

LEGISLATIVE BILL 820

Approved by the Governor March 19, 2004

Introduced by Schimek, 27

AN ACT relating to recall elections; to amend section 32-1306, Reissue Revised Statutes of Nebraska, and section 32-1303, Revised Statutes Supplement, 2003; to change provisions relating to providing notice; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 32-1303, Revised Statutes Supplement, 2003, is amended to read:

32-1303. (1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 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 that (a) for an office for which more than one candidate is chosen, 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, (b) for a member of a board of a Class I school district, the petition 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 district on the date that the recall petitions are first checked out from the filing clerk by the principal circulator, and (c) for a member of a governing body of a village, the petition shall be signed by registered voters equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of section 32-630.

(3) The petition papers shall be procured from the filing clerk. 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 official sought to be removed, shall include in typewritten form in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall ~~deliver a copy of the affidavit by certified mail to~~ notify the official sought to be removed by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the affidavit at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing clerk within twenty days after the official receives the copy of the affidavit. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(4) 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 principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing clerk shall certify on the papers the name of the 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. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

(5) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Sec. 2. Section 32-1306, Reissue Revised Statutes of Nebraska, is amended to read:

32-1306. (1) If the recall petition is found to be sufficient, the filing clerk shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed may be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) If the official does not resign within five days after receiving the notice, 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 shall provide for the holding of the removal election on the same day. After the governing body sets the date for the recall election, the recall election shall be held regardless of whether the official whose removal is sought resigns before the recall election is held.

(3) 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 the district court having jurisdiction over a county in which the elected official serves. If a filing clerk is subject to a recall election, the Secretary of State shall conduct the recall election.

Sec. 3. Original section 32-1306, Reissue Revised Statutes of Nebraska, and section 32-1303, Revised Statutes Supplement, 2003, are repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.