

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 610

Introduced by Pirsch, 4.

Read first time January 19, 2011

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to recall; to amend sections 32-628, 32-1205,
2 32-1301, 32-1302, 32-1303, 32-1304, 32-1305, 32-1306,
3 32-1308, and 32-1309, Reissue Revised Statutes of
4 Nebraska; to provide for recall of an official elected or
5 appointed to a state elective office; to harmonize
6 provisions; and to repeal the original sections.

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

1 Section 1. Section 32-628, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-628 (1) All petitions prepared or filed pursuant to
4 the Election Act or any petition which requires the election
5 commissioner or county clerk to verify signatures by utilizing the
6 voter registration register shall provide a space at least two and
7 one-half inches long for written signatures, a space at least two
8 inches long for printed names, and sufficient space for date of birth
9 and street name and number, city or village, and zip code. Lines on
10 each petition shall not be less than one-fourth inch apart. Petitions
11 may be designed in such a manner that lines for signatures and other
12 information run the length of the page rather than the width.
13 Petitions shall provide for no more than twenty signatures per page.

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

21 WARNING TO PETITION SIGNERS—VIOLATION OF ANY OF THE
22 FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL
23 CHARGES: Any person who signs any name other than his or her own to
24 any petition or who is not qualified to sign the petition shall be
25 guilty of a Class I misdemeanor. Any person who falsely swears to a

1 circulator's affidavit on a petition, who accepts money or other
 2 things of value for signing a petition, or who offers money or other
 3 things of value in exchange for a signature upon any petition shall
 4 be guilty of a Class IV felony.

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

11 STATE OF NEBRASKA)
 12) ss.
 13 COUNTY OF)
 14, (name of circulator) being
 15 first duly sworn, deposes and says that he or she is the circulator
 16 of this petition containing signatures, that he or she is
 17 an elector of the State of Nebraska, that each person whose name
 18 appears on the petition personally signed the petition in the
 19 presence of the affiant, that the date to the left of each signature
 20 is the correct date on which the signature was affixed to the
 21 petition and that the date was personally affixed by the person
 22 signing such petition, that the affiant believes that each signer has
 23 written his or her name, street and number or voting precinct, and
 24 city, village, or post office address correctly, that the affiant
 25 believes that each signer was qualified to sign the petition, and

1 that the affiant stated to each signer the object of the petition as
2 printed on the petition before he or she affixed his or her signature
3 to the petition.

4 Circulator

5 Address

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

8 Notary Public

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

17 Sec. 2. Section 32-1205, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 32-1205 A political subdivision or state agency in which
20 an official is recalled or a vacancy needs to be filled as the result
21 of a recall petition shall pay the costs of the recall procedure and
22 any special election held as a result of a recall election. If a
23 recall election is canceled pursuant to section 32-1306, the
24 political subdivision or state agency shall be responsible for costs
25 incurred related to the canceled election. The costs shall include

1 all chargeable costs as provided in section 32-1202 associated with
2 preparing for and conducting a recall or special election.

3 Sec. 3. Section 32-1301, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 32-1301 For purposes of sections 32-1301 to 32-1309: ~~7~~
6 ~~filing clerk shall mean~~

7 (1) Filing clerk means the election commissioner or
8 county clerk for recall of elected officers of cities, villages,
9 counties, irrigation districts, natural resources districts, public
10 power districts, school districts, community college areas,
11 educational service units, hospital districts, and metropolitan
12 utilities districts and the Secretary of State for recall an official
13 elected or appointed to a state elective office; -

14 (2) Official means an elected official of a political
15 subdivision or an elected member of the governing body of a political
16 subdivision listed in subdivision (1) of this section or an official
17 elected or appointed to a state elective office; and

18 (3) State elective office means the office of Governor,
19 Lieutenant Governor, Secretary of State, Auditor of Public Accounts,
20 State Treasurer, Attorney General, member of the Legislature, and
21 member of a board or commission with one or more election districts
22 of more than one county other than a board subject to recall under
23 sections 31-786 to 31-793 or listed in subdivision (1) of this
24 section.

25 Sec. 4. Section 32-1302, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 32-1302 (1) Except for trustees of sanitary and
3 improvement districts, any official elected or appointed to a state
4 elective office, any elected official of a political subdivision, and
5 any elected member of the governing bodies of cities, villages,
6 counties, irrigation districts, natural resources districts, public
7 power districts, school districts, community college areas,
8 educational service units, hospital districts, and metropolitan
9 utilities districts may be removed from office by recall pursuant to
10 sections 32-1301 to 32-1309. A trustee of a sanitary and improvement
11 district may be removed from office by recall pursuant to sections
12 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 and to officials elected or
22 appointed to a state elective office for which members are elected by
23 district. Only registered voters of such ~~member's~~ official's
24 precinct, district, or subdistrict may sign a recall petition or vote
25 at the recall election. The recall election shall be held within the

1 ~~member's~~ official's precinct, district, or subdistrict. When an
2 ~~elected member~~ official is nominated by precinct, district, or
3 subdistrict in the primary election and elected at large in the
4 general election, the recall provisions shall apply to the registered
5 voters at the general election.

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

10 Sec. 5. Section 32-1303, Reissue Revised Statutes of
11 Nebraska, is amended to read:

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

1 procured from the filing clerk by the principal circulator or
2 circulators, and (c) for a member of a governing body of a village,
3 the petition shall be signed by registered voters equal in number to
4 at least forty-five percent of the total vote cast for the person
5 receiving the most votes for that office in the last general
6 election. The signatures shall be affixed to petition papers and
7 shall be considered part of the petition.

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

10 (3) The petition papers shall be procured from the filing
11 clerk. Prior to the issuance of such petition papers, an affidavit
12 shall be signed and filed with the filing clerk by at least one
13 registered voter. Such voter or voters shall be deemed to be the
14 principal circulator or circulators of the recall petition. The
15 affidavit shall state the name and office of the official sought to
16 be removed, shall include in typewritten form in concise language of
17 sixty words or less the reason or reasons for which recall is sought,
18 and shall request that the filing clerk issue initial petition papers
19 to the principal circulator or circulators for circulation.

20 (4) The filing clerk shall notify the official sought to
21 be removed by any method specified in section 25-505.01 or, if
22 notification cannot be made with reasonable diligence by any of the
23 methods specified in section 25-505.01, by leaving a copy of the
24 affidavit at the official's usual place of residence and mailing a
25 copy by first-class mail to the official's last-known address. If the

1 official chooses, he or she may submit a defense statement in
2 typewritten form in concise language of sixty words or less for
3 inclusion on the petition. Any such defense statement shall be
4 submitted to the filing clerk within twenty days after the official
5 receives the copy of the affidavit. The filing clerk shall notify the
6 principal circulator or circulators that the necessary signatures
7 must be gathered within thirty days ~~from~~after the date of issuing
8 the petitions. ~~(4)~~—The filing clerk, upon issuing the initial
9 petition papers or any subsequent petition papers, shall enter in a
10 record, to be kept in his or her office, the name of the principal
11 circulator or circulators to whom the papers were issued, the date of
12 issuance, and the number of papers issued. The filing clerk shall
13 certify on the papers the name of the principal circulator or
14 circulators to whom the papers were issued and the date they were
15 issued. No petition paper shall be accepted as part of the petition
16 unless it bears such certificate. The principal circulator or
17 circulators who ~~check out~~procure petitions from the filing clerk may
18 distribute such petitions to persons who may act as circulators of
19 such petitions.

20 (5) Petition signers shall ~~conform to~~comply with the
21 requirements of sections 32-629 and 32-630. Each signer of a recall
22 petition shall be a registered voter and qualified by his or her
23 place of residence to vote for the office in question.

24 Sec. 6. Section 32-1304, Reissue Revised Statutes of
25 Nebraska, is amended to read:

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

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

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

1 signer affixed his or her signature to the petition, the following:

2 (a) The name and office of the ~~individual~~official sought to be
3 recalled, (b) the reason or reasons for which recall is sought as
4 printed on the petition, (c) the defense statement, if any, submitted
5 by the official as printed on the petition, and (d) the name of the
6 principal circulator or circulators of the recall petition".

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

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

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

1 Sec. 7. Section 32-1305, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 32-1305 (1) The principal circulator or circulators shall
4 file, as one instrument, all petition papers comprising a recall
5 petition for signature verification with the filing clerk within
6 thirty days after the filing clerk issues the initial petition papers
7 to the principal circulator or circulators as provided in section
8 32-1303.

9 (2) If the filing clerk is the subject of a recall
10 petition, the signature verification process shall be conducted by
11 two election commissioners or county clerks appointed by the
12 Secretary of State. Mileage and expenses incurred ~~by officials~~
13 ~~appointed~~ pursuant to this subsection shall be reimbursed by the
14 political subdivision or the state agency or office involved in the
15 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. No new
19 signatures may be added after the initial filing of the petition
20 papers. No signatures may be removed unless the filing clerk receives
21 an affidavit signed by the person requesting his or her signature be
22 removed before the petitions are filed with the filing clerk for
23 signature verification. If the petition is found to be sufficient,
24 the filing clerk shall attach to the petition a certificate showing
25 the result of such examination. If the requisite number of signatures

1 has not been gathered, the filing clerk shall file the petition in
2 his or her office without prejudice to the filing of a new petition
3 for the same purpose.

4 Sec. 8. Section 32-1306, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 32-1306 (1) If the recall petition is found to be
7 sufficient, the filing clerk shall notify the official whose removal
8 is sought and the governing body of the affected political
9 subdivision or state agency or office that sufficient signatures have
10 been gathered. Notification of the official sought to be removed may
11 be by any method specified in section 25-505.01 or, if notification
12 cannot be made with reasonable diligence by any of the methods
13 specified in section 25-505.01, by leaving such notice at the
14 official's usual place of residence and mailing a copy by first-class
15 mail to the official's last-known address.

16 (2) The governing body of the political subdivision or
17 the Secretary of State shall order an election to be held not less
18 than thirty nor more than forty-five days after the notification of
19 the official whose removal is sought under subsection (1) of this
20 section, except that if any other election is to be held in that
21 political subdivision or in the state within ninety days after such
22 notification, the governing body of the political subdivision or the
23 Secretary of State shall provide for the holding of the recall
24 election on the same day. All resignations shall be tendered as
25 provided in section 32-562. If the official whose removal is sought

1 resigns before the recall election is held, ~~the governing body may~~
2 cancel the recall election if the governing body notifies the
3 election commissioner or county clerk of the cancellation and the
4 filing clerk has notice of such resignation at least sixteen days
5 prior to the election, the recall election may be canceled, otherwise
6 the recall election shall be held as scheduled.

7 (3) If the governing body of the political subdivision
8 fails or refuses to order a recall election within the time required,
9 the election may be ordered by the district court having jurisdiction
10 over a county in which the ~~elected~~ official serves. If the Secretary
11 of State fails or refuses to order a recall election within the time
12 required, the election may be ordered by the district court of
13 Lancaster County. If a filing clerk other than the Secretary of State
14 is subject to a recall election, the Secretary of State shall conduct
15 the recall election. If the Secretary of State is subject to a recall
16 election, the Governor shall appoint an election commissioner to
17 conduct the recall election.

18 Sec. 9. Section 32-1308, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 32-1308 (1) If a majority of the votes cast at a recall
21 election are against the removal of the official named on the ballot
22 or the election results in a tie, the official shall continue in
23 office for the remainder of his or her term but may be subject to
24 further recall attempts as provided in section 32-1309.

25 (2) If a majority of the votes cast at a recall election

1 are for the removal of the official named on the ballot, he or she
2 shall, regardless of any technical defects in the recall petition, be
3 deemed removed from office unless a recount is ordered. If the
4 official is deemed removed, the removal shall result in a vacancy in
5 the office which shall be filled as provided in this section and
6 sections 32-567 to 32-570.

7 (3) If the election results show a margin of votes equal
8 to one percent or less between the removal or retention of the
9 official in question, the Secretary of State, election commissioner,
10 or county clerk shall order a recount of the votes cast unless the
11 official named on the ballot files a written statement with the
12 filing clerk that he or she does not want a recount.

13 (4) If there are vacancies in the offices of a majority
14 or more of the members of any governing body or state agency at one
15 time due to the recall of such members, a special election to fill
16 such vacancies shall be conducted as expeditiously as possible by the
17 Secretary of State, election commissioner, or county clerk.

18 (5) No official who is removed at a recall election or
19 who resigns after the initiation of the recall process shall be
20 appointed to fill the vacancy resulting from his or her removal or
21 the removal of any other member of the same governing body or state
22 agency during the remainder of his or her term of office.

23 Sec. 10. Section 32-1309, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 32-1309 No recall petition shall be filed against an

1 ~~elected~~—official within twelve months after a recall election has
2 failed to remove him or her from office or within six months after
3 the beginning of his or her term of office or within six months prior
4 to the incumbent filing deadline for the office.

5 Sec. 11. Original sections 32-628, 32-1205, 32-1301,
6 32-1302, 32-1303, 32-1304, 32-1305, 32-1306, 32-1308, and 32-1309,
7 Reissue Revised Statutes of Nebraska, are repealed.