

LEGISLATIVE BILL 1010

Approved by the Governor April 10, 1984

Introduced by Landis, 46; Lundy, 36

AN ACT relating to initiative and referendum; to amend sections 18-2502, 18-2506, 18-2512 to 18-2517, 18-2520 to 18-2522, 18-2524 to 18-2526, 18-2528 to 18-2530, and 18-2535, Revised Statutes Supplement 1982; to define and redefine terms; to change petition and ballot provisions; to provide for declaratory judgments; to provide additional measures which may be submitted to voters; to change notice provisions; to provide for certain special elections; to provide duties; to allow different effective dates for certain initiative measures; to provide exceptions to referendums or limited referendums; to change hearing provisions; to change provisions relating to failure to act on referendum petitions; to change a penalty; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 18-2502, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2502. For purposes of sections 18-2501 to 18-2537 and sections 3, 4, and 8 of this act, the definitions in sections 18-2503 to 18-2511 and sections 3 and 4 of this act, unless the context otherwise requires, shall apply.

Sec. 2. That section 18-2506, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2506. Measure shall mean an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to enact pass, and which is not excluded from the operation of referendum by the exceptions in section 18-2528.

Sec. 3. Place of residence shall mean the street and number of the residence. If there is no street and number for the residence, place of residence shall mean the mailing address.

Sec. 4. Residence shall mean that place at which a person has established his or her home, where he or she is habitually present, and to which, when he or she departs, he or she intends to return.

Sec. 5. That section 18-2512, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2512. Before circulating an initiative or referendum petition, the petitioner shall file with the city clerk a prospective petition. The city clerk shall date the prospective petition immediately upon its receipt. The city clerk shall verify that the prospective petition is in proper form, and shall provide a ballot title for the initiative or referendum proposal, pursuant to section ~~18-2512~~ 18-2513. If the prospective petition is in proper form, the city clerk shall authorize the circulation of the petition and such authorization shall be given within three working days from the date the prospective petition was filed. If the form of the prospective petition is incorrect, ~~in any way~~; the city clerk shall, within three working days from the date the prospective petition was filed, inform the petitioner of necessary changes and request that those changes be made. When the requested changes have been made and the revised prospective petition has been submitted to the city clerk in proper form, the city clerk shall authorize the circulation of the petition and such authorization shall be given within two working days from the receipt of the properly revised petition. Verification by the city clerk that the prospective petition is in proper form does not constitute an admission by the city clerk, governing body, or municipality that the measure is subject to referendum or limited referendum or that the measure may be enacted by initiative.

Sec. 6. That section 18-2513, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2513. (1) The ballot title of any measure to be initiated or referred shall consist of:

(a) A briefly worded caption by which the measure is commonly known or which accurately summarizes the measure;

(b) A briefly worded question which plainly states the purpose of the measure, and is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

(c) A concise and impartial statement, of not more than seventy-five words, of the chief purpose of the measure.

(2) The ballots used when voting on an initiative or referendum proposal shall contain the entire ballot title. Proposals for initiative and referendum shall be submitted on separate ballots and the ballots shall be printed in lower case ten point type, except that the caption shall be in ~~black~~ bold face type. All initiative and referendum measures shall be submitted in a nonpartisan manner without indicating or suggesting on the ballot that they have or have not been approved or endorsed by any political party or organization.

Sec. 7. That section 18-2514, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2514. The Secretary of State shall design the form to be used for initiative and referendum petitions which shall conform to those provided for in section 32-4,156, including signature sheets. These forms shall be made available to the public by the city clerk, and they shall serve as a guide for individuals preparing prospective petitions. Substantial compliance with initiative and referendum forms is required before authorization to circulate such petition may be granted by the city clerk pursuant to section 18-2512. These Chief petitioners or circulators preparing prospective petitions shall be responsible for making copies of the petition for circulation, once authorization for circulation has been granted.

Sec. 8. The municipality or any chief petitioner may seek a declaratory judgment regarding any questions arising under Chapter 18, article 25, as it may be from time to time amended, including, but not limited to, determining whether a measure is subject to referendum or limited referendum or whether a measure may be enacted by initiative. If a chief petitioner seeks a declaratory judgment, the municipality shall be served as provided in section 25-510.02. If the municipality seeks a declaratory judgment, only the chief petitioner or chief petitioners shall be required to be served. Any action brought for declaratory judgment for purposes of determining whether a measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, may be filed in the district court at any time after the filing of a referendum or initiative petition with the city clerk for signature verification until forty days from the date the governing body received notification pursuant to section 18-2518. If the municipality does not bring an action for declaratory judgment to determine whether the measure is subject to limited referendum or referendum, or whether the measure may be enacted by initiative until after it has received notification pursuant to section 18-2518, it shall be required to proceed with the initiative or referendum election in accordance with sections 18-2501 to 18-2537, sections 3 and 4 of this act, and this section. If the municipality does file such an action prior to receiving notification pursuant to section 18-2518, it shall not be required to proceed to hold such election until a final decision has been rendered in the action. Any action for a declaratory judgment shall be governed generally by sections 25-21,149 to 25-21,164, as amended from time to time, except that only the municipality and each chief petitioner shall be required to be made parties. The municipality, city clerk, governing body, or any of the municipality's officers shall be entitled to rely on any order rendered by the court in any such proceeding. Any action brought for declaratory judgment pursuant to this

section shall be given priority in scheduling hearings and in disposition as determined by the court. When an action is brought to determine whether the measure is subject to limited referendum or referendum, or whether a measure may be enacted by initiative, a decision shall be rendered by the court no later than five days prior to the election. The provisions of this section relating to declaratory judgments shall not be construed as limiting, but construed as supplemental and additional to other rights and remedies conferred by law.

Sec. 9. That section 18-2515, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2515. (1) Each petition presented for signature must be identical to the petition authorized for circulation by the city clerk pursuant to section 18-2512.

(2) Every petition shall contain the name and place of residence ~~residential address~~ of not more than three persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the municipal subdivision potentially affected by the initiative or referendum proposal.

(3) Every petition shall contain the caption and the statement specified in subdivisions (1)(a) and (1)(c) of section 18-2513.

(4) When a special election is being requested, such fact shall be stated on every petition.

(5) ~~(4)~~ Only qualified electors shall circulate petitions.

Sec. 10. That section 18-2516, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2516. Every signature sheet shall:

(1) Contain the caption required in subdivision (1) of section 18-2513;

(2) Be part of a complete and authorized petition when presented to potential signatories;

(3) Provide space for signatories to write their names, ~~residential addresses~~ places of residence, and the date of signing; and

(4) Contain a statement that anyone falsifying information on a signature sheet shall be subject to penalties provided by law.

No more than twenty-five signatures on each signature sheet shall be counted. In order to be valid, a signature shall be that of an individual registered to vote, at the time of signing, in the jurisdiction governed or to be governed by the measure addressed in the petition. A signature shall include the signatory's full name, his or her ~~residential address~~ place of residence, and the date of signing. No signatory shall use ditto marks as a means of affixing his or her ~~address~~ place of residence or date on any petition. A wife shall not use her husband's Christian or given name when she signs a petition and she shall sign

her own Christian or given name along with her surname.

Sec. 11. That section 18-2517, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2517. (1) Included in the contents of every petition shall be an affidavit, to be signed by the circulator in the presence of a notary, which states that the circulator is a qualified elector, that each person who signed the petition did so in the presence of the circulator on the date indicated, and that the circulator believes that each signatory was registered to vote in the affected jurisdiction at the time he or she signed the petition and that the circulator believes that each signatory has stated his or her name and address place of residence correctly.

(2) ~~When a special election is being requested, such fact shall be stated in the petition.~~

Sec. 12. That section 18-2520, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2520. The executive officer and governing body of a municipal subdivision may at any time, by resolution, provide for the submission to a direct vote of the electors of any measure pending before it, enacted passed by it, including an override of any veto, if necessary, or enacted by the electors under sections 18-2501 to 18-2537 and sections 3, 4, and 8 of this act; and may provide in such resolution that such measure shall be submitted at a special election or the next regularly scheduled primary or general election. Immediately upon the passage of any such resolution for submission, the city clerk shall cause such measure to be submitted to a direct vote of the electors, at the time specified in such resolution and in the manner provided in sections 18-2501 to 18-2537 and sections 3, 4, and 8 of this act for submission of measures upon proposals and petitions filed by voters. Such matter shall become law if approved by a majority of the votes cast.

Sec. 13. That section 18-2521, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2521. ~~Meetings of the electors~~ Elections under the provisions of sections 18-2501 to 18-2537 and sections 3, 4, and 8 of this act, either at a special election or regularly scheduled primary or general election, shall be called by the city clerk. He or she shall cause notice of every such meeting election to be printed in one or more newspapers of general circulation in such municipal subdivision at least once not less than thirty days prior to such election and also posted in the office of the city clerk and in at least three or more conspicuous places in such municipal subdivision at least thirty days prior to such election. The notice shall be substantially as follows:

Notice is hereby given that on Tuesday, the
..... day of, 19...., at (identify

polling place or precinct) of the city (or village) of....., Nebraska, an election will be held at which there will be submitted to the electors of the municipality for their approval or rejection, the following measures, propositions, or issues:

.....

(naming measures, propositions, or issues), which election will be open at 8:00 a.m. and will continue open until 8:00 p.m., of the same day.

Dated this day of, 19.....

.....
City (or Village) Clerk of
the City (or Village) of
....., Nebraska.

The clerk shall ~~cause copies~~ make available for photocopying a copy in pamphlet form of measures initiated or referred. ~~to be printed in pamphlet form, and furnish the same to the electors of such city upon their application or order.~~ Such notice provided in this section shall designate where such a copy in pamphlet form ~~copies~~ may be obtained.

Sec. 14. That section 18-2522, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2522. All ballots for use in special elections under sections 18-2501 to 18-2537 and sections 3, 4, and 8 of this act shall be prepared by the city clerk and furnished by the governing body, ~~city clerk~~, unless the governing body contracts with the county for such service, and shall be in form the same as provided by law for election of the executive officer and governing body of such municipal subdivision. When ordinances under such sections are submitted to the electors at a regularly scheduled primary or general election, they shall be placed upon the official ballots as provided in sections 18-2501 to 18-2537 and sections 3, 4, and 8 of this act.

Sec. 15. That section 18-2524, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2524. Whenever an initiative petition bearing signatures equal in number to at least fifteen percent of the qualified electors of a municipal subdivision has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to consider ~~enactment~~ passage of the measure contained in the petition, including an override of any veto, if necessary. If the governing body fails to ~~enact~~ pass the measure without amendment, including an override of any veto, if necessary, within thirty days from the date it received notification pursuant to section 18-2518, the city clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the municipal subdivision. If the governing body

desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the municipal subdivision, the governing body shall, by resolution, direct the city clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum.

Sec. 16. That section 18-2525, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2525. Whenever an initiative petition bearing signatures equal in number to at least twenty per cent of the qualified electors of a municipal subdivision, which requests that a special election be called to submit the initiative measure to a vote of the people, has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to consider enactment passage of the measure contained in the petition, including an override of any veto, if necessary. If the governing body fails to pass enact the measure, without amendment, including an override of any veto, if necessary, within thirty days from the date it received notification pursuant to section 18-2518, the city clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose. The date of such election shall not be less than thirty nor more than sixty days from the date the governing body received notification pursuant to section 18-2518.

Sec. 17. That section 18-2526, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2526. If a majority of the voters voting on the initiative measure shall vote in favor of such measure, it shall immediately become a valid and binding measure of the municipal subdivision thirty days after certification of the election results, unless the governing body by resolution orders an earlier effective date or the measure itself provides for a later effective date, which resolution shall not be subject to referendum or limited referendum. A measure adopted passed by such method shall not be amended or repealed except by two-thirds majority of the members of the governing body. No such attempt to amend or repeal shall be made within one year from the adoption passage of the measure by the electors.

Sec. 18. That section 18-2528, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2528. (1) The following measures shall not be subject to referendum or limited referendum:

(a) Measures necessary to carry out contractual obligations, including, but not limited to, those relating to the issuance of or provided for in bonds, notes, warrants, or other evidences of indebtedness, for projects previously approved by a measure which was, or is, subject to referendum or limited referendum or previously approved

by a measure adopted prior to July 17, 1982;

(b) Measures relating to any industrial development projects, subsequent to measures giving initial approval to such projects;

(c) Measures adopting proposed budget statements following compliance with procedures set forth in the Nebraska Budget Act;

(d) Measures relating to the immediate preservation of the public peace, health, or safety which have been designated as urgent measures by unanimous vote of those present and voting of the municipal subdivision's governing body and approved by its executive officer; and

(e) Measures relating to projects for which notice has been given as provided for in subsection (4) of this section and for which a sufficient referendum petition was not filed within the time limit ~~prescribed in subsection (3) of this section~~ stated in such notice or which received voter approval after the filing of such petition; -

(f) Resolutions directing the city clerk to cause measures to be submitted to a vote of the people at a special election as provided in sections 18-2524 and 18-2529; and

(g) Resolutions ordering an earlier effective date for measures enacted by initiative as provided in section 18-2526.

(2) The following measures shall be subject to limited referendum:

(a) Measures in furtherance of a policy of the municipal subdivision or relating to projects previously approved by a measure which was subject to referendum or which was enacted by initiative or has been approved by the voters at an election, except that such measures shall not be subject to referendum or limited referendum for a period of one year after any such policy or project was approved at a referendum election, enacted by initiative, or approved by the voters at an election;

(b) Measures relating to the acquisition, construction, installation, improvement, or enlargement, including the financing or refinancing of the costs, of public ways, public property, utility systems, and other capital projects; and measures giving initial approval for industrial development projects; and

(c) Measures setting utility system rates and charges, except for measures necessary to carry out contractual obligations provided for in previously issued bonds, notes, warrants, or other evidences of indebtedness, and pay rates and salaries for municipal subdivision employees other than the members of the governing body and the executive officer.

(3) Measures subject to limited referendum shall ordinarily take effect thirty days after their enactment passage by the governing body, including an override of any

veto, if necessary. Referendum petitions directed at measures subject to limited referendum shall be filed for signature verification pursuant to section 18-2518 within thirty days after such measure's ~~adoption~~ passage by the governing body, including an override of any veto, if necessary, or after notice is first published pursuant to ~~subsection~~ subdivision (4)(c) of this section. If the necessary number of signatures as provided in section 18-2529 or 18-2530 has been obtained within the time limitation, the effectiveness of the measure shall be suspended unless approved by the voters.

(4) For any measure relating to the acquisition, construction, installation, improvement, or enlargement of public ways, public property, utility systems, or other capital projects, a municipality may, ~~by giving notice in the manner prescribed in this subsection,~~ exempt all subsequent measures relating to the same project from the referendum and limited referendum procedures provided for in this act by the following procedure:

(a) By holding a public hearing on the project, the time and place of such hearing being published at least once not less than five days prior to the date set for hearing in a newspaper of general circulation within the governing body's jurisdiction;

(b) By passage of a measure approving the project, including an override of a veto if necessary, at a meeting held on any date subsequent to the date of hearing; and

(c) After passage of such measure, including an override of a veto if necessary, by giving notice as follows: ~~Notice for purposes of establishing such exemption shall be given as follows:~~ (a) (i) For those projects for which applicable statutes require an ordinance or resolution of necessity, creating a district or otherwise establishing the project, notice shall be given for such project by including either as part of such ordinance or resolution or as part of any publicized notice concerning such ordinance or resolution a statement that the project as described in the ordinance or resolution is subject to limited referendum for a period of thirty days after the first publication of such notice and that, after such thirty-day period, the project and measures related to it will not be subject to any further right of referendum; ~~and~~ (ii) for projects for which applicable statutes do not require an ordinance or resolution of necessity, notice shall be given by publication of a notice concerning such projects stating in general terms the nature of the project and the engineer's estimate of costs of such project and stating that the project described in the notice is subject to limited referendum for a period of thirty days after the first publication of such notice and that, after such thirty-day period, the project and measures related to it

will not be subject to any further right of referendum. The notice required by subdivision ~~(4)(b)~~ (c)(ii) of this subsection section shall be published in at least one newspaper of general circulation within the municipal subdivision and shall be published not later than ~~ten~~ fifteen days after ~~adoption~~ passage by the governing body, including an override of a veto, if necessary, of a measure approving the project.

The right of a municipal subdivision to hold such a hearing prior to passage of the measure by the governing body and give such notice after passage of such measure by the governing body to ~~and~~ obtain exemption for any particular project in a manner described in this subsection is optional and no municipal subdivision shall be required to hold such a hearing or give such notice for any particular project.

(5) All measures, except as provided in subsections (1), (2), and (4) of this section, shall be subject to the referendum procedure at any time after such measure has been ~~adopted~~ passed by the governing body, including an override of a veto, if necessary, or enacted by the voters by initiative.

Sec. 19. That section 18-2529, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2529. Whenever a referendum petition bearing signatures equal in number to at least fifteen per cent of the qualified electors of a municipal subdivision has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to reconsider the measure or portion of such measure which is the object of the referendum. If the governing body fails to repeal or amend the measure or portion thereof in the manner proposed by the referendum, including an override of any veto, if necessary, within thirty days from the date the governing body receives notification pursuant to section 18-2518, the city clerk shall cause the measure to be submitted to a vote of the people at the next regularly scheduled primary or general election held within the municipal subdivision. If the governing body desires to submit the measure to a vote of the people at a special election prior to the next regularly scheduled primary or general election held within the municipal subdivision, the governing body shall, by resolution, direct the clerk to cause the measure to be submitted at a special election. Such resolution shall not be subject to referendum or limited referendum. ~~7~~ within thirty days from the date the governing body receives notification pursuant to section 18-2518.

Sec. 20. That section 18-2530, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2530. Whenever a referendum petition bearing signatures equal in number to at least twenty per cent of the qualified voters of a municipal subdivision, which

requests that a special election be called to submit the referendum measure to a vote of the people, has been filed with the city clerk and verified pursuant to section 18-2518, it shall be the duty of the municipal subdivision's governing body to reconsider the measure or portion of such measure which is the object of the referendum. If the governing body fails to repeal or amend the measure or portion thereof, in the manner proposed by the referendum, including an override of any veto, if necessary, the city clerk shall cause the measure to be submitted to a vote of the people at a special election called for such purpose within thirty days from the date the governing body received notification pursuant to section 18-2518. The date of such special election shall not be less than thirty nor more than sixty days from the date the governing body received notification pursuant to section 18-2518.

Sec. 21. That section 18-2535, Revised Statutes Supplement, 1982, be amended to read as follows:

18-2535. Any city clerk who willfully refuses to comply with the provisions of sections 18-2501 to 18-2531 and sections 3, 4, and 8 of this act or who willfully causes unreasonable delay in the execution of his or her duties under such sections shall be guilty of a Class IV ~~felony~~ 1 misdemeanor, but imprisonment shall not be included as part of the punishment, and the fine shall ~~not exceed five thousand dollars.~~

Sec. 22. That original sections 18-2502, 18-2506, 18-2512 to 18-2517, 18-2520 to 18-2522, 18-2524 to 18-2526, 18-2528 to 18-2530, and 18-2535, Revised Statutes Supplement, 1982, are repealed.