

## LEGISLATIVE BILL 744

Approved by the Governor February 28, 2018

Introduced by Executive Board: Watermeier, 1, Chairperson; Bolz, 29; Chambers, 11; Crawford, 45; Hughes, 44; Kuehn, 38; Larson, 40; McCollister, 20; Scheer, 19; Stinner, 48.

A BILL FOR AN ACT relating to the Legislature; to amend sections 32-1101, 32-1105, 32-1111, 32-1112, 32-1114, 32-1115, and 32-1116, Reissue Revised Statutes of Nebraska; to adopt the Legislative Qualifications and Election Contests Act; to change and repeal provisions relating to election contests; to provide a duty for the Revisor of Statutes; to harmonize provisions; to repeal the original sections; and to outright repeal sections 32-1106 and 32-1107, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 32-1101, Reissue Revised Statutes of Nebraska, is amended to read:

32-1101 (1) Sections 32-1101 to 32-1117 shall apply to contests of any election other than the election of a member of the Legislature. The contest of the election of a member of the Legislature is subject to the Legislative Qualifications and Election Contests Act.

(2) The election of any person to an elective office other than the Legislature, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

(a) ~~(1)~~ For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;

(b) ~~(2)~~ If the incumbent was not eligible to the office at the time of the election;

(c) ~~(3)~~ If the incumbent has been convicted of a felony unless at the time of the election his or her civil rights have been restored;

(d) ~~(4)~~ If the incumbent has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;

(e) ~~(5)~~ If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(f) ~~(6)~~ For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;

(g) ~~(7)~~ If the incumbent is in default as a collector and custodian of public money or property; or

(h) ~~(8)~~ For any other cause which shows that another person was legally elected.

(3) When the misconduct is on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk, it shall be insufficient to set aside the election unless the vote of the county, precinct, or township would change the result as to that office.

Sec. 2. Section 32-1105, Reissue Revised Statutes of Nebraska, is amended to read:

32-1105 ~~The If the contested seat is not in the Legislature, the petitioner shall file in the proper court within ten days after filing of the petition a bond with security to be approved by the clerk of the court conditioned to pay all costs in case the election is confirmed.~~

~~If the contested seat is in the Legislature, the petitioner shall file with the Clerk of the Legislature within ten days after filing the petition a bond with security approved by the Clerk of the Legislature conditioned to pay all costs in case the election is confirmed. The bond shall be in an amount of at least five thousand dollars as determined by the Clerk of the Legislature. If the Clerk of the Legislature determines that the bond is inadequate, he or she may order an increase in the amount of the bond at any stage of the contest proceedings.~~

Sec. 3. Section 32-1111, Reissue Revised Statutes of Nebraska, is amended to read:

32-1111 When a contested election is pending, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties of the office until the contest is decided. If the contest is decided against him or her, the ~~Legislature or court~~ shall order him or her to give up the office to the successful party in the contest and deliver to the successful party all books, records, papers, property, and effects pertaining to the office, and the ~~Legislature or court~~ may enforce such order by attachment or other proper legal process.

Sec. 4. Section 32-1112, Reissue Revised Statutes of Nebraska, is amended to read:

32-1112 ~~(1) Any court before which any contested election may be pending or the clerk of such court in vacation may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the election in contest and to certify the result of such count, comparison, and examination to the court from which the writ was issued.~~

~~(2) The Legislature or the committee of the Legislature designated by the Legislature before which a contested election is pending may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the election in contest and to certify the result of such count, comparison, and examination to the Legislature.~~

Sec. 5. Section 32-1114, Reissue Revised Statutes of Nebraska, is amended to read:

32-1114 ~~On (1) Except as provided in subsection (2) of this section, on the day fixed for opening the ballots pursuant to section 32-1113, the election commissioner or county clerk and the county canvassing board which officiated in making the official county canvass of the election returns shall proceed to open such ballots in the presence of the petitioner and the person whose election is contested or their attorneys. While the ballots are open and being examined, the election commissioner or county clerk shall exclude all other persons from the counting room. All persons witnessing the counting of ballots shall be placed under oath requiring them not to disclose any fact discovered from such ballots except as stated in the certificate of the election commissioner or county clerk.~~

~~(2) In an election contest for a seat in the Legislature, the Legislature may establish rules and procedures for the recount of ballots. Such rules and procedures may provide for delivery to the Legislature or a committee of the Legislature designated by the Legislature before which a contested election is pending, by the election commissioner or county clerk, of the ballots or notarized copies of the ballots which were cast at the election in contest.~~

Sec. 6. Section 32-1115, Reissue Revised Statutes of Nebraska, is amended to read:

32-1115 ~~(1) The election commissioner or county clerk shall permit the petitioner, the person whose election is being contested, and their attorneys to fully examine the ballots. The election commissioner or county clerk shall make return to the writ, under his or her hand and official seal, of all the facts which either of the parties may desire and which appear from the ballots to affect or relate to the contested election. After the examination of the ballots is completed, the election commissioner or county clerk shall again securely seal the ballots as they were and preserve and destroy them as provided by law in the same manner as if they had not been opened. The certificate of the election commissioner or county clerk certifying the total number of votes received by a candidate shall be prima facie evidence of the facts stated in the certificate, but the persons present at the examination of the ballots may be heard as witnesses to contradict the certificate.~~

~~(2) If the ballots or notarized copies of the ballots were examined as part of an election contest for a seat in the Legislature, the Legislature shall return such ballots or notarized copies of such ballots to the election commissioner or county clerk at the conclusion of the election contest.~~

Sec. 7. Section 32-1116, Reissue Revised Statutes of Nebraska, is amended to read:

32-1116 ~~Except for election contests involving a member of the Legislature under the Legislative Qualifications and Election Contests Act, the cost of election contests under sections 32-1101 to 32-1117 and recounts under section 32-1118 shall be adjudged against the petitioner if he or she loses the contest, and if the petitioner wins the contest, the cost shall be adjudged against the state, county, or other political subdivision of which such contested office was a part. The payment of such costs shall be enforced as in civil cases. Attorneys representing the person finally determined to be the winner in any contest or recount of an election to the Legislature may be allowed as part of such costs reimbursement for reasonable attorney's fees as determined by the committee of the Legislature designated by the Legislature before which a contested election is pending but not to exceed five thousand dollars for such services.~~

Sec. 8. ~~Sections 8 to 27 of this act shall be known and may be cited as the Legislative Qualifications and Election Contests Act.~~

Sec. 9. ~~For purposes of the Legislative Qualifications and Election Contests Act:~~

~~(1) Committee means the committee of the Legislature designated by the Legislature to conduct proceedings regarding a petition filed under the act;~~

~~(2) Petitioner means a candidate whose name appeared on the ballot at a general election to represent a legislative district as a member of the Legislature who files a petition under the act; and~~

~~(3) Respondent member means a candidate proclaimed duly elected to represent the legislative district for which the petitioner was seeking election.~~

Sec. 10. ~~The Legislative Qualifications and Election Contests Act applies to any contest of the election of a member of the Legislature and any challenge of the qualifications of a member of the Legislature.~~

Sec. 11. ~~(1) An election contest pursuant to the Legislative~~

Qualifications and Election Contests Act shall only determine which candidate was properly elected to the Legislature and is entitled to be seated. The election contest shall place in issue only the validity of the results of the election.

(2) A qualifications challenge pursuant to the act shall only determine whether a person elected to the Legislature is qualified to hold or retain the seat for which elected. The qualifications challenge shall place in issue only the qualifications of the person elected as a member of the Legislature under the Constitution of Nebraska.

Sec. 12. Only an unsuccessful candidate whose name appeared on the ballot in the general election to represent a legislative district as a member of the Legislature may contest the election or challenge the qualifications of the person elected as a member of the Legislature to represent that legislative district.

Sec. 13. (1) The contest of an election or challenge of the qualifications of a person elected as a member of the Legislature by an unsuccessful candidate shall be considered at the next regular session of the Legislature following the general election.

(2) The election contest or qualifications challenge shall be heard and determined in accordance with the Legislative Qualifications and Election Contests Act and the Rules of the Nebraska Unicameral Legislature.

Sec. 14. When an election contest or qualifications challenge is pending pursuant to the Legislative Qualifications and Election Contests Act, the respondent member may qualify and take office at the time specified by law and exercise the duties of the office until the election contest or qualifications challenge is decided. If the election contest or qualifications challenge is decided against such member, the Legislature shall order him or her to give up the office to the petitioner in the election contest or qualifications challenge and deliver to the petitioner all books, records, papers, property, and effects pertaining to the office. The Legislature may enforce such order by attachment or other proper legal process.

Sec. 15. The petitioner shall have the burden of proving that the respondent member was not properly elected or qualified to hold office at the time of the election by clear and convincing evidence.

Sec. 16. If the date for filing or completion of an act under the Legislative Qualifications and Election Contests Act falls on a Saturday, Sunday, or legal holiday, the next business day shall be the deadline for filing or completing the act.

Sec. 17. All filings with the Clerk of the Legislature pursuant to the Legislative Qualifications and Election Contests Act, including pleadings, responses, and motions, shall be served upon each of the parties and shall contain a complete certificate of service.

Sec. 18. (1) A petition to contest the election or challenge the qualifications of a person elected as a member of the Legislature shall be filed with the Clerk of the Legislature within forty calendar days after the general election at which the respondent member was elected, and a copy of the petition shall be personally served on the respondent member. The petition shall be verified by affidavit swearing to the truth of the allegations or based on information and belief. The petitioner shall include with the petition filed with the Clerk of the Legislature proof of personal service upon the respondent member.

(2)(a) A petition to contest the election shall contain the names of the voters whose votes are contested, the grounds upon which such votes are illegal, a full statement of any other grounds upon which the election is contested, and the standing of the petitioner to contest the election.

(b) A petition to challenge qualifications shall contain the constitutional grounds on which the respondent member is alleged to be unqualified and the standing of the petitioner to challenge the respondent member's qualifications.

Sec. 19. (1) A petition to contest the election or challenge the qualifications of a member shall only be amended once within the time period for filing the initial petition under section 18 of this act. An amended petition shall be filed with the Clerk of the Legislature and personally served on the respondent member and shall meet all the elements required for an initial petition.

(2) A petition which is filed or amended after the filing deadline in section 18 of this act or which fails to meet any of the requirements of the Legislative Qualifications and Election Contests Act shall be void, and any rights related thereto shall expire by operation of law.

Sec. 20. The petitioner shall file with the Clerk of the Legislature, within five calendar days after filing the petition pursuant to section 18 of this act, a bond with security approved by the Clerk of the Legislature conditioned to pay all costs incurred by the Legislature if the election is confirmed or the qualifications of the respondent member are confirmed. The bond shall be in an amount of at least ten thousand dollars as determined by the Clerk of the Legislature. If the Clerk of the Legislature determines that the bond is inadequate, he or she may order an increase in the amount of the bond at any stage of the proceedings.

Sec. 21. The respondent member may file a response to the petition filed pursuant to section 18 of this act with the Clerk of the Legislature within ten calendar days after receipt of service of the petition. If the respondent member files a response, he or she shall also serve a copy of the response on the petitioner within such ten-day period.

Sec. 22. The prevailing party may request from the opposing party or the state the recovery of attorney's fees and costs incurred in bringing or defending a petition to contest an election or challenge qualifications under the Legislative Qualifications and Election Contests Act. The request shall be filed with the Clerk of the Legislature within fifteen calendar days after the filing of the final report regarding the petition. The request shall include a detailed report of attorney's fees and costs incurred by the prevailing party. The committee may decide that the prevailing party should receive attorney's fees and costs. Any sum awarded shall be reasonable, just, and proper.

Sec. 23. (1) The election of a person to represent a legislative district as a member of the Legislature may be contested for any or all of the following grounds:

(a) For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;

(b) If the respondent member has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;

(c) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(d) For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;

(e) If the respondent member is in default as a collector and custodian of public money or property; or

(f) For any other cause which shows that another person was legally elected.

(2) When the misconduct is on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk, it shall be insufficient to set aside the election unless the vote of the county or precinct would change the result as to that office.

Sec. 24. The Legislature or the committee before which a contested election is pending may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine in his or her office the ballots which were cast at the election in contest and to certify the result of such count, comparison, and examination to the Legislature.

Sec. 25. Any writ issued pursuant to section 24 of this act shall be served without delay on the election commissioner or county clerk by the sheriff of his or her county. The election commissioner or county clerk shall at once fix a day, not more than thirty calendar days after the date of the receipt of such writ, on which he or she will proceed to open such ballots and shall cause notice in writing of the day so fixed to be served on the petitioner or his or her attorney and the respondent member or his or her attorney at least five calendar days before such day. Such notice may be served in the manner provided in section 25-505.01.

Sec. 26. (1) The Legislature may establish rules and procedures for the recount of ballots. Such rules and procedures may provide for delivery by the election commissioner or county clerk, to the Legislature or the committee, of the ballots or notarized copies of the ballots which were cast at the election in contest. The Legislature shall return such ballots or notarized copies of such ballots to the election commissioner or county clerk at the conclusion of the election contest.

(2) The election commissioner or county clerk shall permit the petitioner, the respondent member, and the attorneys for the parties to fully examine the ballots. The election commissioner or county clerk shall make return to the writ, under his or her hand and official seal, of all the facts which either of the parties may desire and which appear from the ballots to affect or relate to the contested election. After the examination of the ballots is completed, the election commissioner or county clerk shall again securely seal the ballots as they were and preserve and destroy them as provided by law in the same manner as if they had not been opened. The certificate of the election commissioner or county clerk certifying the total number of votes received by a candidate shall be prima facie evidence of the facts stated in the certificate, but the persons present at the examination of the ballots may be heard as witnesses to contradict the certificate.

Sec. 27. Pursuant to Article III, section 10, of the Constitution of Nebraska, the Legislature is vested with the jurisdiction to hear any challenge to the qualifications of a member of the Legislature and is the judge of the elections, returns, and qualifications of its members.

Sec. 28. The Revisor of Statutes shall assign sections 8 to 27 of this act to Chapter 50.

Sec. 29. Original sections 32-1101, 32-1105, 32-1111, 32-1112, 32-1114, 32-1115, and 32-1116, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 30. The following sections are outright repealed: Sections 32-1106 and 32-1107, Reissue Revised Statutes of Nebraska.