LEGISLATIVE BILL 687

Introduced by Bloomfield, 17.

Read first time January 06, 2016

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to recall; to amend sections 32-1205, 32-1301,
   32-1302, 32-1304, 32-1305, and 32-1309, Reissue Revised Statutes of
   Nebraska, sections 32-628, 32-1303, and 32-1306, Revised Statutes
   Cumulative Supplement, 2014, and section 32-1308, Revised Statutes
   Supplement, 2015; to provide for recall of an official elected or
   appointed to a state elective office; to harmonize provisions; and
   to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,
Section 1. Section 32-628, Revised Statutes Cumulative Supplement, 2014, is amended to read:

32-628 (1) All petitions prepared or filed pursuant to the Election Act or any petition which requires the election commissioner or county clerk to verify signatures by utilizing the voter registration register shall provide a space at least two and one-half inches long for written signatures, a space at least two inches long for printed names, and sufficient space for date of birth and street name and number, city or village, and zip code. Lines on each petition shall not be less than one-fourth inch apart. Petitions may be designed in such a manner that lines for signatures and other information run the length of the page rather than the width. Petitions shall provide for no more than twenty signatures per page.

(2) For the purpose of preventing fraud, deception, and misrepresentation, every sheet of every petition containing signatures shall have upon it, above the signatures, the statements contained in this subsection, except that a petition for recall of an elected official shall also have the additional information specified in subsection (2) of section 32-1304. The statements shall be printed in boldface type in substantially the following form:

WARNING TO PETITION SIGNERS—VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

(3) Every sheet of a petition which contains signatures shall have upon it, below the signatures, an affidavit as provided in this subsection, except that the affidavit for a petition for recall of an
elected official shall also include the additional language specified in subsection (3) of section 32-1304. The affidavit shall be in substantially the following form:

STATE OF NEBRASKA )

)ss.

COUNTY OF ....... )

..........................., (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing .......... signatures, that he or she is at least eighteen years of age, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator ...........................

Address .............................

Subscribed and sworn to before me, a notary public, this ...... day of ......... 20.... at ..............., Nebraska.

Notary Public ..........................

(4) Each sheet of a petition shall have upon its face and in plain view of persons who sign the petition a statement in letters not smaller than sixteen-point type in red print on the petition. If the petition is circulated by a paid circulator, the statement shall be as follows: This petition is circulated by a paid circulator. If the petition is circulated by a circulator who is not being paid, the statement shall be
as follows: This petition is circulated by a volunteer circulator.

Sec. 2. Section 32-1205, Reissue Revised Statutes of Nebraska, is amended to read:

32-1205 A political subdivision in which an official is recalled or a vacancy needs to be filled as the result of a recall petition shall pay the costs of the recall procedure and any special election held as a result of a recall election. If a recall election is canceled pursuant to section 32-1306, the political subdivision shall be responsible for costs incurred related to the canceled election. If a person holding a state elective office is the subject of a recall petition, the state shall be responsible for all costs of the recall procedure, any special election, or costs incurred related to a canceled election. The costs shall include all chargeable costs as provided in section 32-1202 associated with preparing for and conducting a recall or special election.

Sec. 3. Section 32-1301, Reissue Revised Statutes of Nebraska, is amended to read:

32-1301 For purposes of sections 32-1301 to 32-1309 and section 6 of this act: filing clerk shall mean

(1) Filing clerk means the election commissioner or county clerk for recall of elected officers of cities, villages, counties, irrigation districts, natural resources districts, public power districts, school districts, community college areas, educational service units, hospital districts, and metropolitan utilities districts and the Secretary of State for recall of an official elected or appointed to a state elective office;

(2) Official means an elected official of a political subdivision or an elected member of the governing body of a political subdivision listed in subdivision (1) of this section or an official elected or appointed to a state elective office; and

(3) State elective office means the office of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State
Treasurer, Attorney General, member of the Legislature, and member of a board or commission with one or more election districts of more than one county other than a board subject to recall under sections 31-786 to 31-793 or listed in subdivision (1) of this section.

Sec. 4. Section 32-1302, Reissue Revised Statutes of Nebraska, is amended to read:

32-1302 (1) Any official except for trustees of sanitary and improvement districts, any elected official of a political subdivision and any elected member of the governing bodies of cities, villages, counties, irrigation districts, natural resources districts, public power districts, school districts, community college areas, educational service units, hospital districts, and metropolitan utilities districts may be removed from office by recall pursuant to sections 32-1301 to 32-1309 and section 6 of this act. A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793.

(2) If due to reapportionment the boundaries of the area served by the official or body change, the recall procedure and special election provisions of sections 32-1301 to 32-1309 and section 6 of this act shall apply to the registered voters within the boundaries of the new area.

(3) The recall procedure and special election provisions of such sections shall apply to officials members of the governing bodies listed in subsection (1) of this section, other than sanitary and improvement districts, who are elected by precinct, district, or subdistrict of the political subdivision. Only registered voters of such official's member's precinct, district, or subdistrict may sign a recall petition or vote at the recall election. The recall election shall be held within the official's member's precinct, district, or subdistrict. When an elected official member is nominated by precinct, district, or subdistrict in the primary election and elected at large in the general election, the recall provisions shall apply to the registered voters at the general election.
(4) The recall procedure and special election provisions shall apply to the mayor and members of the city council of municipalities with a home rule charter notwithstanding any contrary provisions of the home rule charter.

Sec. 5. Section 32-1303, Revised Statutes Cumulative Supplement, 2014, is amended to read:

32-1303 (1) A petition demanding that the question of removing an elected official of a political subdivision or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for such office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election, (b) for a member of a board of a Class I school district, the petition shall be signed by registered voters of the school district equal in number to at least twenty-five percent of the total number of registered voters residing in the district on the date that the recall petitions are first procured checked out from the filing clerk by the principal circulator or circulators, and (c) for a member of a governing body of a village, the petition shall be signed by registered voters equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall comply with conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one registered voter.
Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed, shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator or circulators for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the affidavit. The principal circulator or circulators shall gather the petition papers within twenty days after the receipt of the official's defense statement. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after from the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who procure check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators.
of such petitions.

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

Sec. 6. (1) A petition demanding that the question of removing an official elected or appointed to a state elective office be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for such office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall comply with the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name and office of the official sought to be removed and shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought. Such reason or reasons shall be factual and based on the official's conduct during his or her term of office. The affidavit shall request that the filing clerk issue initial petition papers to the principal circulator or circulators for circulation. The filing clerk shall notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise
language of sixty words or less for inclusion on the petition. Any such
defense statement shall be submitted to the filing clerk within twenty
days after the official receives the copy of the affidavit. The principal
circulator or circulators shall gather the petition papers within twenty
days after the receipt of the official's defense statement. The filing
clerk shall notify the principal circulator or circulators that the
necessary signatures must be gathered within sixty days after the date of
issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or
any subsequent petition papers, shall enter in a record, to be kept in
his or her office, the name of the principal circulator or circulators to
whom the papers were issued, the date of issuance, and the number of
papers issued. The filing clerk shall certify on the papers the name of
the principal circulator or circulators to whom the papers were issued
and the date they were issued. No petition paper shall be accepted as
part of the petition unless it bears such certificate. The principal
circulator or circulators who procure petitions from the filing clerk may
distribute such petitions to persons who may act as circulators of such
petitions.

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

Sec. 7. Section 32-1304, Reissue Revised Statutes of Nebraska, is
amended to read:

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

(2) In addition to the requirements specified in section 32-628, for
the purpose of preventing fraud, deception, and misrepresentation, every
sheet of each petition paper presented to a registered voter for his or
her signature shall have upon it, above the lines for signatures, (a) a
statement that the signatories must be registered voters qualified by
residence to vote for the office in question and support the holding of a
recall election and (b) in letters not smaller than sixteen-point type in
red print (i) the name and office of the **official individual** sought to be
recalled, (ii) the reason or reasons for which recall is sought, (iii)
the defense statement, if any, submitted by the official, and (iv) the
name of the principal circulator or circulators of the recall petition.
The decision of a county attorney to prosecute or not to prosecute any
individual shall not be stated on a petition as a reason for recall.

(3) Every sheet of each petition paper presented to a registered
voter for his or her signature shall have upon it, below the lines for
signatures, an affidavit as required in subsection (3) of section 32-628
which also includes language substantially as follows: "and that the
affiant stated to each signer, before the signer affixed his or her
signature to the petition, the following: (a) The name and office of the
**official individual** sought to be recalled, (b) the reason or reasons for
which recall is sought as printed on the petition, (c) the defense
statement, if any, submitted by the official as printed on the petition,
and (d) the name of the principal circulator or circulators of the recall
petition".

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

(a) No one circulating this petition paper in an attempt to gather
signatures shall sign the circulator's affidavit unless each person who
signed the petition paper did so in the presence of the circulator.
(b) No one circulating this petition paper in an attempt to gather signatures shall allow a person to sign the petition until the circulator has stated to the person (i) the object of the petition as printed on the petition, (ii) the name and office of the official individual sought to be recalled, (iii) the reason or reasons for which recall is sought as printed on the petition, (iv) the defense statement, if any, submitted by the official as printed on the petition, and (v) the name of the principal circulator or circulators of the recall petition.

Sec. 8. Section 32-1305, Reissue Revised Statutes of Nebraska, is amended to read:

32-1305 (1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days, for an elected official of a political subdivision or an elected member of a governing body listed in section 32-1301, or sixty days, for an official elected or appointed to a state elective office, after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 32-1303 and section 6 of this act.

(2) If the filing clerk is the subject of a recall petition, the signature verification process shall be conducted by two election commissioners or county clerks appointed by the Secretary of State. Mileage and expenses incurred by officials appointed pursuant to this subsection shall be reimbursed by the political subdivision involved in the recall. If the filing clerk subject to a recall petition is holding a state elective office, the mileage and expenses incurred pursuant to this subsection shall be reimbursed by the state.

(3) For an elected official of a political subdivision or elected member of a governing body listed in section 32-1301 within fifteen days after the filing of the petition, the filing clerk shall ascertain within fifteen days after the filing of the petition whether or not the petition is signed by the requisite number of registered voters. For an official
elected or appointed to a state elective office, the filing clerk shall have thirty days after the filing of the petition to ascertain whether the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed before the petitions are filed with the filing clerk for signature verification. If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Sec. 9. Section 32-1306, Revised Statutes Cumulative Supplement, 2014, is amended to read:

32-1306 (1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision or state entity, if any, that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) If the subject of the recall is an elected official of a political subdivision or an elected member of a governing body listed in section 32-1301, the governing body of the political subdivision shall order an election to be held not less than thirty nor more than seventy-five days after the notification of the official whose removal is sought under subsection (1) of this section, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision
shall provide for the holding of the recall election on the same day. If
the subject of the recall is a person holding a state elective office,
the Secretary of State shall order an election to be held not less than
thirty nor more than seventy-five days after the notification of the
official whose removal is sought under subsection (1) of this section,
except that if any other election is to be held in the state within
ninety days after such notification, the Secretary of State shall provide
for the holding of the recall election on the same day. All resignations
shall be tendered as provided in section 32-562. If the official whose
removal is sought resigns before the recall election is held and the
filing clerk has notice of such resignation, the governing body may
cancel the recall election if the governing body notifies the election
commissioner or county clerk of the cancellation at least sixteen days
prior to the election, the recall election may be canceled, otherwise the
recall election shall be held as scheduled.

(3) If the governing body of the political subdivision fails or
refuses to order a recall election within the time required, the election
may be ordered by the district court having jurisdiction over a county in
which the elected official serves. If the Secretary of State fails or
refuses to order a recall election within the time required, the election
may be ordered by the district court of Lancaster County. If a filing
clerk other than the Secretary of State is subject to a recall election,
the Secretary of State shall conduct the recall election. If the
Secretary of State is subject to a recall election, the Governor shall
appoint an election commissioner to conduct the recall election.

Sec. 10. Section 32-1308, Revised Statutes Supplement, 2015, is
amended to read:

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

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as provided in this section and sections 32-566, 32-567 to 32-570, 32-573, 32-574, 75-103, and 79-314.

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

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

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

Sec. 11. Section 32-1309, Reissue Revised Statutes of Nebraska, is amended to read:

32-1309 No recall petition shall be filed against an elected official within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.