

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 878

Introduced by Engel, 17; Adams, 24; Aguilar, 35; Ashford, 20; Friend, 10; Gay, 14; Kruse, 13; Lathrop, 12; Nantkes, 46; Pahls, 31; Pankonin, 2; Pedersen, 39; Raikes, 25; Rogert, 16; Synowiecki, 7; Wightman, 36.

Read first time January 11, 2008

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Election Act; to amend sections
2 32-1301, 32-1302, 32-1303, 32-1304, 32-1306, and 32-1308,
3 Reissue Revised Statutes of Nebraska, and section 32-101,
4 Revised Statutes Cumulative Supplement, 2006; to change
5 provisions relating to recall; to require notification as
6 prescribed; to harmonize provisions; and to repeal the
7 original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-101, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 32-101 Sections 32-101 to 32-1551 and section 4 of this
4 act shall be known and may be cited as the Election Act.

5 Sec. 2. Section 32-1301, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-1301 For purposes of sections 32-1301 to 32-1309,
8 ~~filing clerk shall mean~~ and section 4 of this act:

9 (1) Filing clerk means the election commissioner or
10 county clerk for recall of elected officers of cities, villages,
11 counties, irrigation districts, natural resources districts,
12 public power districts, school districts, community college areas,
13 educational service units, hospital districts, and metropolitan
14 utilities districts; ~~-~~

15 (2) Malfeasance in office means the knowing and
16 intentional commission by a public official of an unlawful or
17 wrongful act in the performance of the duties of such public
18 official which infringes on the rights of any person or entity;

19 (3) Misfeasance in office means the negligent performance
20 by a public official of the duties of such public official or the
21 negligent failure by a public official to perform a specific act
22 which is a required part of the duties of such public official; and

23 (4) Nonfeasance in office means the knowing and
24 intentional failure by a public official to perform a specific act
25 which is a required part of the duties of such public official.

1 Sec. 3. Section 32-1302, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-1302 (1) Except for ~~trustees of sanitary and~~
4 ~~improvement districts,~~ as otherwise provided in sections 31-786
5 to 31-793, any elected official of a political subdivision and
6 any elected member of the governing bodies of cities, villages,
7 counties, irrigation districts, natural resources districts,
8 public power districts, school districts, community college areas,
9 educational service units, hospital districts, and metropolitan
10 utilities districts may be removed from office by recall pursuant
11 to sections 32-1301 to 32-1309 and section 4 of this act. A ~~trustee~~
12 ~~of a sanitary and improvement district may be removed from office~~
13 ~~by recall pursuant to sections 31-786 to 31-793.~~

14 (2) If due to reapportionment the boundaries of the area
15 served by the official or body change, the recall procedure and
16 special election provisions of sections 32-1301 to 32-1309 and
17 section 4 of this act shall apply to the registered voters within
18 the boundaries of the new area.

19 (3) The recall procedure and special election provisions
20 of such sections shall apply to members of the governing bodies
21 listed in subsection (1) of this section, ~~other than sanitary and~~
22 ~~improvement districts,~~ who are elected by precinct, district, or
23 subdistrict of the political subdivision. Only registered voters of
24 such member's precinct, district, or subdistrict may sign a recall
25 petition or vote at the recall election. The recall election shall

1 be held within the member's precinct, district, or subdistrict.
2 When an elected member is nominated by precinct, district, or
3 subdistrict in the primary election and elected at large in
4 the general election, the recall provisions shall apply to the
5 registered voters at the general election.

6 (4) The recall procedure and special election provisions
7 shall apply to the mayor and members of the city council
8 of municipalities with a home rule charter notwithstanding any
9 contrary provisions of the home rule charter.

10 Sec. 4. One or more registered voters proposing the
11 recall of an elected official or elected member of a governing
12 body listed in section 32-1302 shall submit to the filing clerk a
13 typewritten statement, in concise language of sixty or fewer words,
14 alleging facts which if true establish malfeasance in office,
15 misfeasance in office, or nonfeasance in office for which recall
16 of the official or member is sought. Such voter or voters shall be
17 deemed to be the principal circulator or circulators of the recall
18 petition.

19 Sec. 5. Section 32-1303, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 32-1303 (1) A petition demanding that the question of
22 removing an elected official or elected member of a governing body
23 listed in section 32-1302 be submitted to the registered voters
24 shall be signed by registered voters equal in number to at least
25 thirty-five percent of the total vote cast for ~~that~~ such office in

1 the last general election, except that (a) for an office for which
2 more than one candidate is chosen, the petition shall be signed by
3 registered voters equal in number to at least thirty-five percent
4 of the number of votes cast for the person receiving the most votes
5 for such office in the last general election, (b) for a member of
6 a board of a Class I school district, the petition shall be signed
7 by registered voters of the school district equal in number to at
8 least twenty-five percent of the total number of registered voters
9 residing in the district on the date that the recall petitions are
10 first ~~checked out~~ procured from the filing clerk by the principal
11 circulator or circulators, and (c) for a member of a governing body
12 of a village, the petition shall be signed by registered voters
13 equal in number to at least forty-five percent of the total vote
14 cast for the person receiving the most votes for that office in the
15 last general election. The signatures shall be affixed to petition
16 papers and shall be considered part of the petition.

17 (2) Petition circulators shall conform to the
18 requirements of section 32-630.

19 (3) The petition papers shall be procured from the filing
20 clerk. The filing clerk shall notify the Secretary of State when
21 initial petition papers are issued under this section. Prior to the
22 issuance of such petition papers, an affidavit shall be signed and
23 filed with the filing clerk by ~~at least one registered voter.~~ Such
24 ~~voter or voters shall be deemed to be~~ the principal circulator or
25 circulators of the recall petition. The affidavit shall state the

1 name and office of the elected official or elected member sought to
2 be removed, shall include ~~in typewritten form in concise language~~
3 ~~of sixty words or less the reason or reasons for which recall is~~
4 ~~sought,~~ the statement of allegations filed pursuant to section 4
5 of this act, and shall request that the filing clerk issue initial
6 petition papers to the principal circulator or circulators for
7 circulation.

8 (4) The filing clerk shall notify the official individual
9 sought to be removed by any method specified in section 25-505.01
10 or, if notification cannot be made with reasonable diligence by
11 any of the methods specified in section 25-505.01, by leaving
12 a copy of the affidavit at the official's individual's usual
13 place of residence and mailing a copy by first-class mail to
14 the official's individual's last-known address. If the official
15 ~~chooses,~~ Within twenty days after the individual receives the copy
16 of the affidavit, he or she may submit a typewritten defense
17 statement, in typewritten form in concise language of sixty or
18 fewer words, or less for inclusion on the petition or he or
19 she may file an action in the district court having jurisdiction
20 over the county in which such individual resides to challenge
21 the sufficiency of the allegations in the statement filed by the
22 principal circulator or circulators. The court shall presume the
23 allegations in the statement are true and construe them in the
24 light most favorable to the principal circulator or circulators and
25 shall determine, without hearing and without cost to any party,

1 whether the allegations in the statement establish the existence
2 of malfeasance in office, misfeasance in office, or nonfeasance in
3 office. The clerk of the district court shall notify the filing
4 clerk and all parties of the court's decision within five days
5 after the decision is rendered. If the allegations are found to
6 be sufficient to establish the existence of malfeasance in office,
7 misfeasance in office, or nonfeasance in office, the individual
8 whose removal is sought may submit a defense statement as described
9 in this subsection within twenty days after receiving the notice
10 of the decision. Upon receipt of the defense statement or upon the
11 expiration of such twenty-day period if no defense statement is
12 submitted, the filing clerk shall issue the petition papers to the
13 principal circulator or circulators pursuant to this section. If
14 the allegations are found not to be sufficient, the filing clerk
15 shall not issue the petition papers. Any such defense statement
16 shall be submitted to the filing clerk within twenty days after the
17 official receives the copy of the affidavit.

18 (5) The filing clerk shall notify the principal
19 circulator or circulators that the necessary signatures must be
20 gathered within thirty days ~~from~~ after the date of issuing the
21 petitions. ~~(4)~~ The filing clerk, upon issuing the initial petition
22 papers or any subsequent petition papers, shall enter in a record,
23 to be kept in his or her office, the name of the principal
24 circulator or circulators to whom the papers were issued, the date
25 of issuance, and the number of papers issued. The filing clerk

1 shall certify on the papers the name of the principal circulator or
2 circulators to whom the papers were issued and the date they were
3 issued. No petition paper shall be accepted as part of the petition
4 unless it bears such certificate. The principal circulator or
5 circulators who ~~check out~~ procure petitions from the filing clerk
6 may distribute such petitions to persons who may act as circulators
7 of such petitions.

8 ~~(5)~~ (6) Petition signers shall ~~conform to~~ comply with the
9 requirements of sections 32-629 and 32-630. Each signer of a recall
10 petition shall be a registered voter and qualified by his or her
11 place of residence to vote for the office in question.

12 Sec. 6. Section 32-1304, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 32-1304 (1) The Secretary of State shall design the
15 uniform petition papers to be distributed by all filing clerks
16 and shall keep a sufficient number of such blank petition papers
17 on file for distribution to any filing clerk requesting recall
18 petitions. The petition papers shall as nearly as possible conform
19 to the requirements of section 32-628.

20 (2) In addition to the requirements specified in section
21 32-628, for the purpose of preventing fraud, deception, and
22 misrepresentation, every sheet of each petition paper presented
23 to a registered voter for his or her signature shall have upon
24 it, above the lines for signatures, (a) a statement that the
25 signatories must be registered voters qualified by residence to

1 vote for the office in question and support the holding of a recall
 2 election, (b) a statement of the estimated cost of the recall
 3 election to be filled in by the filing clerk prior to issuing
 4 the initial petition papers under section 32-1303, and (c) and
 5 ~~(b)~~ in letters not smaller than sixteen-point type in red print
 6 (i) the name and office of the individual sought to be recalled,
 7 (ii) ~~the reason or reasons for which recall is sought,~~ statement
 8 of allegations filed pursuant to section 4 of this act, (iii) the
 9 defense statement, if any, submitted by the elected official or
 10 elected member pursuant to section 32-1303, and (iv) the name of
 11 the principal circulator or circulators of the recall petition. ~~The~~
 12 Neither the decision of a county attorney to prosecute or not to
 13 prosecute any individual, nor the finding of the district court
 14 pursuant to section 32-1303, shall ~~not~~ be stated on a petition as
 15 a reason for recall.

16 (3) Every sheet of each petition paper presented to a
 17 registered voter for his or her signature shall have upon it, below
 18 the lines for signatures, an affidavit as required in subsection
 19 (3) of section 32-628 which also includes language substantially as
 20 follows: "and that the affiant stated to each signer, before the
 21 signer affixed his or her signature to the petition, the following:
 22 (a) The name and office of the individual sought to be recalled,
 23 (b) ~~the reason or reasons for which recall is sought as printed on~~
 24 ~~the petition,~~ statement of allegations filed pursuant to section 4
 25 of this act, (c) the defense statement, if any, submitted by the

1 official or member as printed on the petition, and (d) the name of
2 the principal circulator or circulators of the recall petition."

3 (4) Each petition paper shall contain a statement
4 entitled Instructions to Petition Circulators prepared by the
5 Secretary of State to assist circulators in understanding the
6 provisions governing the petition process established by sections
7 32-1301 to 32-1309 and section 4 of this act. The instructions
8 shall include the following statements:

9 (a) No one circulating this petition paper in an attempt
10 to gather signatures shall sign the circulator's affidavit unless
11 each person who signed the petition paper did so in the presence of
12 the circulator.

13 (b) No one circulating this petition paper in an attempt
14 to gather signatures shall allow a person to sign the petition
15 until the circulator has stated to the person (i) the object of the
16 petition as printed on the petition, (ii) the name and office of
17 the individual sought to be recalled, (iii) the ~~reason or reasons~~
18 ~~for which recall is sought as printed on the petition,~~ statement
19 of allegations filed pursuant to section 4 of this act, (iv) the
20 defense statement, if any, submitted by the official or member
21 as printed on the petition, and (v) the name of the principal
22 circulator or circulators of the recall petition.

23 Sec. 7. Section 32-1306, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 32-1306 (1) If the recall petition is found to be

1 sufficient, the filing clerk shall notify the official whose
2 removal is sought and the governing body of the affected political
3 subdivision that sufficient signatures have been gathered.
4 Notification of the official sought to be removed may be by any
5 method specified in section 25-505.01 or, if notification cannot be
6 made with reasonable diligence by any of the methods specified in
7 section 25-505.01, by leaving such notice at the official's usual
8 place of residence and mailing a copy by first-class mail to the
9 official's last-known address.

10 (2) If the official does not resign within five days
11 after receiving the notice, the governing body of the political
12 subdivision shall order an election to be held not less than thirty
13 nor more than forty-five days after the expiration of the five-day
14 period, except that if any other election is to be held in that
15 district within ninety days of the expiration of the five-day
16 period, the governing body of the political subdivision shall
17 provide for the holding of the removal election on the same day.
18 After the governing body sets the date for the recall election, the
19 recall election shall be held regardless of whether the official
20 whose removal is sought resigns before the recall election is held.

21 (3) If the governing body of the political subdivision
22 fails or refuses to order a recall election within the time
23 required, the election may be ordered by the district court having
24 jurisdiction over a county in which the elected official serves. If
25 a filing clerk is subject to a recall election, the Secretary of

1 State shall conduct the recall election.

2 (4) The filing clerk shall notify the Secretary of State
3 whenever the recall petition is found to be sufficient and an
4 election will be held under this section.

5 Sec. 8. Section 32-1308, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 32-1308 (1) If a majority of the votes cast at a recall
8 election are against the removal of the official named on the
9 ballot or the election results in a tie, the official shall
10 continue in office for the remainder of his or her term but may be
11 subject to further recall attempts as provided in section 32-1309.

12 (2) If a majority of the votes cast at a recall election
13 are for the removal of the official named on the ballot, he or she
14 shall, regardless of any technical defects in the recall petition,
15 be deemed removed from office unless a recount is ordered. If the
16 official is deemed removed, the removal shall result in a vacancy
17 in the office which shall be filled as provided in this section and
18 sections 32-567 to 32-570.

19 (3) If the election results show a margin of votes
20 equal to one percent or less between the removal or retention
21 of the official in question, the Secretary of State, election
22 commissioner, or county clerk shall order a recount of the votes
23 cast unless the official named on the ballot files a written
24 statement with the filing clerk that he or she does not want a
25 recount.

1 (4) If there are vacancies in the offices of a majority
2 or more of the members of any governing body at one time due to the
3 recall of such members, a special election to fill such vacancies
4 shall be conducted as expeditiously as possible by the Secretary of
5 State, election commissioner, or county clerk.

6 (5) No official who is removed at a recall election or
7 who resigns after the initiation of the recall process shall be
8 appointed to fill the vacancy resulting from his or her removal or
9 the removal of any other member of the same governing body during
10 the remainder of his or her term of office.

11 (6) The filing clerk shall notify the Secretary of State
12 regarding the results of the election.

13 (7) The Secretary of State shall compile records of all
14 notifications received from filing clerks under sections 32-1301
15 to 32-1309 and section 4 of this act. The Secretary of State may
16 prescribe the form for such notifications.

17 Sec. 9. Original sections 32-1301, 32-1302, 32-1303,
18 32-1304, 32-1306, and 32-1308, Reissue Revised Statutes of
19 Nebraska, and section 32-101, Revised Statutes Cumulative
20 Supplement, 2006, are repealed.