

## LEGISLATIVE BILL 878

Approved by the Governor March 14, 2012

Introduced by Wallman, 30.

FOR AN ACT relating to elections; to amend sections 32-206, 32-568, and 32-809, Reissue Revised Statutes of Nebraska, section 32-570, Revised Statutes Cumulative Supplement, 2010, and section 32-811, Revised Statutes Supplement, 2011; to change provisions relating to publication of the official election calendar, filling vacancies, automatic nomination of candidates for reclamation districts, and placement of names on ballots; to eliminate provisions relating to custodians and training for vote counting devices; to harmonize provisions; to repeal the original sections; and to outright repeal sections 32-1044 and 32-1045, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 32-206, Reissue Revised Statutes of Nebraska, is amended to read:

32-206 (1) The Secretary of State shall publish an official election calendar by ~~December~~ November 1 prior to the statewide primary election. Such calendar, to be approved as to form by the Attorney General, shall set forth the various election deadline dates and other pertinent data as determined by the Secretary of State. The official election calendar shall be merely a guideline and shall in no way legally bind the Secretary of State or the Attorney General.

(2) Except as provided in sections 32-302 and 32-306, any filing or other act required to be performed by a specified day shall be performed by 5 p.m. of such day, except that if such day falls upon a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

Sec. 2. Section 32-568, Reissue Revised Statutes of Nebraska, is amended to read:

32-568 (1) If any vacancy occurs in the office of city council member of a city of the metropolitan class, the remaining members of the council shall appoint a person to fill such vacancy from the district in which the vacancy occurred for the remainder of the term. The person thus appointed shall qualify and give bond as by law provided for council members elected to such office. A vacancy in the office of mayor of a city of the metropolitan class shall be filled as provided by local law.

(2) The city council of a city of the primary class may provide for filling any vacancies that occur in any elective office by appointment by the mayor, with the advice and consent of the council, to hold office until the next general city election. In case of vacancy in the office of mayor of a city of the primary class or his or her absence or disability, the president of the council shall exercise the powers and duties of the office until such vacancy is filled or disability removed or, in case of temporary absence, until the mayor returns, and such acting mayor shall perform such other duties as may be required by law.

(3) In a city of the first class except a city which has adopted the commissioner or city manager plan of government, any vacancy on the council resulting from causes other than expiration of the term shall be filled by appointment by the mayor with the consent of the city council to hold office for the remainder of the term. When there is a vacancy in the office of the mayor in a city of the first class, the president of the city council shall serve as mayor for the unexpired term. In case of any temporary absence or disability on the part of the mayor, the president of the council shall exercise the powers and duties of the office of mayor until such disability is removed, or in case of temporary absence until the mayor returns, and shall perform such other duties as may be required by law.

(4) Any vacancy on the city council of a city of the second class shall be filled as provided in section 32-569. In the case of any vacancy in the office of mayor, or in case of his or her disability or absence, the president of the council shall exercise the office of mayor for the unexpired term, until such disability is removed, or in case of temporary absence, until the mayor returns. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council.

(5) A vacancy on the board of trustees of a village shall be filled as provided in section 32-569, except that the board of trustees of a village situated in more than one county shall have power to fill by appointment any vacancy that may occur in their number.

(6) If any vacancy occurs in the office of council member in a

city under the commission plan of government, the vacancy shall be filled as provided in section 32-569. If an incumbent in a city under the commission plan of government files for a city office other than the office he or she holds, the office he or she holds shall become vacant as of the date of the commencement of the term of the office for which he or she has filed. If such vacancy results in an unexpired term, such vacancy shall be filled by election for the remainder of the unexpired term. In a city under the commission plan of government, the vice president of the city council shall perform the duties of the mayor of the city in the absence or inability of the mayor to serve. If a vacancy occurs in the office of mayor by death or otherwise, the vice president shall perform the duties of mayor of the city until such time as the council shall fill such vacancy, which shall be done at the first council meeting after such vacancy occurs or as soon thereafter as may be practicable.

(7) If a vacancy occurs in the office of council member in a city under a city manager plan, a successor council member shall be elected at the next regular city election to serve for the remainder of the term, except that a majority of the remaining members of the council shall appoint a registered voter to serve as council member until the successor is so elected and has qualified. If the council members are elected by ward, the council member elected or appointed to fill the vacancy shall be a registered voter of the ward in which the vacancy exists. If for any reason the seats of a majority one-half or more of the members of the council become vacant, the Secretary of State shall conduct a special election to fill the vacancies for the unexpired portion of each term. A vacancy in any office to which the council elects shall be filled by the council for the unexpired term.

(8) Vacancies in city offices in any city under home rule charter shall be filled as provided in the home rule charter.

Sec. 3. Section 32-570, Revised Statutes Cumulative Supplement, 2010, is amended to read:

32-570 (1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) A person appointed to fill a vacancy on the school board of a Class I school district by the remaining members of the board shall hold office until the beginning of the next school year. A board member of a Class I school district elected to fill a vacancy at a regular or special school district meeting shall serve for the remainder of the unexpired term or until a successor is elected and qualified.

(3) Except as provided in subsection (4) of this section, a vacancy in the membership of a school board of a Class II, III, IV, V, or VI school district resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs in a Class II school district prior to July 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is elected at such general election for the remainder of the unexpired term. If the vacancy occurs in a Class III, IV, V, or VI school district prior to February 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. If the vacancy occurs on or after the applicable deadline, the appointment shall be for the remainder of the unexpired term. A registered voter appointed or elected pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(4) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs at least twenty days prior to the first regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the first regular caucus and at least twenty days prior to the second regular caucus to be held during the term that

was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the second regular caucus held during the term that was vacated or after such caucus, the appointment shall be for the remainder of the unexpired term.

(5) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(6) If there are vacancies in the offices of a ~~majority~~ one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Sec. 4. Section 32-809, Reissue Revised Statutes of Nebraska, is amended to read:

32-809 (1) The form of the official ballot at the statewide primary election shall be prescribed by the Secretary of State. At the top of the ballot and over all else shall be printed in boldface type the name of the political party, ..... Official Ballot, Primary Election 20.. . Each division containing the names of the office and a list of candidates for such office shall be separated from other groups by a bold line. The ballot shall list at-large candidates and subdistrict candidates under appropriate headings.

(2) All proposals for constitutional amendments, candidates for delegates to the national political party conventions, and candidates on the nonpartisan ballot shall be submitted on a ballot where bold lines separate one office or issue from another. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211. Each candidate for delegate to the national political party convention shall have his or her preference for the candidacy for the office of President of the United States or the fact that he or she is uncommitted shown on the ballot in parenthesis and indented on the line immediately below the name of the candidate. All constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires the ballot after being voted to be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, constitutional amendments may be printed on either side of the ballot and shall be separated from other offices or issues by a bold line. Constitutional amendments so arranged shall constitute a separate ballot.

(3) The Except as otherwise provided in section 32-811, the statewide primary election ballot shall contain the name of every candidate filing or recognized under subsection (1) of section 32-606 and sections 32-606, 32-611, and 32-613, and 32-614 and no other names. No name of a candidate for member of the Legislature or an elective office described in Article IV, section 1, of the Constitution of Nebraska shall appear on any ballot or any series of ballots at any primary election more than once except for the names of candidates for the office of delegate to a county, state, or national political party convention. When two or more of the last names of candidates for the same office at the primary election are the same in spelling or sound, the official ballots may, on the request of any such candidate, have his or her address printed immediately below his or her name in capital and lowercase letters in lightface type of the same size as the type in which the name of the candidate is printed.

Sec. 5. Section 32-811, Revised Statutes Supplement, 2011, is amended to read:

32-811 (1) If the names of candidates properly filed for nomination at the primary election for directors of natural resources districts, directors of public power districts, ~~directors of reclamation districts,~~ members of the boards of governors of community college areas, members of the boards of Class III or Class V school districts which nominate candidates at a primary election, and officers of cities of the first or second class and cities having a city manager plan of government do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots. The official abstract of votes kept by the county or state shall show the names of such candidates with the statement Nominated Without Opposition. The election commissioner or county clerk shall place the names of such automatically nominated candidates on the general election ballot as provided in section 32-814.

(2) Candidates shall not appear on the ballot in the primary election for the ~~board of directors in public power districts receiving annual gross revenue of less than forty million dollars, for county weed district boards, and for the board of trustees in villages.~~ offices listed in subsection (2) of section 32-606.

(3) If the number of candidates for delegates to a county or national political party convention are the same in number or less than the number of candidates to be elected, the names shall not appear on the primary election ballot and those so filed shall receive a certificate of election.

Sec. 6. Original sections 32-206, 32-568, and 32-809, Reissue Revised Statutes of Nebraska, section 32-570, Revised Statutes Cumulative Supplement, 2010, and section 32-811, Revised Statutes Supplement, 2011, are repealed.

Sec. 7. The following sections are outright repealed: Sections 32-1044 and 32-1045, Reissue Revised Statutes of Nebraska.