

LEGISLATIVE BILL 331

Approved by the Governor May 7, 1979

Introduced by Murphy, 17

AN ACT to amend sections 5-108, 23-148, 23-204, 23-205, 23-207, 23-297, and 32-4,111, Reissue Revised Statutes of Nebraska, 1943, section 32-1040, Revised Statutes Supplement, 1978, and section 23-151, Revised Statutes Supplement, 1978, as amended by section 1, Legislative Bill 345, Eighty-sixth Legislature, First Session, 1979, relating to elections; to change provisions relating to city, village, county, or school district elections at large or by districts; to provide procedures for counties to appoint three or five commissioners; to provide that the county attorney perform certain duties previously performed by the county judge; to change provisions relating to vacancies in office as prescribed; to provide for enforcement of redistricting requirements; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 5-108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

5-108. When any city, village, county, or school district elects members of any governing board by districts, such districts shall be substantially equal in population, as determined by the most recent federal census. Any such city, village, county, or school district in existence at the time the most recent federal census was completed shall redistrict ~~by January 17, 1972, within six months after the completion of such census and in the event it fails to do so candidates--for--the governing board shall thereafter be elected at large~~ the procedures set forth in section 11 of this act shall be followed. until ~~until~~ such time as redistricting is completed pursuant to this section, membership on the governing board shall remain on an at-large basis. The provisions of this section shall apply to all counties, notwithstanding the limitations on alteration of districts contained in section 23-151. When any new city, village, county, or school district is established or the number of board members has changed, members of the governing board shall be elected at large until such time as districts are established pursuant to this section.

Any city, except a city under a home rule charter, village, county, or school district electing members to its governing body at large may at a general election submit the question of electing members to its governing body by district or ward.

Any city, except a city under a home rule charter, village, county, or school district electing members to its governing body by district or ward may at a general election submit the question of electing members to its governing body at large.

Petitions for submission of the question shall be prepared, circulated, and signed by registered electors of the city, village, county, or school district desiring to change the procedures for electing its governing body. The petition or petitions shall be signed by registered electors equal in number to twenty-five per cent 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 body. Each sheet of the petition shall have printed the full and correct copy of the question as it shall 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.

If the petition or petitions are found to contain the required number of valid signatures, it shall be the duty of the county clerk or election commissioner to place the question on a separate ballot to be issued to the electors of the city, village, county, or school district entitled to vote on such question.

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

Any city, village, county, or school district voting to change from electing the members of its governing body at large to 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 on a district or ward basis at the next primary and general election following

submission of the question. When the question for district or ward elections has been approved by the majority of the electorate, the governing body 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 census.

Each city, except a city under a home rule charter, village, county, and school district which votes to elect members to its governing body by district or ward shall establish districts or wards so that the members of its governing body 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 July October 1 in the year following the general election at which the question was voted upon. If the governing body fails to redistrict by July October 1, any registered elector or group of registered electors may file suit in the proper court of the county for removal of the governing body for failure to comply with the provisions of this section. All vacancies because of removal shall be filled as provided by law.

Sec. 2. That section 23-148, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-148. The board of county commissioners in all counties having not more than two hundred thousand inhabitants, shall consist of three persons, and in counties having more than two hundred thousand inhabitants the board shall consist of five persons; Provided, the electors in any county containing more than ten thousand inhabitants and not more than two hundred thousand inhabitants, may vote at any general election as to whether their county board shall consist of three or five commissioners. The electors of counties under township organization voting as to a change to the commissioner system may vote at the same time as to the number of commissioners desired; Provided, the electors of counties may vote to have the same number of commissioners as there were supervisors in the county pursuant to sections 23-296 and 23-297. Thereafter, if a petition is filed and an election held, as provided in section 23-149, the number of commissioners may be changed to three. The proposition shall be submitted upon the ballot under the titles For three commissioners and Against three commissioners. If the proposition submitted is carried by a majority of the electors voting thereon, three commissioners shall be appointed by the

~~county clerk, county treasurer, and county judge from the county at large, who shall take and hold office, as provided by section 23-297, until their successors are elected and qualified. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased, vacancies shall be deemed to exist and the procedures set forth in section 32-1040 shall be instituted.~~

Sec. 3. That section 23-151, Revised Statutes Supplement, 1978, as amended by section 1, Legislative Bill 345, Eighty-sixth Legislature, First Session, 1979, be amended to read as follows:

23-151. Each county, ~~not~~ under township commissioner organization, having not more than three hundred thousand inhabitants, shall be divided into three districts numbered respectively, one, two and three, or into five districts as provided for in sections 23-148 to 23-150, which shall be numbered respectively, one, two, three, four, and five. Each county having more than three hundred thousand inhabitants shall be divided into five districts numbered respectively, one, two, three, four, and five. Such districts shall consist of two or more voting precincts, comprising compact and contiguous territory and embracing, as nearly as may be possible, an equal division of the population of the county and not subject to alteration oftener than once in four years. One commissioner shall be nominated and elected by each of said districts, but shall be elected by the qualified electors of the entire county in counties having a population in excess of one hundred thousand. The district lines shall not be changed at any session of the board unless all of the commissioners are present at such session. In counties having more than three hundred thousand inhabitants, and in counties where a majority have voted for five commissioners, (1) counties which elect members of the board on an at-large basis shall continue to appoint and elect additional members at large, and (2) in counties which elect by district, it shall be the duty of the county board of such county, at their first meeting after the publication of the state or federal census, or after an election deciding to have five, to divide said county into five commissioner districts, as provided by law. ~~except that the~~

The three commissioners of such county whose terms of office will expire after said election shall continue to represent the districts in which they reside after the redistricting of such county, in office until the expiration of the terms for which they were elected and until their successors are elected and qualified.

Two commissioners shall be appointed, pursuant to section 32-1040, to serve until the first Thursday after the first Tuesday in January following the next general election. ~~Appointment shall be made as provided in section 32-1039.~~ At such next general election commissioners shall be elected to fill the positions of any commissioners appointed under this section. At the first primary election after such appointments, filings will be accepted for a term of two years and for a term of four years so that two members will be elected to four-year terms at one election and three members will be elected to four-year terms at the next election. ~~At the general election next after the division of a county into five districts, one commissioner shall be elected for each of the two remaining districts and elect additional members at large, and of the two persons elected for such districts, the person receiving the highest number of votes shall hold his or her office for the term of four years, and the person receiving the next highest number of votes shall hold his or her office for the term of two years, and each commissioner elected thereafter, in pursuance of the provisions of this section, Except for commissioners first elected after the county has increased the number of commissioners, each commissioner shall hold his or her office for four years and until his or her successor is elected and qualified.~~ After the effective date of this act, commissioners holding office in counties having more than three hundred thousand inhabitants shall continue to serve until the expiration of their terms, and thereafter their successors shall be nominated by district and elected at large according to the provisions of this section. Nothing in this section shall be construed to prohibit the reelection of commissioners currently holding office as long as such commissioner is reelected to represent his or her respective district.

Sec. 4. That section 23-204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-204. On the second Tuesday after such election adopting township organization in any county, the county judge attorney, county clerk and county treasurer of the county shall meet at the county seat of such county and shall within three days from and after the first day of meeting, divide such county into seven districts to be known as supervisor districts. Such districts shall be divided as nearly as possible with regular boundary lines and in regular and compact form and shapes, and each of such districts shall as nearly as possible have the same number of inhabitants as any other district. No voting precinct shall be divided by any

such district; Provided, in counties having cities of over one thousand inhabitants and where such cities have more inhabitants than the average outlying district, the county board shall add enough contiguous territory to such city so that the inhabitants in such city and contiguous territory shall equal the inhabitants of two of the other districts. The county judge attorney, county clerk, and county treasurer shall then divide the tract thus segregated into two supervisor districts with population as nearly equal as possible, and when so divided, each of said districts shall elect one supervisor who shall reside in such supervisor district and be nominated and elected by the qualified electors residing in that district. If any such city has more than the requisite inhabitants for two supervisor districts, then sufficient outlying territory may be added to such city to make three supervisor districts. The supervisor in each supervisor district in such city shall reside in such supervisor district, and be nominated and elected by the qualified electors residing in that supervisor district. The remainder of the county outside of such city districts shall be divided so as to create a total of seven supervisor districts; provided, that if any county under township organization has gone to an at-large basis for election of supervisors under the provisions of section 5-108, the board of supervisors of such county may stay on the at-large voting basis.

Sec. 5. That section 23-205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-205. When the county has been divided as provided in section 23-204, the county judge attorney, county clerk and county treasurer shall at once proceed to number such districts from one to seven and in case of a city district as contemplated in said section, it shall give such city district two numbers, one odd and one even.

Sec. 6. That section 23-207, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-207. The county judge attorney, county clerk, and county treasurer shall forthwith appoint seven supervisors, who shall duly qualify and file their oath of office and bond with the county judge within ten days after such appointment. ~~Any vacancy shall be filled by appointment by the remaining supervisors.~~

Sec. 7. That section 23-297, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

23-297. On the first Saturday after the first Tuesday of January following the election at which township organization shall be voted to be discontinued, the county commissioners of such county, for the purpose of temporary organization, shall be appointed by the county clerk, treasurer, and county judge attorney of ~~said~~ such county, unless the counties vote to retain the same persons as the former supervisors, in which event, the commissioner districts shall be the same districts as the former supervisor districts unless changed at a later date as provided by section 23-149. Their successors shall be elected at the next general election in the manner provided by law for the first election of a board of commissioners in any county.

Sec. 8. That section 32-1040, Revised Statutes Supplement, 1978, be amended to read as follows:

32-1040. Vacancies in office shall be filled in the following manner: In the offices of the Clerk and Reporter of the Supreme Court, by the Supreme Court; in all other state and judicial district offices, and in the membership of any board or commission created by the state, where no other method is especially provided, by the Governor; in county and precinct offices, ~~including county-supervisors~~, by the county board; and in the membership of such board, ~~except county--supervisors~~, by the county clerk, county attorney, and county treasurer; in township offices, by the town board, but when there are two or more vacancies on the town board, the county board shall appoint. Unless otherwise provided by law, all vacancies shall be filled within sixty forty-five days after the vacancy occurs, unless good cause is shown that this requirement imposes an undue burden.

Sec. 9. That section 32-4,111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-4,111. A certificate shall be prepared for and delivered to each person whom the canvassing board has declared to have received the highest vote, in substance as follows:

State of Nebraska. At an election held on the day of, was elected to the office of for the term of years from the (or, if to fill a vacancy, say, for the residue of the term ending on the day of 19...). Given at

..... this Day of
 19....

The certificate shall be signed by the Governor, under the seal of the state and countersigned by the Secretary of State if the candidate was elected to a state office, as a member of Congress, or from a district whose boundaries extend beyond the limits of a single county, ~~and by the county clerk, election commissioner, or other officer charged with the duty of canvassing the result of county elections to each person having the highest number of votes for the several county, precinct, and township offices.~~

Sec. 10. Upon completion of the canvass, a certificate, as provided in section 32-4,111, shall be prepared for and delivered to each person whom the canvassing board has declared to have received the highest vote. The certificate shall be signed by the county clerk, election commissioner, or other officer charged with the duty of canvassing the result of county elections, if the candidate was elected to a county, precinct, or township office.

Sec. 11. (1) If a governing board whose members are elected by any city, village, county, or school district, which has voted to elect members to the governing board by district or ward, fails to redistrict itself within six months after the completion of the most recent federal census, the county attorney of the county in which the governing board is located shall file an action in the district court for the purpose of ordering the governing board to redistrict. If, within six months of the receipt of such order the board does not comply, the members of the board shall be subject to removal and the court shall order the Secretary of State to redistrict in accordance with the most recent federal census.

(2) If the county attorney fails to file the action required by subsection (1) of this section, he or she shall be subject to removal from office. If the county attorney fails to file such action, any citizen within the jurisdiction of the board may file the action. The court shall order the governing board to pay any costs and attorneys' fees involved in such action.

Sec. 12. That original sections 5-108, 23-148, 23-204, 23-205, 23-207, 23-297, and 32-4,111, Reissue Revised Statutes of Nebraska, 1943, section 32-1040, Revised Statutes Supplement, 1978, and section 23-151, Revised Statutes Supplement, 1978, as amended by section 1, Legislative Bill 345, Eighty-sixth Legislature, First

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Session, 1979, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.