

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 744**

FINAL READING

Introduced by Executive Board: Watermeier, 1, Chairperson; Bolz, 29;  
Chambers, 11; Crawford, 45; Hughes, 44; Kuehn, 38; Larson,  
40; McCollister, 20; Scheer, 19; Stinner, 48.

Read first time January 03, 2018

Committee: Executive Board

1 A BILL FOR AN ACT relating to the Legislature; to amend sections 32-1101,  
2 32-1105, 32-1111, 32-1112, 32-1114, 32-1115, and 32-1116, Reissue  
3 Revised Statutes of Nebraska; to adopt the Legislative  
4 Qualifications and Election Contests Act; to change and repeal  
5 provisions relating to election contests; to provide a duty for the  
6 Revisor of Statutes; to harmonize provisions; to repeal the original  
7 sections; and to outright repeal sections 32-1106 and 32-1107,  
8 Reissue Revised Statutes of Nebraska.

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

1 Section 1. Section 32-1101, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 32-1101 (1) Sections 32-1101 to 32-1117 shall apply to contests of  
4 any election other than the election of a member of the Legislature. The  
5 contest of the election of a member of the Legislature is subject to the  
6 Legislative Qualifications and Election Contests Act.

7 (2) The election of any person to an elective office other than the  
8 Legislature, the location or relocation of a county seat, or any  
9 proposition submitted to a vote of the people may be contested:

10 (a) ~~(1)~~ For misconduct, fraud, or corruption on the part of an  
11 election commissioner, a county clerk, an inspector, a judge or clerk of  
12 election, a member of a counting or canvassing board, or an employee of  
13 the election commissioner or county clerk sufficient to change the  
14 result;

15 (b) ~~(2)~~ If the incumbent was not eligible to the office at the time  
16 of the election;

17 (c) ~~(3)~~ If the incumbent has been convicted of a felony unless at  
18 the time of the election his or her civil rights have been restored;

19 (d) ~~(4)~~ If the incumbent has given or offered to any voter or an  
20 election commissioner, a county clerk, an inspector, a judge or clerk of  
21 election, a member of a counting or canvassing board, or an employee of  
22 the election commissioner or county clerk any bribe or reward in money,  
23 property, or thing of value for the purpose of procuring his or her  
24 election;

25 (e) ~~(5)~~ If illegal votes have been received or legal votes rejected  
26 at the polls sufficient to change the results;

27 (f) ~~(6)~~ For any error of any board of canvassers in counting the  
28 votes or in declaring the result of the election if the error would  
29 change the result;

30 (g) ~~(7)~~ If the incumbent is in default as a collector and custodian  
31 of public money or property; or

1           (h) ~~(8)~~ For any other cause which shows that another person was  
2 legally elected.

3           (3) When the misconduct is on the part of an election commissioner,  
4 a county clerk, an inspector, a judge or clerk of election, a member of a  
5 counting or canvassing board, or an employee of the election commissioner  
6 or county clerk, it shall be insufficient to set aside the election  
7 unless the vote of the county, precinct, or township would change the  
8 result as to that office.

9           Sec. 2. Section 32-1105, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11           32-1105 ~~The~~ If the contested seat is not in the Legislature, the  
12 petitioner shall file in the proper court within ten days after filing of  
13 the petition a bond with security to be approved by the clerk of the  
14 court conditioned to pay all costs in case the election is confirmed.

15           ~~If the contested seat is in the Legislature, the petitioner shall~~  
16 ~~file with the Clerk of the Legislature within ten days after filing the~~  
17 ~~petition a bond with security approved by the Clerk of the Legislature~~  
18 ~~conditioned to pay all costs in case the election is confirmed. The bond~~  
19 ~~shall be in an amount of at least five thousand dollars as determined by~~  
20 ~~the Clerk of the Legislature. If the Clerk of the Legislature determines~~  
21 ~~that the bond is inadequate, he or she may order an increase in the~~  
22 ~~amount of the bond at any stage of the contest proceedings.~~

23           Sec. 3. Section 32-1111, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25           32-1111 When a contested election is pending, the person holding the  
26 certificate of election may give bond, qualify and take the office at the  
27 time specified by law, and exercise the duties of the office until the  
28 contest is decided. If the contest is decided against him or her, the  
29 Legislature or court shall order him or her to give up the office to the  
30 successful party in the contest and deliver to the successful party all  
31 books, records, papers, property, and effects pertaining to the office,

1 and the ~~Legislature~~ or court may enforce such order by attachment or  
2 other proper legal process.

3 Sec. 4. Section 32-1112, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 32-1112 ~~(1)~~ Any court before which any contested election may be  
6 pending or the clerk of such court in vacation may issue a writ to the  
7 election commissioner or county clerk of the county in which the  
8 contested election was held commanding him or her to open, count, compare  
9 with the list of voters, and examine the ballots in his or her office  
10 which were cast at the election in contest and to certify the result of  
11 such count, comparison, and examination to the court from which the writ  
12 was issued.

13 ~~(2) The Legislature or the committee of the Legislature designated~~  
14 ~~by the Legislature before which a contested election is pending may issue~~  
15 ~~a writ to the election commissioner or county clerk of the county in~~  
16 ~~which the contested election was held commanding him or her to open,~~  
17 ~~count, compare with the list of voters, and examine the ballots in his or~~  
18 ~~her office which were cast at the election in contest and to certify the~~  
19 ~~result of such count, comparison, and examination to the Legislature.~~

20 Sec. 5. Section 32-1114, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 32-1114 On ~~(1)~~ ~~Except as provided in subsection (2) of this~~  
23 ~~section,~~ on the day fixed for opening the ballots pursuant to section  
24 32-1113, the election commissioner or county clerk and the county  
25 canvassing board which officiated in making the official county canvass  
26 of the election returns shall proceed to open such ballots in the  
27 presence of the petitioner and the person whose election is contested or  
28 their attorneys. While the ballots are open and being examined, the  
29 election commissioner or county clerk shall exclude all other persons  
30 from the counting room. All persons witnessing the counting of ballots  
31 shall be placed under oath requiring them not to disclose any fact

1 discovered from such ballots except as stated in the certificate of the  
2 election commissioner or county clerk.

3 ~~(2) In an election contest for a seat in the Legislature, the~~  
4 ~~Legislature may establish rules and procedures for the recount of~~  
5 ~~ballots. Such rules and procedures may provide for delivery to the~~  
6 ~~Legislature or a committee of the Legislature designated by the~~  
7 ~~Legislature before which a contested election is pending, by the election~~  
8 ~~commissioner or county clerk, of the ballots or notarized copies of the~~  
9 ~~ballots which were cast at the election in contest.~~

10 Sec. 6. Section 32-1115, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

12 32-1115 ~~(1)~~The election commissioner or county clerk shall permit  
13 the petitioner, the person whose election is being contested, and their  
14 attorneys to fully examine the ballots. The election commissioner or  
15 county clerk shall make return to the writ, under his or her hand and  
16 official seal, of all the facts which either of the parties may desire  
17 and which appear from the ballots to affect or relate to the contested  
18 election. After the examination of the ballots is completed, the election  
19 commissioner or county clerk shall again securely seal the ballots as  
20 they were and preserve and destroy them as provided by law in the same  
21 manner as if they had not been opened. The certificate of the election  
22 commissioner or county clerk certifying the total number of votes  
23 received by a candidate shall be prima facie evidence of the facts stated  
24 in the certificate, but the persons present at the examination of the  
25 ballots may be heard as witnesses to contradict the certificate.

26 ~~(2) If the ballots or notarized copies of the ballots were examined~~  
27 ~~as part of an election contest for a seat in the Legislature, the~~  
28 ~~Legislature shall return such ballots or notarized copies of such ballots~~  
29 ~~to the election commissioner or county clerk at the conclusion of the~~  
30 ~~election contest.~~

31 Sec. 7. Section 32-1116, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2           32-1116 Except for election contests involving a member of the  
3 Legislature under the Legislative Qualifications and Election Contests  
4 Act, the The cost of election contests under sections 32-1101 to 32-1117  
5 and recounts under section 32-1118 shall be adjudged against the  
6 petitioner if he or she loses the contest, and if the petitioner wins the  
7 contest, the cost shall be adjudged against the state, county, or other  
8 political subdivision of which such contested office was a part. The  
9 payment of such costs shall be enforced as in civil cases.—Attorneys  
10 ~~representing the person finally determined to be the winner in any~~  
11 ~~contest or recount of an election to the Legislature may be allowed as~~  
12 ~~part of such costs reimbursement for reasonable attorney's fees as~~  
13 ~~determined by the committee of the Legislature designated by the~~  
14 ~~Legislature before which a contested election is pending but not to~~  
15 ~~exceed five thousand dollars for such services.~~

16           Sec. 8. Sections 8 to 27 of this act shall be known and may be  
17 cited as the Legislative Qualifications and Election Contests Act.

18           Sec. 9. For purposes of the Legislative Qualifications and Election  
19 Contests Act:

20           (1) Committee means the committee of the Legislature designated by  
21 the Legislature to conduct proceedings regarding a petition filed under  
22 the act;

23           (2) Petitioner means a candidate whose name appeared on the ballot  
24 at a general election to represent a legislative district as a member of  
25 the Legislature who files a petition under the act; and

26           (3) Respondent member means a candidate proclaimed duly elected to  
27 represent the legislative district for which the petitioner was seeking  
28 election.

29           Sec. 10. The Legislative Qualifications and Election Contests Act  
30 applies to any contest of the election of a member of the Legislature and  
31 any challenge of the qualifications of a member of the Legislature.

1           Sec. 11. (1) An election contest pursuant to the Legislative  
2 Qualifications and Election Contests Act shall only determine which  
3 candidate was properly elected to the Legislature and is entitled to be  
4 seated. The election contest shall place in issue only the validity of  
5 the results of the election.

6           (2) A qualifications challenge pursuant to the act shall only  
7 determine whether a person elected to the Legislature is qualified to  
8 hold or retain the seat for which elected. The qualifications challenge  
9 shall place in issue only the qualifications of the person elected as a  
10 member of the Legislature under the Constitution of Nebraska.

11           Sec. 12. Only an unsuccessful candidate whose name appeared on the  
12 ballot in the general election to represent a legislative district as a  
13 member of the Legislature may contest the election or challenge the  
14 qualifications of the person elected as a member of the Legislature to  
15 represent that legislative district.

16           Sec. 13. (1) The contest of an election or challenge of the  
17 qualifications of a person elected as a member of the Legislature by an  
18 unsuccessful candidate shall be considered at the next regular session of  
19 the Legislature following the general election.

20           (2) The election contest or qualifications challenge shall be heard  
21 and determined in accordance with the Legislative Qualifications and  
22 Election Contests Act and the Rules of the Nebraska Unicameral  
23 Legislature.

24           Sec. 14. When an election contest or qualifications challenge is  
25 pending pursuant to the Legislative Qualifications and Election Contests  
26 Act, the respondent member may qualify and take office at the time  
27 specified by law and exercise the duties of the office until the election  
28 contest or qualifications challenge is decided. If the election contest  
29 or qualifications challenge is decided against such member, the  
30 Legislature shall order him or her to give up the office to the  
31 petitioner in the election contest or qualifications challenge and

1 deliver to the petitioner all books, records, papers, property, and  
2 effects pertaining to the office. The Legislature may enforce such order  
3 by attachment or other proper legal process.

4       Sec. 15. The petitioner shall have the burden of proving that the  
5 respondent member was not properly elected or qualified to hold office at  
6 the time of the election by clear and convincing evidence.

7       Sec. 16. If the date for filing or completion of an act under the  
8 Legislative Qualifications and Election Contests Act falls on a Saturday,  
9 Sunday, or legal holiday, the next business day shall be the deadline for  
10 filing or completing the act.

11       Sec. 17. All filings with the Clerk of the Legislature pursuant to  
12 the Legislative Qualifications and Election Contests Act, including  
13 pleadings, responses, and motions, shall be served upon each of the  
14 parties and shall contain a complete certificate of service.

15       Sec. 18. (1) A petition to contest the election or challenge the  
16 qualifications of a person elected as a member of the Legislature shall  
17 be filed with the Clerk of the Legislature within forty calendar days  
18 after the general election at which the respondent member was elected,  
19 and a copy of the petition shall be personally served on the respondent  
20 member. The petition shall be verified by affidavit swearing to the truth  
21 of the allegations or based on information and belief. The petitioner  
22 shall include with the petition filed with the Clerk of the Legislature  
23 proof of personal service upon the respondent member.

24       (2)(a) A petition to contest the election shall contain the names of  
25 the voters whose votes are contested, the grounds upon which such votes  
26 are illegal, a full statement of any other grounds upon which the  
27 election is contested, and the standing of the petitioner to contest the  
28 election.

29       (b) A petition to challenge qualifications shall contain the  
30 constitutional grounds on which the respondent member is alleged to be  
31 unqualified and the standing of the petitioner to challenge the

1 respondent member's qualifications.

2       Sec. 19. (1) A petition to contest the election or challenge the  
3 qualifications of a member shall only be amended once within the time  
4 period for filing the initial petition under section 18 of this act. An  
5 amended petition shall be filed with the Clerk of the Legislature and  
6 personally served on the respondent member and shall meet all the  
7 elements required for an initial petition.

8       (2) A petition which is filed or amended after the filing deadline  
9 in section 18 of this act or which fails to meet any of the requirements  
10 of the Legislative Qualifications and Election Contests Act shall be  
11 void, and any rights related thereto shall expire by operation of law.

12       Sec. 20. The petitioner shall file with the Clerk of the  
13 Legislature, within five calendar days after filing the petition pursuant  
14 to section 18 of this act, a bond with security approved by the Clerk of  
15 the Legislature conditioned to pay all costs incurred by the Legislature  
16 if the election is confirmed or the qualifications of the respondent  
17 member are confirmed. The bond shall be in an amount of at least ten  
18 thousand dollars as determined by the Clerk of the Legislature. If the  
19 Clerk of the Legislature determines that the bond is inadequate, he or  
20 she may order an increase in the amount of the bond at any stage of the  
21 proceedings.

22       Sec. 21. The respondent member may file a response to the petition  
23 filed pursuant to section 18 of this act with the Clerk of the  
24 Legislature within ten calendar days after receipt of service of the  
25 petition. If the respondent member files a response, he or she shall also  
26 serve a copy of the response on the petitioner within such ten-day  
27 period.

28       Sec. 22. The prevailing party may request from the opposing party  
29 or the state the recovery of attorney's fees and costs incurred in  
30 bringing or defending a petition to contest an election or challenge  
31 qualifications under the Legislative Qualifications and Election Contests

1 Act. The request shall be filed with the Clerk of the Legislature within  
2 fifteen calendar days after the filing of the final report regarding the  
3 petition. The request shall include a detailed report of attorney's fees  
4 and costs incurred by the prevailing party. The committee may decide that  
5 the prevailing party should receive attorney's fees and costs. Any sum  
6 awarded shall be reasonable, just, and proper.

7       Sec. 23. (1) The election of a person to represent a legislative  
8 district as a member of the Legislature may be contested for any or all  
9 of the following grounds:

10       (a) For misconduct, fraud, or corruption on the part of an election  
11 commissioner, a county clerk, an inspector, a judge or clerk of election,  
12 a member of a counting or canvassing board, or an employee of the  
13 election commissioner or county clerk sufficient to change the result;

14       (b) If the respondent member has given or offered to any voter or an  
15 election commissioner, a county clerk, an inspector, a judge or clerk of  
16 election, a member of a counting or canvassing board, or an employee of  
17 the election commissioner or county clerk any bribe or reward in money,  
18 property, or thing of value for the purpose of procuring his or her  
19 election;

20       (c) If illegal votes have been received or legal votes rejected at  
21 the polls sufficient to change the results;

22       (d) For any error of any board of canvassers in counting the votes  
23 or in declaring the result of the election if the error would change the  
24 result;

25       (e) If the respondent member is in default as a collector and  
26 custodian of public money or property; or

27       (f) For any other cause which shows that another person was legally  
28 elected.

29       (2) When the misconduct is on the part of an election commissioner,  
30 a county clerk, an inspector, a judge or clerk of election, a member of a  
31 counting or canvassing board, or an employee of the election commissioner

1 or county clerk, it shall be insufficient to set aside the election  
2 unless the vote of the county or precinct would change the result as to  
3 that office.

4       Sec. 24. The Legislature or the committee before which a contested  
5 election is pending may issue a writ to the election commissioner or  
6 county clerk of the county in which the contested election was held  
7 commanding him or her to open, count, compare with the list of voters,  
8 and examine in his or her office the ballots which were cast at the  
9 election in contest and to certify the result of such count, comparison,  
10 and examination to the Legislature.

11       Sec. 25. Any writ issued pursuant to section 24 of this act shall  
12 be served without delay on the election commissioner or county clerk by  
13 the sheriff of his or her county. The election commissioner or county  
14 clerk shall at once fix a day, not more than thirty calendar days after  
15 the date of the receipt of such writ, on which he or she will proceed to  
16 open such ballots and shall cause notice in writing of the day so fixed  
17 to be served on the petitioner or his or her attorney and the respondent  
18 member or his or her attorney at least five calendar days before such  
19 day. Such notice may be served in the manner provided in section  
20 25-505.01.

21       Sec. 26. (1) The Legislature may establish rules and procedures for  
22 the recount of ballots. Such rules and procedures may provide for  
23 delivery by the election commissioner or county clerk, to the Legislature  
24 or the committee, of the ballots or notarized copies of the ballots which  
25 were cast at the election in contest. The Legislature shall return such  
26 ballots or notarized copies of such ballots to the election commissioner  
27 or county clerk at the conclusion of the election contest.

28       (2) The election commissioner or county clerk shall permit the  
29 petitioner, the respondent member, and the attorneys for the parties to  
30 fully examine the ballots. The election commissioner or county clerk  
31 shall make return to the writ, under his or her hand and official seal,

1 of all the facts which either of the parties may desire and which appear  
2 from the ballots to affect or relate to the contested election. After the  
3 examination of the ballots is completed, the election commissioner or  
4 county clerk shall again securely seal the ballots as they were and  
5 preserve and destroy them as provided by law in the same manner as if  
6 they had not been opened. The certificate of the election commissioner or  
7 county clerk certifying the total number of votes received by a candidate  
8 shall be prima facie evidence of the facts stated in the certificate, but  
9 the persons present at the examination of the ballots may be heard as  
10 witnesses to contradict the certificate.

11       Sec. 27. Pursuant to Article III, section 10, of the Constitution  
12 of Nebraska, the Legislature is vested with the jurisdiction to hear any  
13 challenge to the qualifications of a member of the Legislature and is the  
14 judge of the elections, returns, and qualifications of its members.

15       Sec. 28. The Revisor of Statutes shall assign sections 8 to 27 of  
16 this act to Chapter 50.

17       Sec. 29. Original sections 32-1101, 32-1105, 32-1111, 32-1112,  
18 32-1114, 32-1115, and 32-1116, Reissue Revised Statutes of Nebraska, are  
19 repealed.

20       Sec. 30. The following sections are outright repealed: Sections  
21 32-1106 and 32-1107, Reissue Revised Statutes of Nebraska.