

## LEGISLATIVE BILL 251

Approved by the Governor March 18, 2002

Introduced by Schimek, 27

AN ACT relating to elections; to amend sections 32-560, 32-572, 32-605, 32-615, 32-616, 32-625, and 85-1514, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to vacancies; to harmonize provisions; to repeal the original sections; and to outright repeal section 32-626, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 32-560, Reissue Revised Statutes of Nebraska, is amended to read:

32-560. Every elective office shall be vacant, except as provided in section 32-561, upon the happening of any one of the following events at any time before the expiration of the term of such office:

- (1) Resignation of the incumbent;
- (2) Death of the incumbent;
- (3) Removal of the incumbent from office;
- (4) Decision of a competent tribunal declaring the office of the incumbent vacant;
- (5) Incumbent ceasing to be a resident of the state, district, county, township, or precinct in which the duties of his or her office are to be exercised or for which he or she may have been elected;
- (6) Failure to elect at an election when there is no incumbent to continue in office until his or her successor is elected and qualified;
- (7) The candidate who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason unable to assume the office for which he or she was a candidate; Failure of a candidate elected to an office to qualify for such office;
- (8) Forfeiture of office as provided by law;
- (9) Conviction of a felony or of any public offense involving the violation of the oath of office of the incumbent; or
- (10) Incumbent of a high elective office assuming another elective office as provided in subsections (2) through (4) of section 32-604.

Sec. 2. Section 32-572, Reissue Revised Statutes of Nebraska, is amended to read:

32-572. (1) Every officer elected or appointed for a fixed term shall hold office until his or her successor is elected or appointed and is qualified. The fixed term shall end and the successor, whether elected or appointed, shall qualify on the day for taking office as provided by law. This section shall not be construed in any way to prevent the removal or suspension of such officer during or after his or her term in cases provided by law.

(2) ~~If a successful candidate or the candidate receiving the highest number of votes in an election is prevented from assuming office on account of death, disability, resignation, removal, or disqualification, the incumbent shall not be entitled to hold over the term, but the office shall automatically become vacant upon the day for taking office as provided by law.~~ The appointment to fill any vacancy if the elective or appointive officer fails to qualify shall be made as provided in sections 32-566 to 32-570. If the vacancy is created by the elective or appointive officer on or before the day for taking office, the incumbent shall remain in office until his or her successor is appointed and qualified and sworn into office, and the swearing in shall not be more than one calendar month from the day for taking office as provided by law. The appointing board or officer shall have the authority to appoint any qualified registered voter to fill the vacancy.

Sec. 3. Section 32-605, Reissue Revised Statutes of Nebraska, is amended to read:

32-605. No candidate defeated at a primary election shall be permitted to file an affidavit declaring a write-in candidacy, file by petition, or file a nomination, if nominated by party convention or committee, for the following general election for the same office. ~~This section shall not be construed to preclude a candidate who was defeated at the primary election from being placed on the ballot at the general election pursuant to~~ except as provided in section 32-616 or 32-626 32-625.

Sec. 4. Section 32-615, Reissue Revised Statutes of Nebraska, is amended to read:

32-615. Any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the treasurer's receipt for any filing fee with the filing officer as provided in section 32-608 no later than ten days prior to the election. A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless a vacancy on the ballot exists pursuant to section 32-625. A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Sec. 5. Section 32-616, Reissue Revised Statutes of Nebraska, is amended to read:

32-616. (1) Any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot for a partisan office by filing petitions as prescribed in sections 32-617 to 32-621 or by nomination by political party convention or committee.

(2) Any candidate who was defeated in the primary election and any registered voter who was not a candidate in the primary election may have his or her name placed on the general election ballot if a vacancy exists on the ballot under subsection ~~(1)~~ (2) of section ~~32-626~~ 32-625 and the candidate files for the office by petition as prescribed in sections 32-617 and 32-618 or files as a write-in candidate as prescribed in section 32-615.

Sec. 6. Section 32-625, Reissue Revised Statutes of Nebraska, is amended to read:

32-625. (1) If there is a vacancy on the ballot for a nonpartisan office after the time for filing and before the primary election, the vacancy may only be filled by a petition candidate after the primary election pursuant to sections 32-617 and 32-618.

(2) A vacancy shall exist on the ballot for the general election when (a) any person ceases to be a candidate for the office for which he or she filed a candidate filing form in the primary election and the number of candidates for office is less than twice the number of positions to be filled, ~~or~~ (b) no person was nominated for the office in the primary election, or (c) one of the candidates who received a certificate of nomination for a nonpartisan office as a result of a primary election is ineligible, disqualified, deceased, or for any other reason unable to assume the office for which he or she was a candidate. If such a vacancy exists for a nonpartisan office, such vacancy may be filled by filing petitions for nomination pursuant to such sections no later than September 1 prior to the general election.

Sec. 7. Section 85-1514, Reissue Revised Statutes of Nebraska, is amended to read:

85-1514. (1) In addition to the events listed in section 32-560, a vacancy on any board shall exist in the event of the removal of a board member from the community college area for board members elected at large or community college district for board members elected by district. After notice and hearing, a vacancy shall also exist when any board 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.

(2) If after ~~an~~ a primary election there is a vacancy upon the ballot, such vacancy shall be filled by a petition candidate pursuant to section 32-625.

(3) 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, the Secretary of State shall conduct a special election to fill such vacancies.

Sec. 8. Original sections 32-560, 32-572, 32-605, 32-615, 32-616, 32-625, and 85-1514, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 9. The following section is outright repealed: Section 32-626, Reissue Revised Statutes of Nebraska.