

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 796

Introduced by Schimek, 27

Read first time January 17, 2001

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to elected officials; to amend sections 19-616,
2 32-1303, and 32-1304, Reissue Revised Statutes of
3 Nebraska, and section 32-628, Revised Statutes
4 Supplement, 2000; to provide for vacancies in office for
5 unexcused absences from municipal meetings; to change
6 provisions relating to recall petitions; to harmonize
7 provisions; and to repeal the original sections.

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

1 Section 1. In all cities of the first and second classes
2 and villages regardless of the form of government, in addition to
3 the events listed in section 32-560 and any other reasons for a
4 vacancy provided by law, after notice and a hearing, a vacancy on
5 the city council or board of trustees shall exist if a member is
6 absent from more than five consecutive regular meetings of the
7 council or board unless the absences are excused by a majority vote
8 of the remaining members.

9 Sec. 2. Section 19-616, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 19-616. The annual compensation of the mayor and a
12 council member in cities adopting sections 19-601 to 19-648 shall
13 be payable quarterly in equal installments, and shall be fixed by
14 the council. The emoluments of any appointive or elective officer
15 shall not be increased or diminished during the term for which such
16 officer was elected or appointed, except that when there are
17 officers elected or appointed to the council, or a board or
18 commission having more than one member and the terms of one or more
19 members commence and end at different times, the compensation of
20 all members of such council, board, or commission may be increased
21 or diminished at the beginning of the full term of any member
22 thereof. No person who ~~shall have~~ has resigned or vacated any
23 office shall be eligible to the same during the time for which such
24 person was elected or appointed when, during the same time, the
25 emoluments have been increased. For each absence from regular
26 meetings of the council, unless authorized by a two-thirds vote of
27 all members thereof, there shall be deducted a sum equal to two
28 percent of such annual salary. ~~Absence from five consecutive~~

1 ~~regular meetings shall operate to vacate the seat of a member,~~
2 ~~unless the absence is excused by the council by resolution setting~~
3 ~~forth such excuse and entered upon the journal.~~

4 Sec. 3. Section 32-628, Revised Statutes Supplement,
5 2000, is amended to read:

6 32-628. (1) All petitions prepared or filed pursuant to
7 the Election Act or any petition which requires the election
8 commissioner or county clerk to verify signatures by utilizing the
9 voter registration register shall provide a space at least two and
10 one-half inches long for written signatures, a space at least two
11 inches long for printed names, and sufficient space for date of
12 birth and street name and number, city or village, and zip code.
13 Lines on each petition shall not be less than one-fourth inch
14 apart. Petitions may be designed in such a manner that lines for
15 signatures and other information run the length of the page rather
16 than the width. Petitions shall provide for no more than twenty
17 signatures per page.

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

26 WARNING TO PETITION SIGNERS--VIOLATION OF ANY OF THE
27 FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL
28 CHARGES: Any person who signs any name other than his or her own

1 to any petition or who is not, at the time of signing or
 2 circulating the petition, a registered voter and qualified to sign
 3 or circulate the petition except as provided for initiative and
 4 referendum petitions shall be guilty of a Class I misdemeanor. Any
 5 person who falsely swears to a circulator's affidavit on a
 6 petition, who accepts money or other things of value for signing a
 7 petition, or who offers money or other things of value in exchange
 8 for a signature upon any petition shall be guilty of a Class IV
 9 felony.

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

16 STATE OF NEBRASKA)
 17) ss.
 18 COUNTY OF)
 19, (name of circulator) being first duly
 20 sworn, deposes and says that he or she is the circulator of this
 21 petition containing signatures, that he or she is a
 22 registered voter of the State of Nebraska, that each person whose
 23 name appears on the petition personally signed the petition in the
 24 presence of the affiant, that the date to the left of each
 25 signature is the correct date on which the signature was affixed to
 26 the petition and that the date was personally affixed by the person
 27 signing such petition, that the affiant believes that each signer
 28 has written his or her name, street and number or voting precinct,

1 and city, village, or post office address correctly, that the
 2 affiant believes that each signer was qualified to sign the
 3 petition, and that the affiant stated to each signer the object of
 4 the petition as printed on the petition before he or she affixed
 5 his or her signature to the petition.

6

7 Circulator

8

9 Address

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

12

13 Notary Public

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

22 Sec. 4. Section 32-1303, Reissue Revised Statutes of
 23 Nebraska, is amended to read:

24 32-1303. (1) A petition demanding that the question of
 25 removing an elected official or member of a governing body listed
 26 in section 32-1302 be submitted to the registered voters shall be
 27 signed by registered voters equal in number to at least thirty-five
 28 percent of the total vote cast for that office in the last general

1 election, except that (a) for an office for which more than one
2 candidate is chosen, the petition shall be signed by registered
3 voters equal in number to at least thirty-five percent of the
4 number of votes cast for the person receiving the most votes for
5 such office in the last general election, (b) for a member of a
6 board of a Class I school district, the petition shall be signed by
7 registered voters of the school district equal in number to at
8 least twenty-five percent of the total number of registered voters
9 residing in the district on the date that the recall petitions are
10 first checked out from the filing clerk by the principal
11 circulator, and (c) for a member of a governing body of a village,
12 the petition shall be signed by registered voters equal in number
13 to at least forty-five percent of the total vote cast for the
14 person receiving the most votes for that office in the last general
15 election. The signatures shall be affixed to petition papers and
16 shall be considered part of the petition.

17 (2) Petition circulators shall conform to the
18 requirements of sections 32-629 and 32-630. Each circulator of a
19 recall petition shall be a registered voter and qualified by his or
20 her place of residence to vote for the office in question on the
21 date of the issuance of the initial petition papers.

22 (3) The petition papers shall be procured from the filing
23 clerk. Prior to the issuance of such petition papers, an affidavit
24 shall be signed and filed with the filing clerk by at least one
25 registered voter. Such voter or voters shall be deemed to be the
26 principal circulator or circulators of the recall petition. The
27 affidavit shall state the name and office of the official sought to
28 be removed, shall include in typewritten form in concise language

1 of sixty words or less the reason or reasons for which recall is
2 sought, and shall request that the filing clerk issue initial
3 petition papers to the principal circulator for circulation. The
4 filing clerk shall deliver a copy of the affidavit by certified
5 mail to the official sought to be removed. If the official
6 chooses, he or she may submit a defense statement in typewritten
7 form in concise language of sixty words or less for inclusion on
8 the petition. Any such defense statement shall be submitted to the
9 filing clerk within twenty days after the official receives the
10 copy of the affidavit. The filing clerk shall notify the principal
11 circulator or circulators that the necessary signatures must be
12 gathered within thirty days from the date of issuing the petitions.

13 (4) The filing clerk, upon issuing the initial petition
14 papers or any subsequent petition papers, shall enter in a record,
15 to be kept in his or her office, the name of the principal
16 circulator or circulators to whom the papers were issued, the date
17 of issuance, and the number of papers issued. The filing clerk
18 shall certify on the papers the name of the principal circulator or
19 circulators to whom the papers were issued and the date they were
20 issued. No petition paper shall be accepted as part of the
21 petition unless it bears such certificate. The principal
22 circulator or circulators who check out petitions from the filing
23 clerk may distribute such petitions to registered voters residing
24 in the district who may act as circulators of such petitions.

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

1 issuance of the initial petition papers.

2 Sec. 5. Section 32-1304, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 32-1304. (1) The Secretary of State shall design the
5 uniform petition papers to be distributed by all filing clerks and
6 shall keep a sufficient number of such blank petition papers on
7 file for distribution to any filing clerk requesting recall
8 petitions. The petition papers shall as nearly as possible conform
9 to the requirements of section 32-628.

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

26 (3) Every sheet of each petition paper presented to a
27 registered voter for his or her signature shall have upon it, below
28 the lines for signatures, an affidavit as required in subsection

1 (3) of section 32-628 which also includes language substantially as
2 follows: "and that the affiant stated to each signer, before the
3 signer affixed his or her signature to the petition, the following:
4 (a) The name and office of the individual sought to be recalled,
5 (b) the reason or reasons for which recall is sought as printed on
6 the petition, (c) the defense statement, if any, submitted by the
7 official as printed on the petition, and (d) the name of the
8 principal circulator or circulators of the recall petition."

9 (4) Each petition paper shall contain a statement
10 entitled Instructions to Petition Circulators prepared by the
11 Secretary of State to assist circulators in understanding the
12 provisions governing the petition process established by sections
13 32-1301 to 32-1309. The instructions shall include the following
14 statements:

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

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

24 (c) No one circulating this petition paper in an attempt
25 to gather signatures shall allow a person to sign the petition
26 until the circulator has stated to the person (a) the object of the
27 petition as printed on the petition, (b) the name and office of the
28 individual sought to be recalled, (c) the reason or reasons for

1 which recall is sought as printed on the petition, (d) the defense
2 statement, if any, submitted by the official as printed on the
3 petition, and (e) the name of the principal circulator or
4 circulators of the recall petition.

5 Sec. 6. Original sections 19-616, 32-1303, and 32-1304,
6 Reissue Revised Statutes of Nebraska, and section 32-628, Revised
7 Statutes Supplement, 2000, are repealed.