

LEGISLATIVE BILL 640

Approved by the Governor May 25, 1989

Introduced by Government, Military & Veterans Affairs
Committee, Baack, 47, Chairperson;
Conway, 17; Coordsen, 32; Robak, 22;
Beyer, 3; Korshoj, 16; Withem, 14

AN ACT relating to elections; to amend sections 23-343.25, 32-1401 to 32-1408, and 79-2647, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to recall procedures as prescribed; to provide contents for the petition paper; to provide qualifications for circulators; to provide for filling vacancies as prescribed; to provide penalties; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 23-343.25, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-343.25. The elective officers of a local hospital district shall be a board of directors consisting of five members. The members of the first board shall be appointed by the county board and shall be so appointed that two members shall serve a ~~term~~ terms ending on the first Tuesday in June following the first statewide primary election following the initial appointment, and three shall serve a ~~term~~ terms ending on the first Tuesday in June following the second statewide primary election following the initial appointment.

At the first statewide primary election after the initial appointment, two members shall be elected for terms of four years. At the second statewide primary election after the initial appointment, three members shall be elected for terms of four years.

Candidates shall file personal nonpartisan applications with the county clerk or election commissioner as provided in Chapter 32. Their successors shall thereafter be elected for terms of four years each.

Terms of membership on the board of directors which are to expire in 1971 are hereby extended to 1972.

Members elected to the board in 1972 shall serve four-year terms, except ; ~~PROVIDED~~; that if four members of the board are to be elected in 1972, the candidate who receives the fourth highest number of votes shall serve a term of two years. Terms of membership on the board of directors which are to expire in 1973 are hereby extended to 1974. At the election in 1974, two members shall be elected for terms of four years. The successors of all members of the board of directors shall serve four-year terms.

Members of the board shall be elected from the district at large at the time of the statewide primary election. Their terms shall begin on the first Tuesday in June following their election, and they shall serve until their successors are duly elected and qualified. All qualified electors of this state who reside within the hospital district on or before the day of the election shall be entitled to vote in such hospital district election. Such election shall be conducted by the appropriate county clerk or election commissioner in accordance with the provisions of Chapter 32.

Any vacancy upon such board; occurring other than by the expiration of a term; shall be filled by appointment by the remaining members of the board of directors. Any person appointed to fill such vacancy shall serve for the remainder of the unexpired term. If there are vacancies in the offices of a majority of the members of the board, there shall be a special election conducted by the Secretary of State to fill such vacancies.

Sec. 2. That section 32-1401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1401. As used in For purposes of sections 32-1401 to 32-1408 and section 10 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

(2) 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; and

(3) Signature shall include the mark of a person registered voter 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 registered voter unable to write his or her name.

Sec. 3. That section 32-1402, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1402. Elected county officers and elected members of the governing bodies of cities, villages, counties, irrigation districts, natural resources districts, public power districts, school districts, and water boards may be removed from office by recall pursuant to sections 32-1401 to 32-1408 and section 10 of this act.

Sec. 4. That section 32-1403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1403. (1) A petition demanding that the question of removing an officer listed in section 32-1402 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 that office in the last general election, except for an office where when 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 percent 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 school district equal in number to at least twenty-five percent of the total number of registered voters residing in the school 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 initial petition papers to the principal circulator or circulators for circulation.

(3) 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 registered voter or voters to whom principal circulator or circulators to whom the papers were 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 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 and unless it is filed as provided in this section sections 32-1401 to 32-1408 and section 10 of this act.

(4) Each petition paper presented to a registered voter for his or her signature shall indicate clearly at the top (a) that the signatories are registered voters qualified by residence to vote for the office in question and support the holding of a recall election, (b) and shall indicate the name and office of the individual sought to be recalled, and (c) a general statement of the reason or reasons for which recall is sought. In no case shall the decision of a county attorney to prosecute or not to prosecute any individual be stated on any petition as a reason for recall.

(5) Each petition paper shall contain a statement entitled Instructions to Petition Circulators. The statement shall be prepared by the Secretary of State and, in addition to any other information the Secretary of State deems necessary to assist circulators in understanding the provisions governing the petition process established by sections 32-1401 to 32-1408 and section 10 of this act, shall include the following statements:

No one shall circulate this petition paper in an attempt to gather signatures unless he or she is (1) duly registered to vote and (2) qualified by his or her place of residence to vote in a general election for the office in question.

No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit attached hereto unless

each person who has signed the petition paper did so in the presence of the circulator.

(6) Each petition paper shall contain the following warning which shall be placed immediately after the information required to be printed on the petition paper under subsection (4) of this section: WARNING TO PETITION SIGNERS--VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person signing any name other than his or her own to this petition, knowingly signing his or her name more than once to any petition, or receiving any compensation in return for signing this petition shall be guilty of a Class I misdemeanor. Any person signing this petition knowing that he or she is not a registered voter shall be guilty of a Class IV misdemeanor.

(4) (7) Each signer of a recall petition shall sign and print his or her given name and surname, indicate the date of signing, and list his or her place of residence, as defined in section 32-107, by street and number, or 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, and that each signature appended affixed 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.

(8) No one shall circulate any petition paper in an attempt to gather signatures unless he or she is (a) duly registered to vote and (b) qualified by his or her place of residence to vote in a general election for the office in question.

Sec. 5. That section 32-1404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1404. (1) All papers comprising a recall petition shall be filed, as one instrument, 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 circulators under subsection (2) of section 32-1403. The petition shall be filed with the filing clerk by the any principal circulator, or circulators as defined in

section 32-1403-

(2) Within ten days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is properly signed by the requisite number of registered voters. 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, and shall attach to the petition a certificate showing whether any signatures need to be corrected in order to comply with sections 32-1401 to 32-1408. If the filing clerk finds incorrect signatures that any signer did not correctly affix his or her signature or other information as set forth in subsection (7) of section 32-1403, he or she shall promptly notify the person filing the petition principal circulator or circulators 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 material, on additional petition papers issued and filed as provided for the original petition papers. 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 the filing of any supplementary petition under this subsection, examine the corrected supplementary petition and attach a certificate as in the case of the original petition papers to determine whether the incorrect material has been adequately corrected.

(3) Following the examination of a supplementary petition, the filing clerk shall join the supplementary petition papers to the original petition and attach a certificate indicating whether the petition as corrected has been signed by the requisite number of registered voters. If the certificate shows the corrected petition as corrected 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) (4) 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. 6. That section 32-1405, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1405. (1) If the petition or corrected

petition as corrected 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 and the governing body of the political subdivision that sufficient signatures have been gathered. 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 expiration of the five-day period, except that if any other election is to be held in that district within ninety days of the expiration 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 The form of the official ballot at any election held pursuant to sections 32-1401 to 32-1408 and section 10 of this act 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. Immediately following the first proposition, the following statement shall be printed in italic type: NOTE TO VOTER: The above square should be marked if you want (name of person) removed from office. Immediately following the second proposition, the following statement shall be printed in italic type: NOTE TO VOTER: The above square should be marked if you want (name of person) kept in office.

Sec. 7. That section 32-1406, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1406. (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 32-1407. 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 percent 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) Except as provided in subsection (4) of this section, 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) (d) For vacancies in public power and irrigation districts, according to section 70-615;

(b) (e) For vacancies in natural resources districts, according to the provisions of section 2-3215; and

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

(4) If there are vacancies in the offices of a majority or more of the members on any governing body listed in subsection (3) of this section 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.

(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) (5) 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. 8. That section 32-1407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1407. (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 beginning or 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 32-1401 to 32-1408 and section 10 of this act notwithstanding any contrary provisions of the home rule charter.

Sec. 9. That section 32-1408, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-1408. The recall provisions of sections 32-1401 to 32-1407 and section 10 of this act shall also apply to elected members of the governing bodies listed in section 32-1402 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 such sections 32-1401 to 32-1407 shall apply to the registered voters at the general election.

Sec. 10. The following penalties shall apply

to anyone violating the provisions of sections 32-1401 to 32-1408.

(1) Any person (a) signing any name other than his or her own to any petition, (b) knowingly signing his or her name more than once to any petition, (c) falsely swearing to a circulator's affidavit, or (d) offering or providing any compensation to an individual in return for his or her signature on any petition paper or receiving such compensation shall be guilty of a Class I misdemeanor;

(2) Any person circulating any petition paper issued pursuant to sections 32-1401 to 32-1408 in an attempt to gather signatures knowing that he or she is not a registered voter shall be guilty of a Class IIIA misdemeanor; and

(3) Any person signing his or her name to any petition paper knowing that he or she is not a registered voter shall be guilty of a Class IV misdemeanor.

Sec. 11. That section 79-2647, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-2647. A vacancy on any board shall exist in the event of the death, disability, resignation, or removal from the area of any member. After notice and hearing, a vacancy shall also exist when any member is absent from more than three consecutive regular meetings of the board; unless such absences are excused by a majority of the remaining board members. In the event of a vacancy from any of such causes or otherwise, such vacancy shall be filled by the remaining board members for the balance of the unexpired term. Any person so named to fill a vacancy shall have the same qualifications as his or her immediate predecessor. Such appointment shall be made in writing and certified to the office of the Secretary of State. If, after an election, there shall through any cause whatsoever be a vacancy upon the ballot, such vacancy shall be filled by a petition candidate pursuant to section 32-537. An incumbent shall not be permitted to hold over the term, but such office shall automatically become vacant and an appointment shall be made within one calendar month to fill such vacancy for the ensuing term. If there are vacancies in the offices of a majority of the members of the board, there shall be a special election conducted by the Secretary of State to fill such vacancies.

Sec. 12. That original sections 23-343.25, 32-1401 to 32-1408, and 79-2647, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.