

LEGISLATIVE BILL 444

Approved by the Governor April 30, 2003

Introduced by Erdman, 47

AN ACT relating to petitions; to amend sections 18-2515, 32-629, 32-630, 32-631, 32-1301, 32-1404, and 32-1546, Reissue Revised Statutes of Nebraska, and sections 31-787, 31-788, 32-554, 32-628, 32-1303, and 32-1304, Revised Statutes Supplement, 2002; to change filing, circulating, and signing requirements as prescribed; to provide and change powers and duties; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 18-2515, Reissue Revised Statutes of Nebraska, is amended to read:

18-2515. (1) Each petition presented for signature must be identical to the petition authorized for circulation by the city clerk pursuant to section 18-2512.

(2) Every petition shall contain the name and place of residence of not more than three persons as chief petitioners or sponsors of the measure. The chief petitioners or sponsors shall be qualified electors of the municipal subdivision potentially affected by the initiative or referendum proposal.

(3) Every petition shall contain the caption and the statement specified in subdivisions (1)(a) and (1)(c) of section 18-2513.

(4) When a special election is being requested, such fact shall be stated on every petition.

~~(5) Only qualified electors shall circulate petitions.~~

Sec. 2. Section 31-787, Revised Statutes Supplement, 2002, is amended to read:

31-787. (1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition demanding that the question of removing a trustee be submitted to the qualified resident voters or qualified property owning voters that elected such trustee shall be signed by qualified resident voters or qualified property owning voters, as the case may be, who represent at least thirty-five percent of the number of votes cast for the trustee who received the most votes in the last district election pursuant to section 31-735 and who was elected by the same voters as the trustee whose recall is being sought. The signatures shall be affixed to petition papers and shall be considered part of the petition.

~~(2) Each circulator of a recall petition shall be a qualified resident voter of the district on the date of the issuance of the initial petition papers if the trustee whose recall is being sought was elected solely by qualified resident voters. Each circulator of a recall petition may be a qualified resident voter or qualified property owning voter on the date of the issuance of the initial petition papers if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters.~~

~~(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 voter qualified as provided in subsection (2) of this section to circulate a petition regarding the recall of the subject trustee qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.~~

~~(4) (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 principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and~~

whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. 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 ~~qualified voters of the district~~ persons who may act as circulators of such petitions.

~~(5)~~ (4) Each signer of a recall petition shall be (a) qualified to vote in a district election ~~on the date of the issuance of the initial petition papers~~ and (b) a qualified resident voter if the trustee whose recall is being sought was elected solely by qualified resident voters.

Sec. 3. Section 31-788, Revised Statutes Supplement, 2002, is amended to read:

31-788. (1) The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks for use in the recall of trustees of sanitary and improvement districts and shall keep a sufficient number of such blank petition papers on file for distribution to any filing clerk requesting recall petitions.

(2) Each petition paper presented to a qualified voter for his or her signature shall clearly indicate at the top (a) whether the trustee whose recall is being sought was elected solely by qualified resident voters, (b) whether the signatories must be qualified resident voters or may include qualified property owning voters, (c) that the signatories must support the holding of a recall election for the trustee, (d) the name of the individual sought to be recalled, and (e) a general statement of the reason or reasons for which recall is sought.

(3) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by sections 31-786 to 31-793. The instructions shall include the following ~~statements~~ statement:

~~(a) No one shall circulate this petition paper in an attempt to gather signatures unless he or she would be qualified on the date of the issuance of the initial petition papers to vote as provided in section 31-735 for the election of the trustee of the sanitary and improvement district whose recall is being sought.~~

~~(b) No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.~~

Sec. 4. Section 32-554, Revised Statutes Supplement, 2002, is amended to read:

32-554. (1)(a) Any city not under a home rule charter, village, county, or school district nominating and electing members to its governing board at large may at a general election submit the question of nominating and electing members to its governing board by district or ward.

(b) Any city not under a home rule charter, village, county having not more than three hundred thousand inhabitants, or school district nominating and electing members to its governing board by district or ward may at a general election submit the question of nominating and electing members to its governing board at large.

(c) Any city of the first class, except a city having adopted the commissioner or city manager plan of government, nominating and electing members to its governing body by ward may at a general election submit the question of nominating and electing some of the members to its governing body by ward and some at large either by ordinance by a vote of a majority of the members of the governing body or by petition of the registered voters of the city. No more than three members of the city council may be elected on an at-large basis, and at least four members of the city council shall be elected by ward. The ordinance or petition shall specify the number of at-large members to be elected. At the first election in which one or more at-large members are to be elected to the city council, the members shall be elected to serve for initial terms of office of the following lengths:

(i) If one at-large member is to be elected, he or she shall serve for a four-year term;

(ii) If two at-large members are to be elected, the candidate receiving the highest number of votes shall be elected to serve for a four-year term and the other elected member shall be elected to serve for a two-year term; and

(iii) If three at-large members are to be elected, the two candidates receiving the highest number of votes shall be elected to serve for

four-year terms and the other elected member shall be elected to serve for a two-year term. Following the initial term of office, all at-large council members shall be elected to serve for four-year terms. No candidate may file as both an at-large candidate and a candidate by ward at the same election.

(2) Petitions for submission of the question shall be ~~prepared, circulated, and~~ signed by registered voters of the city, village, county, or school district desiring to change the procedures for electing the governing board of the city, village, county, or school district. The petition or petitions shall be signed by registered voters equal in number to twenty-five percent of the votes cast for the person receiving the highest number of votes in the city, village, county, or school district at the preceding general election for electing the last member or members to its governing board. Each sheet of the petition shall have printed the full and correct copy of the question as it will appear on the official ballot. The petitions shall be filed with the county clerk or election commissioner not less than seventy days prior to the date of the general election, and no signatures shall be added or removed from the petitions after they have been so filed. Petitions shall be verified as provided in section 32-631. If the petition or petitions are found to contain the required number of valid signatures, the county clerk or election commissioner shall place the question on a separate ballot to be issued to the registered voters of the city, village, county, or school district entitled to vote on the question.

(3) (a) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board by district or ward to nominating and electing some or all of such members at large shall notify the public and instruct the filing officer to accept the appropriate filings on an at-large basis. Candidates to be elected at large shall be nominated and elected on an at-large basis at the next primary and general election following submission of the question.

(b) Any city, village, county, or school district voting to change from nominating and electing the members of its governing board at large to nominating and electing by district or ward shall notify the public and instruct the filing officer to accept all filings by district or ward. Candidates shall be nominated and elected by district or ward at the next primary and general election following submission of the question. When district or ward elections have been approved by the majority of the electorate, the governing board of any city, village, county, or school district approving such question shall establish districts substantially equal in population as determined by the most recent federal decennial census except as provided in subsection (2) of section 32-553.

(4) Except as provided in section 14-201, each city not under a home rule charter, village, county, and school district which votes to nominate and elect members to its governing board by district or ward shall establish districts or wards so that the members of its governing board may be nominated and elected from districts or wards bearing odd numbers at one election and from districts or wards bearing even numbers at the following election. Districts or wards shall be created not later than October 1 in the year following the general election at which the question was voted upon. If the governing board fails to draw district boundaries by October 1, the procedures set forth in section 32-555 shall be followed.

Sec. 5. Section 32-628, Revised Statutes Supplement, 2002, is amended to read:

32-628. (1) All petitions prepared or filed pursuant to the Election Act or any petition which requires the election commissioner or county clerk to verify signatures by utilizing the voter registration register shall provide a space at least two and one-half inches long for written signatures, a space at least two inches long for printed names, and sufficient space for date of birth and street name and number, city or village, and zip code. Lines on each petition shall not be less than one-fourth inch apart. Petitions may be designed in such a manner that lines for signatures and other information run the length of the page rather than the width. Petitions shall provide for no more than twenty signatures per page.

(2) For the purpose of preventing fraud, deception, and misrepresentation, every sheet of every petition containing signatures shall have upon it, above the signatures, the statements contained in this subsection, except that a petition for recall of an elected official shall also have the additional information specified in subsection (2) of section 32-1304. The statements shall be printed in boldface type in substantially the following form:

WARNING TO PETITION SIGNERS--VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not, ~~at~~

the time of signing or circulating the petition, a registered voter and qualified to sign or circulate the petition except as provided for initiative and referendum petitions shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

(3) Every sheet of a petition which contains signatures shall have upon it, below the signatures, an affidavit as provided in this subsection, except that the affidavit for a petition for recall of an elected official shall also include the additional language specified in subsection (3) of section 32-1304. The affidavit shall be in substantially the following form: STATE OF NEBRASKA)

) ss.

COUNTY OF)

....., (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing signatures, that he or she is a registered voter of the State of Nebraska, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

.....
Circulator

.....
Address

Subscribed and sworn to before me, a notary public, this day of 20.... at, Nebraska.

.....
Notary Public

(4) Each sheet of a petition shall have upon its face and in plain view of persons who sign the petition a statement in letters not smaller than sixteen-point type in red print on the petition. If the petition is circulated by a paid circulator, the statement shall be as follows: This petition is circulated by a paid circulator. If the petition is circulated by a circulator who is not being paid, the statement shall be as follows: This petition is circulated by a volunteer circulator.

Sec. 6. Section 32-629, Reissue Revised Statutes of Nebraska, is amended to read:

32-629. ~~Only~~ Except as otherwise provided in section 32-1404 for initiative and referendum petitions, only a registered voter of the State of Nebraska shall qualify as a valid signer or circulator of a petition and may sign or circulate petitions under the Election Act. , except that any person who is or will be a registered voter in the State of Nebraska on or before the date on which the petition is required to be filed with the Secretary of State may sign an initiative or referendum petition.

Sec. 7. Section 32-630, Reissue Revised Statutes of Nebraska, is amended to read:

32-630. (1) Each person who signs a petition shall, at the time of and in addition to signing, personally affix the date, print his or her last name and first name in full, and affix his or her date of birth and address, including the street and number or a designation of a rural route or voting precinct and the city or village or a post office address. A person signing a petition may use his or her initials in place of his or her first name if such person is registered to vote under such initials. No signer shall use ditto marks as a means of personally affixing the date or address to any petition. A wife shall not use her husband's first name when she signs a petition but shall personally affix her first name and her last name by marriage or her surname. Any signature using ditto marks as a means of personally affixing the date or address of any petition or any signature using a spouse's first name instead of his or her own shall be invalid.

(2) Each circulator of a petition shall personally witness the signatures on the petition and shall sign the circulator's affidavit.

(3) No person shall:

(a) Sign any name other than his or her own to any petition;

(b) Knowingly sign his or her name more than once for the same

petition effort or measure;

(c) Sign ~~or circulate~~ a petition if he or she is not a registered voter and qualified to sign ~~or circulate~~ the same except as provided in section ~~32-629~~ 32-1404;

(d) Falsely swear to any signature upon any such petition;

(e) Accept money or other thing of value for signing any petition;

or

(f) Offer money or other thing of value in exchange for a signature upon any petition.

Sec. 8. Section 32-631, Reissue Revised Statutes of Nebraska, is amended to read:

32-631. (1) All petitions that are presented to the election commissioner or county clerk for signature verification shall be retained in the election office and shall be open to public inspection. Upon receipt of the pages of a petition, the election commissioner or county clerk shall issue a written receipt indicating the number of pages of the petition in his or her custody to the person presenting the petition for signature verification. Petitions may be destroyed twenty-two months after the election to which they apply.

(2) The election commissioner or county clerk shall determine the validity and sufficiency of such petition by comparing the names, dates of birth if applicable, and addresses of the signers ~~and circulators~~ with the voter registration records to determine if the signers ~~and circulators~~ were registered voters on the date of signing the petition. If it is determined that a signer has affixed his or her signature more than once to any petition and that only one person is registered by that name, the election commissioner or county clerk shall strike from the pages of the petition all but one such signature. Only one of the duplicate signatures shall be added to the total number of valid signatures. All signatures, dates of birth, and addresses shall be presumed to be valid if the election commissioner or county clerk has found the signers to be registered voters on or before the date on which the petition was signed. This presumption shall not be conclusive and may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient.

(3) If the election commissioner or county clerk verifies signatures in excess of one hundred ten percent of the number necessary for the issue to be placed on the ballot, the election commissioner or county clerk may cease verifying signatures and certify the number of signatures verified to the person who delivered the petitions for verification.

(4) If the number of signatures verified does not equal or exceed the number necessary to place the issue on the ballot upon completion of the comparison of names and addresses with the voter registration records, the election commissioner or county clerk shall prepare in writing a certification under seal setting forth the name and address of each signer ~~or circulator~~ found not to be a registered voter and the petition page number and line number where the signature is found. If the signature or address is challenged for a reason other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reasons for the challenge of the signature.

Sec. 9. Section 32-1301, Reissue Revised Statutes of Nebraska, is amended to read:

32-1301. For purposes of sections 32-1301 to 32-1309, filing clerk shall mean ~~(1) the election commissioner or county clerk for recall of elected officers of cities, villages, of the metropolitan and primary classes,~~ counties, irrigation districts, natural resources districts, public power districts, school districts, community college areas, educational service units, hospital districts, and metropolitan utilities districts. ~~and (2) the city or village clerk for recall of officers of all municipalities other than cities of the metropolitan or primary class.~~

Sec. 10. Section 32-1303, Revised Statutes Supplement, 2002, 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 sections 32-629 and section 32-630. Each circulator 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 on the date of the issuance of the initial petition papers.~~

(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 the official sought to be removed. 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 ~~registered voters residing in the district~~ 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. on the date of the issuance of the initial petition papers.~~

Sec. 11. Section 32-1304, Revised Statutes Supplement, 2002, is amended to read:

32-1304. (1) The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks and shall keep a sufficient number of such blank petition papers on file for distribution to any filing clerk requesting recall petitions. The petition papers shall as nearly as possible conform to the requirements of section 32-628.

(2) In addition to the requirements specified in section 32-628, for the purpose of preventing fraud, deception, and misrepresentation, every sheet of each petition paper presented to a registered voter for his or her signature shall have upon it, above the lines for signatures, (a) a statement that the signatories must be registered voters qualified by residence to vote for the office in question and support the holding of a recall election and (b) in letters not smaller than sixteen-point type in red print (i) the name and office of the individual sought to be recalled, (ii) the reason or reasons for which recall is sought, (iii) the defense statement, if any, submitted by the official, and (iv) the name of the principal circulator or circulators of the recall petition. The decision of a county attorney to prosecute or not to prosecute any individual shall not be stated on a petition as a reason for recall.

(3) Every sheet of each petition paper presented to a registered voter for his or her signature shall have upon it, below the lines for signatures, an affidavit as required in subsection (3) of section 32-628 which also includes language substantially as follows: "and that the affiant stated to each signer, before the signer affixed his or her signature to the petition, the following: (a) The name and office of the individual sought to be recalled, (b) the reason or reasons for which recall is sought as printed on the petition, (c) the defense statement, if any, submitted by the official

as printed on the petition, and (d) the name of the principal circulator or circulators of the recall petition."

(4) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by sections 32-1301 to 32-1309. The instructions shall include the following statements:

(a) ~~No one shall circulate this petition paper in an attempt to gather signatures unless he or she is registered to vote and qualified by his or her place of residence to vote for the office in question on the date of the issuance of the initial petition papers.~~

~~(b)~~ No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.

~~(c)~~ (b) No one circulating this petition paper in an attempt to gather signatures shall allow a person to sign the petition until the circulator has stated to the person (i) the object of the petition as printed on the petition, (ii) the name and office of the individual sought to be recalled, (iii) the reason or reasons for which recall is sought as printed on the petition, (iv) the defense statement, if any, submitted by the official as printed on the petition, and (v) the name of the principal circulator or circulators of the recall petition.

Sec. 12. Section 32-1404, Reissue Revised Statutes of Nebraska, is amended to read:

32-1404. Signers and circulators of A signer of an initiative and referendum petition shall be a registered voter of the State of Nebraska on or before the date on which the petition is required to be filed with the Secretary of State and shall meet the requirements of sections 32-629 and section 32-630. A registered voter who intends to circulate person who circulates initiative and referendum petitions outside of his or her county of residence shall register with the Secretary of State on forms provided by the Secretary of State prior to circulating initiative and referendum petitions outside of his or her county of residence. The Secretary of State shall make available to the counties a list of registered circulators for each petition drive need not be a registered voter but shall comply with requirements of subsection (2) of section 32-630 and with the prohibitions contained in subdivisions (3)(a), (d), and (f) of section 32-630.

Sec. 13. Section 32-1546, Reissue Revised Statutes of Nebraska, is amended to read:

32-1546. (1) Any person who is not, at the time of signing ~~or circulating~~ a petition, a registered voter and qualified to sign ~~or circulate~~ the petition except as provided for initiative and referendum petitions, ~~in section 32-1404 or~~ who signs any name other than his or her own to any petition, ~~or who willfully and knowingly circulates an initiative or referendum petition outside of his or her county of residence without registering with the Secretary of State~~ shall be guilty of a Class I misdemeanor.

(2) Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

Sec. 14. Original sections 18-2515, 32-629, 32-630, 32-631, 32-1301, 32-1404, and 32-1546, Reissue Revised Statutes of Nebraska, and sections 31-787, 31-788, 32-554, 32-628, 32-1303, and 32-1304, Revised Statutes Supplement, 2002, are repealed.