

LEGISLATIVE BILL 853

Approved by the Governor March 13, 1990

Introduced by Nelson, 35; Smith, 33

AN ACT relating to cities of the first class; to amend sections 16-217, 16-302.01, 19-411, and 32-4,152, Reissue Revised Statutes of Nebraska, 1943; to change the manner of filling vacancies on the city council; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 16-217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-217. A city of the first class by ordinance may provide for the removal of elective officers of the city for misconduct. ~~It~~ The city may create any office that it ~~may deem~~ deems necessary for the good government and interest of the city. The city may ~~and~~ provide for filling ~~such~~ vacancies as ~~may~~ which occur in any elective office, except the mayor or member of the city council, by appointment by the mayor with the consent of the council to hold his or her office for the unexpired term. Whenever the city council ~~shall fail~~ fails to consent to any appointment made ~~hereunder~~ under this section by the mayor by the close of the second regular council meeting following the announcement of the appointment, the vacancy shall be filled by a special election to be held as prescribed by ordinance in the ward in which such vacancy exists. When there is a vacancy in the office of the mayor, the president of the city council shall serve as mayor for the unexpired term, except that if at least one-half of the previous mayor's term remains and a general election is to be held more than sixty days from the date of vacancy, a successor shall be elected at the next general election for the balance of the previous mayor's unexpired term. When there is a vacancy on the city council, the vacancy shall be filled as provided in section 32-4,152.

Sec. 2. That section 16-302.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-302.01. (1) In any city of the first

class, except any city having adopted the commissioner or city manager form of government, there shall be elected a mayor at large and one or two council members from each ward, who shall be ~~electors~~ registered voters of the city and residents of the ward from which elected, except that there shall be at least four council members. The council may also, by a two-thirds vote of its members, provide by ordinance for the election of the treasurer and clerk. All nominations and elections of such officers shall be held as provided in Chapter 32, ~~or as provided in sections~~ 16-302-01, 16-306, 17-102, 17-104, 17-107, 17-202 to 17-203-01, 17-701, 19-404, 19-405, 19-408, 19-411, 19-418, 19-432, 19-619, 19-621, 19-3002, 23-1312, 32-227-01, 32-4, 146 to 32-4, 151, 32-502, 32-504, 32-512, 32-513, 32-1051, 35-506, 79-516-04, 79-516-06, 79-701, and 79-803-03.

(2) Commencing with the statewide primary election in 1976, and every two years thereafter, those candidates whose terms will be expiring shall be nominated at the statewide primary election and elected at the statewide general election.

(3) All elected officers in a first-class city shall serve for a ~~term~~ terms of four years and until their successors are elected and have qualified.

(4) If the number of candidates properly filed for nomination at the primary election does not exceed two for each vacancy to be filled, all candidates properly filed shall be considered nominated, and no primary election for their nomination shall be required.

(5) When any second-class city by law becomes a first-class city, and adopts the first-class city form of government, and it becomes necessary to establish the staggering of terms by nominating and electing members for terms of different durations at the same election, the candidates receiving the greatest number of votes shall be nominated and have their names placed on the general election ballot. In no case shall the city clerk, county clerk, or election commissioner place on the general election ballot more than twice the number of names required to fill the vacancies that will occur.

(6) In the case of a tie vote of any of the candidates in either the primary or general election, the city clerk, county clerk, or election commissioner shall notify such candidates to appear at his or her office on a given day and hour to determine the same by lot before the canvassing board, and the certificate of nomination or election shall be given accordingly. Notice to appear shall be given by certified mail.

(7) The city clerk, county clerk, or election

commissioner ~~in preparing shall place on~~ the official ballot for the general election ~~shall place thereon~~ the names of the persons who received the greatest number of votes in the primary, but in no event shall the names on the general election ballot be more than twice the number of vacancies to be filled at the general election. Petitions for the filling of a vacancy on the ballot shall be filed in accordance with section 32-537.

(8) The city clerk, county clerk, or election commissioner shall place the names of the candidates on the general election ballot in the direct order according to the number of votes received at the primary election. If no primary election was held, the names of the candidates shall be placed upon the general election ballot in the order of their filing. The ~~term~~ terms of office of all such members shall commence on the first regular meeting of the council in December following their election. Any vacancy on the council resulting from causes other than expiration of the term shall be filled ~~by vote of the remaining members~~ as provided in section 32-4,152.

(9) Any city of the first class having a home rule charter may provide in such charter for a nominating petition or filing fee or both for any person desiring to be a candidate for the office of council member or mayor.

Sec. 3. That section 19-411, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-411. The council members and excise members shall qualify and give bond in the manner and amount provided by the existing laws governing the city wherein they are elected. If any vacancy occurs in the office of council member, ~~the remaining members of the council shall appoint a person to fill such vacancy for the remainder of the term~~ vacancy shall be filled as provided in section 32-4,152. If any vacancy occurs in the office of excise members, the remaining members of the excise board shall appoint a person to fill such vacancy for the remainder of the term. The terms and office of the mayor and council members and excise members in any such city who are in office at the beginning of the ~~term~~ terms of office of the council members first elected under the ~~provisions~~ of section 19-404 shall then cease. The terms of office of all other elective or appointive officers in force within or for any such city, except as herein otherwise provided, shall cease as soon as the council herein provided for shall select or appoint their successors; and such

successors qualify and give bond as by law provided; or as soon as such council shall by resolution declare the terms of any such elective or appointive officers at an end; or abolish or discontinue the office.

Sec. 4. That section 32-4,152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-4,152. (1) Vacancies in city and village elected offices shall be filled by the mayor and council or board of trustees for the balance of the unexpired term except as provided in subsection (3), ~~or (4), or~~ (5) of this section. Notice of a vacancy, except ~~that~~ a vacancy resulting from the death of the incumbent, shall be in writing and presented to the council or board of trustees at a regular or special meeting and shall appear as a part of the minutes of such meeting. The council or board of trustees shall at once give public notice of the vacancy by causing to be published in a legal newspaper of general circulation within such village or city or by posting in three public places in the village or city the office vacated and the length of the unexpired term.

(2) The mayor or chairperson of the board shall, within four weeks after the meeting at which such notice of vacancy has been presented or upon the death of the incumbent, call a special meeting of the council or board of trustees or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the mayor or chairperson of the board shall submit the name of a qualified elector to fill the vacancy for the balance of the unexpired term. The council or board of trustees shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If a majority vote is not reached, the nomination shall be rejected and the mayor or chairperson shall at the next regular or special meeting submit the name of another qualified elector to fill the vacancy. If the vote on the nominee fails to carry by a majority vote, the mayor or chairperson shall continue at such meeting to submit the names of qualified electors in nomination and the council or board of trustees shall continue to vote upon such nominations until the vacancy is filled. The mayor or chairperson of the board shall cast his or her vote for or against the nominee in the case of a tie vote of the council or board of trustees. All council members and trustees present shall cast a ballot for or against the nominee. Any member of the city council or board of trustees who has been appointed to fill a vacancy on the

council or board shall have the same rights, including voting, as if such person ~~was~~ were elected.

(3) Vacancies in city offices in any home rule charter city shall be filled as provided in the home rule charter.

(4) The mayor and council or chairperson and board of trustees may, in lieu of filling a vacancy in a city or village elected office as provided in subsection (2) or (5) of this section, call a special municipal election to fill such vacancy. If there ~~is~~ are a ~~vacaney~~ vacancies in the offices of a majority of the members of a city council or village board, there shall be a special municipal election conducted by the Secretary of State to fill such vacancies.

(5) Vacancies on the city council of a city of the first class shall be filled by appointment by the mayor with the consent of the city council to hold office until a successor is elected at the next regular election held more than sixty days from the date of vacancy. At such election a successor shall be elected to hold office for the remainder of the term.

Sec. 5. That original sections 16-217, 16-302.01, 19-411, and 32-4,152, Reissue Revised Statutes of Nebraska, 1943, are repealed.