

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 188

Introduced by Council, 11.

Read first time January 07, 2011

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to recall petitions; to amend sections 32-1302,
2 32-1303, 32-1304, and 32-1305, Reissue Revised Statutes
3 of Nebraska; to change requirements for registered voters
4 signing recall petitions; to harmonize provisions; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 32-1302, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-1302 (1) Except for trustees of sanitary and
4 improvement districts, any elected official of a political
5 subdivision and any elected member of the governing bodies of cities,
6 villages, counties, irrigation districts, natural resources
7 districts, public power districts, school districts, community
8 college areas, educational service units, hospital districts, and
9 metropolitan utilities districts may be removed from office by recall
10 pursuant to sections 32-1301 to 32-1309. A trustee of a sanitary and
11 improvement district may be removed from office by recall pursuant to
12 sections 31-786 to 31-793.

13 (2) If due to reapportionment the boundaries of the area
14 served by the official or body change, the recall procedure and
15 special election provisions of sections 32-1301 to 32-1309 shall
16 apply to the registered voters within the boundaries of the new area.

17 (3) The recall procedure and special election provisions
18 of such sections shall apply to members of the governing bodies
19 listed in subsection (1) of this section, other than sanitary and
20 improvement districts, who are elected by precinct, district, or
21 subdistrict of the political subdivision. Only registered voters of
22 such member's precinct, district, or subdistrict may sign a recall
23 petition as provided in subsection (5) of section 32-1303 or vote at
24 the recall election. The recall election shall be held within the
25 member's precinct, district, or subdistrict. When an elected member

1 is nominated by precinct, district, or subdistrict in the primary
2 election and elected at large in the general election, the recall
3 provisions shall apply to the registered voters at the general
4 election subject to subsection (5) of section 32-1303.

5 (4) The recall procedure and special election provisions
6 shall apply to the mayor and members of the city council of
7 municipalities with a home rule charter notwithstanding any contrary
8 provisions of the home rule charter.

9 Sec. 2. Section 32-1303, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 32-1303 (1) A petition demanding that the question of
12 removing an elected official or member of a governing body listed in
13 section 32-1302 be submitted to the registered voters shall be signed
14 by registered voters equal in number to at least thirty-five percent
15 of the total vote cast for that office in the last general election,
16 except that (a) for an office for which more than one candidate is
17 chosen, the petition shall be signed by registered voters equal in
18 number to at least thirty-five percent of the number of votes cast
19 for the person receiving the most votes for such office in the last
20 general election, (b) for a member of a board of a Class I school
21 district, the petition shall be signed by registered voters of the
22 school district equal in number to at least twenty-five percent of
23 the total number of registered voters residing in the district on the
24 date that the recall petitions are first checked out from the filing
25 clerk by the principal circulator, and (c) for a member of a

1 governing body of a village, the petition shall be signed by
2 registered voters equal in number to at least forty-five percent of
3 the total vote cast for the person receiving the most votes for that
4 office in the last general election. The signatures shall be affixed
5 to petition papers and shall be considered part of the petition.

6 (2) Petition circulators shall conform to the
7 requirements of sections 32-629 and 32-630.

8 (3) The petition papers shall be procured from the filing
9 clerk. Prior to the issuance of such petition papers, an affidavit
10 shall be signed and filed with the filing clerk by at least one
11 registered voter. Such voter or voters shall be deemed to be the
12 principal circulator or circulators of the recall petition. The
13 affidavit shall state the name and office of the official sought to
14 be removed, shall include in typewritten form in concise language of
15 sixty words or less the reason or reasons for which recall is sought,
16 and shall request that the filing clerk issue initial petition papers
17 to the principal circulator for circulation. The filing clerk shall
18 notify the official sought to be removed by any method specified in
19 section 25-505.01 or, if notification cannot be made with reasonable
20 diligence by any of the methods specified in section 25-505.01, by
21 leaving a copy of the affidavit at the official's usual place of
22 residence and mailing a copy by first-class mail to the official's
23 last-known address. If the official chooses, he or she may submit a
24 defense statement in typewritten form in concise language of sixty
25 words or less for inclusion on the petition. Any such defense

1 statement shall be submitted to the filing clerk within twenty days
2 after the official receives the copy of the affidavit. The filing
3 clerk shall notify the principal circulator or circulators that the
4 necessary signatures must be gathered within thirty days from the
5 date of issuing the petitions.

6 (4) The filing clerk, upon issuing the initial petition
7 papers or any subsequent petition papers, shall enter in a record, to
8 be kept in his or her office, the name of the principal circulator or
9 circulators to whom the papers were issued, the date of issuance, and
10 the number of papers issued. The filing clerk shall certify on the
11 papers the name of the principal circulator or circulators to whom
12 the papers were issued and the date they were issued. No petition
13 paper shall be accepted as part of the petition unless it bears such
14 certificate. The principal circulator or circulators who check out
15 petitions from the filing clerk may distribute such petitions to
16 persons who may act as circulators of such petitions.

17 (5) Petition signers shall conform to the requirements of
18 sections 32-629 and 32-630. Each signer of a recall petition shall be
19 a registered voter who voted at the last election at which the
20 elected official sought to be removed was elected and shall be
21 qualified by his or her place of residence to vote for the office in
22 question at the time of signing the petition.

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

25 32-1304 (1) The Secretary of State shall design the

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

6 (2) In addition to the requirements specified in section
7 32-628, for the purpose of preventing fraud, deception, and
8 misrepresentation, every sheet of each petition paper presented to a
9 registered voter for his or her signature shall have upon it, above
10 the lines for signatures, (a) a statement that the signatories must
11 be registered voters who voted at the last election at which the
12 elected official sought to be removed was elected, qualified by
13 residence to vote for the office in question, and support the holding
14 of a recall election and (b) in letters not smaller than sixteen-
15 point type in red print (i) the name and office of the individual
16 sought to be recalled, (ii) the reason or reasons for which recall is
17 sought, (iii) the defense statement, if any, submitted by the
18 official, and (iv) the name of the principal circulator or
19 circulators of the recall petition. The decision of a county attorney
20 to prosecute or not to prosecute any individual shall not be stated
21 on a petition as a reason for recall.

22 (3) Every sheet of each petition paper presented to a
23 registered voter for his or her signature shall have upon it, below
24 the lines for signatures, an affidavit as required in subsection (3)
25 of section 32-628 which also includes language substantially as

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

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

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

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

1 of the recall petition.

2 Sec. 4. Section 32-1305, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 32-1305 (1) The principal circulator or circulators shall
5 file, as one instrument, all petition papers comprising a recall
6 petition for signature verification with the filing clerk within
7 thirty days after the filing clerk issues the initial petition papers
8 to the principal circulator or circulators as provided in section
9 32-1303.

10 (2) If the filing clerk is the subject of a recall
11 petition, the signature verification process shall be conducted by
12 two election commissioners or county clerks appointed by the
13 Secretary of State. Mileage and expenses incurred by officials
14 appointed pursuant to this subsection shall be reimbursed by the
15 political subdivision involved in the recall.

16 (3) Within fifteen days after the filing of the petition,
17 the filing clerk shall ascertain whether or not the petition is
18 signed by the requisite number of registered voters who voted at the
19 last election at which the elected official sought to be removed was
20 elected. No new signatures may be added after the initial filing of
21 the petition papers. No signatures may be removed unless the filing
22 clerk receives an affidavit signed by the person requesting his or
23 her signature be removed before the petitions are filed with the
24 filing clerk for signature verification. If the petition is found to
25 be sufficient, the filing clerk shall attach to the petition a

1 certificate showing the result of such examination. If the requisite
2 number of signatures has not been gathered, the filing clerk shall
3 file the petition in his or her office without prejudice to the
4 filing of a new petition for the same purpose.

5 Sec. 5. Original sections 32-1302, 32-1303, 32-1304, and
6 32-1305, Reissue Revised Statutes of Nebraska, are repealed.