

LEGISLATIVE BILL 975

Approved by the Governor April 11, 1984

Introduced by Landis, 46; Wesely, 26

AN ACT relating to elections; to amend sections 14-212 and 79-464, Reissue Revised Statutes of Nebraska, 1943, and sections 19-425, 19-433, and 19-613.01, Revised Statutes Supplement, 1982; to provide for a uniform method of recall for elected officials of certain political subdivisions; to harmonize recall and special election provisions; to eliminate current procedures; and to repeal the original sections, and also sections 14-1033, 19-629 to 19-631, 19-633 to 19-635, 19-637, 70-618, 79-463, 79-547.01, and 79-605, Reissue Revised Statutes of Nebraska, 1943, sections 14-209, 19-424, 19-426, 19-628, 19-636, 19-4201 to 19-4204, 19-4206 to 19-4211, and 23-2010 to 23-2010.10, Revised Statutes Supplement, 1982, and sections 2-3216, 19-632, and 19-4205, Revised Statutes Supplement, 1983.

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

Section 1. As used in sections 1 to 8 of this act, unless the context otherwise requires:

(1) The term registered voter shall mean an individual who is duly registered to vote and qualified by his or her place of residence as an elector in the general election for the office in question;

(2) Filing clerk shall mean:

(a) The county clerk or election commissioner, for recall of elected officers of cities of the metropolitan and primary class, counties, irrigation districts, natural resources districts, public power districts, school districts, and water boards as provided for in Chapter 14, article 10; and

(b) The municipal clerk, for recall of officers of all municipalities other than cities of the metropolitan or primary class; and

(3) Signature shall include the mark of a person unable to write his or her name when the name is written by some other person and the mark is made near the name by the person unable to write his or her name.

Sec. 2. Elected members of the governing bodies of cities, villages, and counties, irrigation districts, natural resources districts, public power districts, school districts, and water boards may be removed from office by recall pursuant to sections 1 to 8 of this act.

Sec. 3. (1) A petition demanding that the question of removing an officer listed in section 2 of this act be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five per cent of the total vote cast for that office in the last general election, except for an office where more than one candidate is chosen in which case the petition shall be signed by registered voters equal in number to at least thirty-five per cent of the number of votes cast for the person receiving the most votes for such office in the last general election. A petition for the recall of a member of a Class I school district shall be signed by registered voters of the district equal in number to at least twenty-five per cent of the total number of registered voters residing in the district.

(2) The signatures shall be affixed to petition papers which shall be considered part of the petition filed under this section. The petition papers shall be procured from the filing clerk who shall keep a sufficient number of such blank petition papers on file for distribution. The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks. 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 officer sought to be removed and shall request that the filing clerk issue petition papers to the circulator for circulation. The filing clerk, upon issuing any petition papers, shall enter in a record, to be kept in his or her office, the name of the registered voter or voters to whom issued, the date of such issuance, and the number of papers issued and shall certify on the papers the name of the registered voter or voters 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 and unless it is filed as provided in this section.

(3) Each petition paper presented to a registered voter for his or her signature shall indicate clearly at the top that the signatories support the holding of a recall election and shall indicate the name and office of the individual sought to be recalled.

(4) Each signer of a recall petition shall sign and print his or her given name and surname and list his or her place of residence, as defined in section 32-107, by street and number, by rural address, or by mailing address. To each petition paper there shall be attached an affidavit of the circulator stating the number of signers to such part of the petition, that each signature appended to the paper was made in his or her presence and is the genuine signature of the person whose name it purports to be, and

that the circulator has not received and will not receive, either directly or indirectly, any compensation for circulating the petition or for procuring the signatures on it.

Sec. 4. (1) All papers comprising a recall petition shall be filed for signature verification with the filing clerk as one instrument within thirty days after the filing clerk issues the initial petition papers to the principal circulator or to a person who provides written documentation, signed by the principal circulator, that he or she is the principal circulator's designee. The petition shall be filed with the filing clerk by the principal circulator or circulators as defined in section 3 of this act.

(2) Within ten days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters and shall attach to the petition a certificate showing whether any signatures need to be corrected in order to comply with sections 1 to 8 of this act. If the filing clerk finds incorrect signatures he or she shall promptly notify the person filing the petition that the petition may be cured at any time within ten days after the giving of such notice by the filing of a supplementary petition, with the corrected signatures, on additional petition papers issued and filed as provided for the original petition. No new signatures may be added after the initial filing of the petition and no signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting his or her signature be removed. The filing clerk shall, within five days after any correction, examine the corrected petition and attach a certificate as in the case of the original petition. If the certificate shows the corrected petition to be insufficient or if no correction was made, 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.

(3) If, due to reapportionment, the boundaries of the district change, the recall procedure and special election shall apply to the registered voters in the new district.

Sec. 5. (1) If the petition or corrected petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination and shall notify the officer whose removal is sought. If the officer does not resign within five days after the notice, the filing clerk shall submit, within ten days after the five-day period has elapsed, the original petition and supplement, together with his or her certificates, to the governing body of the political subdivision. Upon receipt of such petition and certificate, the governing body of the political

subdivision shall order an election to be held not less than thirty nor more than forty-five days after the five-day period, except that if any other election is to be held in that district within ninety days of the five-day period the governing body of the political subdivision may provide for the holding of the removal election on the same day.

(2) The ballots used at a recall election shall conform to the following requirements: With respect to each person whose removal is sought, the question shall be submitted: Shall (name of person) be removed from the office of (name of office) by recall? Immediately following each such question there shall be printed on the ballots the two propositions, in the order set forth: For the recall of (name of person) and Against the recall of (name of person). Immediately to the left of each proposition shall be placed a square in which the registered voters, by making a cross (X) mark, may vote for one of the propositions.

Sec. 6. (1) If a majority of the votes cast at a recall election are against the removal of the officer named on the ballot or the election results in a tie, the officer shall continue in office for the remainder of his or her term, but may be subject to further recall attempts as provided in section 7 of this act. If a majority of the votes cast at a recall election are for the removal of the officer 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 election results show a margin of votes equal to two per cent or less between the recall or retention of the officer in question, the Secretary of State, county clerk, or election commissioner shall order a recount of the votes cast in the recall election unless the officer named on the ballot files a written statement with the filing clerk that he or she does not want a recount.

(2) If the officer is deemed removed, the removal shall result in a vacancy in the office.

(3) Vacancies resulting from recall elections shall be filled as follows:

(a) For vacancies in city or village offices, according to the provisions of section 32-4,152;

(b) For vacancies in county offices, according to the provisions of section 32-1040; and

(c) For vacancies in school districts, according to the provisions of section 79-464.

(4) Except as provided in subsection (5) of this section, vacancies resulting from recall elections shall be filled as follows:

(a) For vacancies in public power and irrigation districts, according to section 70-615;

(b) For vacancies in natural resources

districts, according to the provisions of section 2-3215; and

(c) For vacancies in metropolitan water boards, according to the provisions of section 14-1005.

(5) When the vacancy of a legal majority of board members from any group listed in subsection (4) occurs, the Governor shall appoint members to temporarily fill the vacancies within thirty days of the vacancies or prior to the second regular meeting of the body after the vacancies have occurred, whichever is sooner. The remainder of the unexpired term shall be filled by a person nominated at the next primary election and elected at the following general election for that office.

(6) No officer who is removed at a recall election or 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 during the remainder of his or her term of office.

Sec. 7. (1) 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 from the end of his or her term of office.

(2) 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 any court of general jurisdiction in a county in which the elected official serves.

(3) Costs of any recall or special election shall be borne by the political subdivision having an officer recalled or needing a vacancy filled.

(4) The mayor and members of the city council of municipalities with a home rule charter shall be removed from office according to the recall provisions of sections 1 to 8 of this act notwithstanding any contrary provisions of the home rule charter.

Sec. 8. The recall provisions of sections 1 to 7 of this act shall also apply to elected members of the governing bodies listed in section 2 of this act who are elected by ward, district, or subdistrict of the political subdivision. Only registered voters of such member's ward, district, or subdistrict may sign a recall petition or vote at the recall election which shall be held within the member's ward, district, or subdistrict. When an elected member is nominated by ward, district, or subdistrict in the primary election and elected at large in the general election, the recall provisions of sections 1 to 7 of this act shall apply to the registered voters at the general election.

Sec. 9. That section 14-212, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

14-212. All petitions provided for in sections

14-204, 14-210, and 14-209 to 14-211 shall be signed by none but legal voters of the city and each petition shall contain, in addition to the names of the petitioners, the street and house number where the petitioner resides. The signatures to such petition need not all be appended to one paper, and at least one of the signers signatories of each paper shall make oath before some officer, competent to administer oaths, that the statements made in any such petition are true as he or she verily believes, and that the signatories signers ~~thereon~~ were, at the time of signing such petition, legal voters of the city as he or she verily believes. He or she shall also state in the affidavit the number of signatories signers upon the petition, or part thereof, sworn to by him or her, at the time he or she makes such affidavit.

Sec. 10. That section 19-425, Revised Statutes Supplement, 1982, be amended to read as follows:

19-425. Candidates other than those mentioned in the a recall petition provided for in section 19-424 sections 1 to 8 of this act shall be nominated as provided in sections 19-405 to 19-407, except that where but one council member is to be voted upon, only the person receiving the largest number of votes of electors shall be deemed nominated and placed upon the ballot, and where two council members are to be voted upon, only the two candidates receiving the largest number of votes shall be deemed nominated, and so on. Such primary shall be held upon the second Tuesday prior to the election. The council shall make, or cause to be made, publication of notice of the time of holding such election and all arrangements for holding such election, and the method and manner of conducting the same and canvassing the vote cast at the election, thereat and declaring the results of the election thereof shall be the same in all respects as at the general or regular city elections in any such city, except that the ballot used at such election shall be the paper ballot authorized by the Australian Ballot Law and the ticket shall be printed in the same manner as provided in section 19-408 for the holding of elections at the general city election in such city and the names thereon so arranged, and aid to voters restricted as provided in such said section.

Sec. 11. That section 19-433, Revised Statutes Supplement, 1982, be amended to read as follows:

19-433. The sufficiency of the petition asking for such special election shall be ascertained by the city clerk in the same manner as is heretofore provided as to petitions making for the removal of any such council member; and such petition may be supplemented, and the sufficiency thereof ascertained and the date of holding such special election and the form of ballot shall be determined in the manner provided for such removal: (1) Within ten days from the date of filing the petition asking

for a special election, the city clerk shall examine it and, from the voters' register, if the petition is filed in any city where registration laws are in force, or if not, then from such source as may be available to the clerk, ascertain whether the petition is signed by the requisite number of qualified electors. If necessary, the council shall allow the clerk extra help for the purpose of examining the petition. The clerk shall attach to the petition a certificate showing whether any signatures need to be corrected in order to comply with sections 1 to 8 of this act. If the filing clerk finds incorrect signatures, he or she shall promptly notify the person filing the petition that the petition may be cured at any time within ten days after the giving of such notice by the filing of a supplementary petition, with the corrected signatures, on additional petition papers issued and filed as provided for the original petition. No new signatures may be added after the initial filing of the petition. The supplemental petition shall be signed and sworn to as in the case of the original petition. The clerk shall, within five days after such supplemental petition is filed, make a similar examination of the supplemental petition, and if the certificate shows the supplemental petition, together with the original petition, contains the requisite number of signatures, the clerk shall promptly submit the original and supplemental petitions together with his or her certificates to the council.

(2) Upon receipt of such petitions and certificates, the council shall promptly order and fix a date for holding the special election, which date shall not be less than thirty nor more than sixty days from the date of the clerk's certificate to the council showing the petition sufficient. The qualification of the electors and the classes of voters who may be aided in casting their ballots at such special election shall be the same as ~~hereinbefore pointed out~~ provided for the election of council members under the provisions of sections 19-401 to 19-433, except that ~~;~~ ~~Provided,~~ nothing in such ~~said~~ sections shall in ~~anywise any way~~ be construed to interfere with or prevent any city at any time from framing and adopting a charter for its own government as provided by the Constitution of the State of Nebraska; and in exercising the right to frame its own charter in accordance with such provision of the ~~Constitution~~ constitution, it shall not be obligatory upon any city to adopt or retain any of the provisions of such ~~said~~ sections, except that any sections relating to recall shall be governed by sections 1 to 8 of this act.

Sec. 12. That section 19-613.01, Revised Statutes Supplement, 1982, be amended to read as follows:

19-613.01. Any council member to be elected for a ward, or an appointed successor in the event of a vacancy, shall be a resident and a qualified elector of

such ward. The council member shall be nominated and elected in the same manner as provided for at-large candidates, except that only residents and registered electors of the ward may participate in the signing of nomination petitions. All nominating petitions and ballots shall clearly identify the ward from which such person shall be a candidate. The ballots within a ward shall not contain the names of ward candidates from other wards. The printed ballots for each ward shall list the candidates in the order of filing affidavits of nomination or petitions by date and hour with the county clerk or election commissioner. The recall procedure shall apply to a ward council member except that only registered electors voters of such member's ward may sign a recall petition or vote at the recall election which shall be held within the ward only. ~~The total number of votes cast within such member's ward at the last preceding statewide general election shall be used to determine the number of signatures required for a recall election.~~

Sec. 13. That section 79-464, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-464. (1) A person filling a vacancy in the district board or board of education Board members of a Class I school districts district, appointed by the remaining members of the board to fill such vacancy, vacaneies shall hold their office until the beginning of the next school year. Board members A board member of a Class I school districts district elected to fill vacaneies a vacancy at a regular or special meeting shall serve for the remainder of the unexpired term and until their successors are a successor is elected and qualified.

(2) Any vacancy on the district board or board of education of a Class II, III, IV, V, or VI school district resulting from any cause other than the expiration of a term shall be temporarily filled by appointment by the remaining members of the board of a legally qualified person. The remainder of the unexpired term shall be filled by a person nominated at the next primary election and elected at the following general election.

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

(4) If there is a vacancy in the offices of a legal majority of a school board, there shall be a special school district election conducted by the Secretary of State to fill such vacancies.

Sec. 14. That original sections 14-212 and 79-464, Reissue Revised Statutes of Nebraska, 1943, and sections 19-425, 19-433, and 19-613.01, Revised Statutes

Supplement, 1982, and also sections 14-1033, 19-629 to 19-631, 19-633 to 19-635, 19-637, 70-618, 79-463, 79-547.01, and 79-605, Reissue Revised Statutes of Nebraska, 1943, sections 14-209, 19-424, 19-426, 19-628, 19-636, 19-4201 to 19-4204, 19-4206 to 19-4211, and 23-2010 to 23-2010.10, Revised Statutes Supplement, 1982, and sections 2-3216, 19-632, and 19-4205, Revised Statutes Supplement, 1983, are repealed.