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HOW TO USE THE INITIATIVE AND REFERENDUM PROCESS IN NEBRASKA



SECRETARY OF STATE ROBERT B. EVNEN

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Contributions to this publication from the Nebraska Accountability and Disclosure Commission (Part III) and review and suggestions from individuals familiar with the initiative and referendum process are greatly appreciated.

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Dear Citizens of Nebraska,

The initiative and referendum process in Nebraska has a long and rich history. Established first in 1912, the process has addressed a myriad of issues such as soldiers' bonuses, bottle laws, budget limitations and seat belts to name a few.

The power of the citizens to use this process is established within our state constitution. Many suggest that it plays a more important role in Nebraska than other states because of our unique unicameral legislature. It has been said that the people of Nebraska, through their use of the initiative and referendum, comprise the second legislative house within our state.

With this power to create, amend, or repeal Nebraska's statutes and constitution come some responsibilities. It is hoped that the material in this pamphlet will provide basic information on the rules and policies to use the initiative or referendum.

Sincerely,

A handwritten signature in blue ink that reads "Robert B. Evnen". The signature is written in a cursive style with a large, prominent initial "R".

Robert B. Evnen
Secretary of State

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This pamphlet is designed to provide basic information about the **statewide initiative and referendum** process. There are other types of petitions that have a legal effect such as city initiative and referendums, recall petitions, candidate or political party petitions and petitions to form certain types of political subdivisions. More detailed information on statewide initiative and referendum and other types of petitions can be obtained by contacting the Secretary of State's office or your local election official.

There are two major parts of the initiative and referendum process. The first part involves gathering signatures on a petition. If enough signatures are submitted, the second part begins which includes the verification of the signatures, placement of the issue on the ballot and the election.

PART I: The Petition Process

A. THE BASICS

- **What Is an Initiative or Referendum Petition?**

Petitions can take many forms. In the broadest sense, even a letter to someone asking for some type of action is a petition. More common is a list of several people signing a paper that expresses their opinion. The right of citizens to petition their government is guaranteed by both the United States and Nebraska constitutions.

An initiative or referendum petition is a specific type of petition that allows registered voters within the state to place a question about state law or a state constitutional amendment on the ballot for registered voters.

An **initiative petition** has two functions. One is to add or change a law for the entire state. The second use is to amend the state constitution.

A **referendum petition** is used to repeal a law that the Legislature has recently passed.

- **Who Can Use the Initiative and Referendum Process?**

Any person, group, or association can use the process. However, only voters registered in Nebraska may sign the petition. There are three groups involved in the process: the sponsors, the circulators, and the signers.

The **sponsors** are the people who come up with the idea or reason to use the process. They are the people who file the petition with the Secretary of State and distribute the petition to the circulators. As mentioned, the sponsor can be a single person or a group of people.

The **circulators** are the people who take the petition around to get signatures. A circulator can circulate the petition anywhere in the state.

The **signers** are the people who actually sign the petition. They must be registered to vote in Nebraska.

- **How Many Signatures Are Necessary?**

As a result of a 1994 Nebraska Supreme Court decision, the required number of signatures is based on the number of registered voters at the filing deadline. For an initiative to propose a law, signatures equaling 7% of the registered voters in the state are required. For a constitutional amendment, 10% of the registered voters must sign, and for a referendum, 5%. For a referendum that suspends a law from taking effect, 10% of the registered voters must sign the petition.

In addition, signatures must be collected from 5% of the registered voters in 38 of the 93 Nebraska counties. This distribution requirement applies to both initiative and referendum efforts.



The image shows four handwritten signatures in cursive script, arranged in two rows. The top row contains two signatures: 'Kieron J. Thomson' and 'Lambert'. The bottom row contains two signatures: 'D.V. 4' and 'David Rumm'. The signatures are written in black ink on a white background.

The statewide initiative can be used to enact or amend a law or to amend the state constitution. Generally, the initiative petition can address almost any issue. There is a statutory restriction on the use of the initiative for issues that interfere with the legislature's prerogative to raise the necessary revenue for the state and its political subdivisions. In addition, the same measure may not be placed on the ballot more often than once in three years. An initiative proposal may contain only one subject.

The referendum petition is used only to repeal a law that the legislature passed during its most recent session. The Nebraska constitution does not allow a referendum on appropriations matters.

- **When Can the Process Be Used?**

While the initiative process can begin at any time, there are deadlines that must be met. Initiative petition signatures must be submitted to the Secretary of State no later than four months prior to the general election. In addition, signatures on a petition become invalid at the first general election occurring at least four months after the petition is first filed in the Secretary State's office (see Neb. Rev. Stat. §32-1407). Generally, this means that an initiative petition process can begin as early as mid-July of an even numbered year and the signatures must be submitted by the first part of July two years later.

The referendum process can begin when a law has been passed by the legislature and signed by the Governor. The signatures must be submitted within 90 days after the legislature has adjourned.

B. THE STEP-BY-STEP PROCESS

This section will take you step by step through the petition portion of the process.



1. Filing the Petition

a. Initiative

Once a sponsor has decided to begin an initiative petition effort, the first step is to deliver, to the Secretary of State's office, a copy of the language that they want to see in the statutes or in the constitution and the object clause for the petition. The object clause is a brief statement of what the proposal will accomplish. The sponsor also must provide a sworn list of the sponsors of the petition at that time.

From there, the Secretary of State sends the language to the Revisor of Statutes, who reviews the submitted language. The Revisor has 10 days to review the language and suggest changes to make the language fit into the constitution or statutes clearly and uniformly. When the suggested changes are returned to the Secretary of State, the sponsors are informed and may accept or reject any suggestions made by the Revisor. The suggested changes are confidential for five days after returned from the Revisor. The sponsor then provides the final language to the Secretary of State and he or she places the language and object clause onto a petition form. The Secretary of State provides 5 camera-ready copies of the form to the sponsor within 5 days. The form must contain a statement in red and 16 pt. type that the petition is circulated by either a paid or volunteer circulator. For examples of the form, see Appendix A.

Once the final form is given to the sponsors, the language of the measure may not be changed or amended. However, if a change in the language becomes necessary, sponsors must stop collecting signatures on the petition and begin the process again with revised language.

b. Referendum

The procedures for filing a referendum petition are very similar to an initiative. Instead of submitting the proposed initiative language, the sponsors submit a copy of the recently passed law along with a statement of the object of the petition. The proposed referendum follows the same path through the Revisor and Secretary of State as an initiative.

2. Circulating the Petition

Once the sponsors have received the camera-ready copies of the form, they may print or copy the form and begin collecting signatures from registered voters in the state.



a. The Circulators

There are a few rules that the circulator of a statewide initiative or referendum must follow.

Circulators must be at least eighteen years of age. The circulator must witness each signature added to the petition he or she is circulating. This means that a circulator may not leave the petition at a location and return later when the petition is full. Each petition contains an oath that the circulator signs stating that the circulator has read the object statement on the petition to each signer of the petition.

There are few specific restrictions on where a circulator may gather signatures. There may be time and place restrictions on public property so as not to disrupt activities at those locations. Circulation on private property is at the discretion of the property owner. State law prohibits the gathering of signatures within 200 feet of a polling place.

The circulator may not offer or give anything of value to a potential signer to get them to sign the petition. It is a crime to do so, with a penalty of up to a year in jail and /or a \$1000 fine.

A circulator may be paid to circulate a petition or may be a volunteer. If the circulator is being paid to circulate the petition, he or she must use a form that discloses to the signer that the circulator is being paid. If the circulator is a volunteer, the form must contain the volunteer disclosure. As mentioned before, this disclosure must be in 16 pt. type and must be in red ink.

When the circulator is finished collecting signatures on the petition form, he or she must sign the oath on the form. This oath must be signed in the presence of a notary public. The circulator should read the oath carefully, as there are criminal penalties for falsely swearing to the oath.

Once the petition form is completed, the petition form should be returned to the sponsors of the petition. While the Secretary of State will accept the completed petition and forward it to the sponsors, it is preferable that the petition be returned directly to the sponsors.

b. The Signers



As with the circulator, there are a few rules that the signer must follow.

While the signer does not have to be a registered voter at the time he or she signs the petition, he or she must be a registered voter by the deadline for the submission of the petition. By signing the petition, the signer is stating that he or she is a registered voter or will be by the submission deadline.

There are three rules that a signer must not violate. A signer may not sign any name other than his or her own to a petition. A signer may not sign a petition more than once. The signer may not accept anything of value for signing the petition.

The information provided by the signer is checked by local election officials to determine whether the signer is a registered voter. It is easier for the local official to verify the signature if the signer signs the petition the same way they are registered. There will be situations where the signer is unaware of how they are registered and may use a nickname or other variation. Local officials will make every attempt to verify the signature despite the difference. Common nicknames such as “Bob” for “Robert” will be counted by the local officials. More detail on this process is described in the section on verification.

Occasionally a signer will make mistakes as they sign the petition. It is permissible to cross out the incorrect signature line without affecting the other signatures on the petition.



3. Submitting the Petition

Once the signatures are collected, the sponsors will submit the petitions to the Secretary of State. The signatures must be submitted no less than four months prior to the general election. The submitted petitions should be separated by county. The Secretary of State will make sure there are at least the minimum number of signatures required prior to sending the petitions to local officials for verification. Assuming there are enough signatures, the petitions will be numbered and forwarded to the local election officials.

PART II: Verification, Certification, and the Election

A. The Basics

1. What Is the Verification Process?

The verification process is conducted after the signatures are submitted to the Secretary of State. Its purpose is to ensure that enough Nebraska voters have signed the petition to meet the constitutional requirements and to prevent potential fraud in the process. Each signature is compared with the voter registration records.

2. What Is the Certification Process?

The certification process includes the totaling of all valid signatures from the 93 counties and addressing any remaining situations to ensure that all valid signatures are counted. Also, during the verification and certification process, the Attorney General prepares the ballot title for the measure. If enough signatures are verified to meet the constitutional standards, the measure is formally certified by the Secretary of State to be placed on general election ballot.

B. The Step-by-Step Process

1. Verification of Signatures



Upon receiving the petitions from the Secretary of State, the local official will begin comparing the information on the petition with the voter registration records.

The first check will be on the circulator of the petition. The local official will check the circulator's oath to ensure it is complete, including the required notarization. If the circulator provision is invalid, no signatures on the petition sheet will be verified or counted.

If the circulator portion is valid, the local official will next check the signer's information. They will compare the information on the petition sheet with the voter registration record to make sure that the voter is registered and that they have not signed the petition more than once. The local official will compare the printed name, address, birthdate, and signature with the information on file.

If the signer is found to be a registered voter, the petition sheet is marked and the signature counted. If the signer had signed more than once, only the first signature is counted. If the signer is not found to be a registered voter or for other reason invalidated, the reason for the invalidation (by page and line number) is noted. The local official's decision may be changed if additional evidence is provided to the local election official.

Local officials must return the verified petitions within 40 days after receiving them from the Secretary of State, although an additional 10 days may be granted in unusual circumstances. The Secretary of State will review the petitions and total the number of valid signatures. If there are sufficient valid signatures, the Secretary of State will certify the measure for the general election ballot.

2. Ballot Title and Language

When the petition is submitted for verification, the Secretary of State will deliver a copy of the measure to the Attorney General. The Attorney General will write a ballot question or title that summarizes (in 100 words or less) the purpose of the measure. In addition, the Attorney General will provide material that explains the effect of a vote for or against the measure. These items will appear on the ballot.

If anyone believes that the ballot language is not sufficient or fair, they may file in district court, asking for the language to be changed. This must be filed within 10 days after the language is delivered to the Secretary of State.

The final language (either from the Attorney General or the district court) is sent by the Secretary of State to each local official for placement on the ballot. The language on the ballot will indicate that the voter is to vote either “For” or “Against” an initiative measure and “Repeal” or “Retain” on a referendum.



3. The Election Period and Beyond

The election on initiative and referenda takes place at the statewide general election which occurs on the first Tuesday following the first Monday in November in even-numbered years. Prior to the election, there are three informational mechanisms used by the Secretary of State:

a. Voter Information Pamphlet

The first is the publication of a pamphlet that contains the ballot title and arguments for and against the measure. The pamphlet is available from local election officials and is available at least six weeks prior to the election. Proponents and opponents of the measure may submit suggestions on material to be included in the pamphlet. It should be noted, however, that the pamphlet is written and produced by the Secretary of State and any submitted material may or may not be used at his or her discretion.

b. Public Hearings

Second, the Secretary of State conducts public hearings on the measures with a public hearing in each congressional district. These hearings occur no more than 8 weeks prior to the general election. Proponents and opponents are encouraged to attend to provide their views on the measure.

c. Publication of Text

The final information source is the publication of the entire text in all legal newspapers in the state once each week for the three weeks prior to the election.

d. The Election

The vote on statewide initiatives and referenda takes place at the general election in November in even-numbered years. At that time, all voters in the state are able to cast ballots for certified ballot measures. For a measure to pass, not only do more people have to vote for the measure than against, but also at least 35% of voters casting ballots must vote for the measure. For example, 100 people show up at the polls to vote. Of those 100 voters, not only must there be more votes cast “For” (or “Repeal”) than “Against” (or “Retain”), but at least 35 must vote “For” the initiative (or “Repeal” for referenda) for the measure to be successful.



Another constitutional provision addresses the situation where two initiatives conflict. If two or more initiatives conflict and they both (or more) pass, the measure receiving the most votes “For” will be adopted as to those provisions that conflict.

e. After the Election

After election day, the votes on an initiative or referenda are counted in the same manner as any other ballot. Two days after the election, the local canvassing board will meet to certify results from the county level. Those results are forwarded to the Secretary of State and are presented to the State Canvassing Board, which consists of the Governor, Attorney General, Auditor, Treasurer, and the Secretary of State. The State Canvassing Board certifies the statewide vote totals on the measure on the fourth Monday following the general election. Within 10 days after certification by the canvassing board, the Governor issues a proclamation declaring which measures have passed and are effective as of that time.

PART III: Other Matters

A. Accountability and Disclosure

Persons involved in a statewide initiative or referendum process are subject to the provisions of the Nebraska Political Accountability and Disclosure Act (§§49-1401, et seq., Neb. Rev. Stat.). This act defines a ballot question as any question which is submitted or which is intended to be submitted to a popular vote at an election, including an initiative and a referendum.

Persons supporting or opposing statewide initiative or referendum processes must keep records of contributions received and expenditures made in connection with the petition effort and, in the event the question is placed on the ballot, contributions received and expenditures made in connection with supporting or opposing the passage or defeat of the ballot question.

Persons raising, receiving or exceeding more than \$5,000 in a single calendar year for the purpose of supporting or opposing the qualification, passage or defeat of a ballot question must register as a ballot question committee. Within ten days after exceeding the \$5,000, a Statement of Organization must be filed with the Nebraska Accountability and Disclosure Commission (NADC Form A-1).

A ballot question committee is required to file Campaign Statements (NADC Form B-1), disclosing the committee's receipts and expenditures. Campaign Statements must be filed with the Nebraska Accountability and Disclosure Commission according to the following schedule:

- On the last day of the calendar month in which the petition is filed with the Secretary of State
- On the last day of each month after the month in which the petition is filed with the Secretary of State
- On the 30th day after the deadline for filing the signed petitions with the Secretary of State

If the issue is placed on the ballot for a vote at an election, the committee must also file Election Campaign Statements in connection with the election in which the issue is voted upon. Election Campaign Statements must be filed with the Nebraska Accountability and Disclosure Commission according to the following schedule:

- On or before the 30th day prior to the election in which the issue is voted upon
- On or before the 10th day prior to the election in which the issue is voted upon
- On or before the 70th day following the election in which the issue is voted upon

B. CAMPAIGN ADVERTISING REQUIREMENTS

Printed materials having reference to the ballot issue must contain the name and street address of the person or committee paying for the matter. If the person paying for the matter acts at the direction of, or receives reimbursement from, a ballot question committee, the committee is considered the "person" paying for the matter. Television and radio advertisements must also include the name of the person or committee who paid for the ads, but such person's or committee's street address need not be included in the ad if the station running the ad will agree to keep the person's or committee's name and street address on file and available to the public for 6 months after the advertisement is run.

One or more persons using their own personal resources who do not raise or spend more than the \$5,000 threshold requiring formation of a committee are exempt from the requirement to identify advertising pertaining to the ballot issue.

For reporting forms and further information, contact the Nebraska Accountability and Disclosure Commission by mail:

Mailing Address: P.O. Box 95086
Lincoln, NE 68509

Physical Address: 1225 L Street
Suite #400
Lincoln, NE 68509

Or, call (402) 471-2522, or visit their website: <http://nadc.nol.org>.

PART IV: FORMS & LISTS



A. Check List

Before Filing with Secretary of State

- Develop language for statute or constitutional amendment
- Review Accountability and Disclosure requirements

At Time of Filing with Secretary of State

- Provide copy of proposed language and object clause
- Provide list of sponsors

After Review by Revisor

- Review suggestions and approve final petition language
- Print petition provided by Secretary of State

Circulation

- Each petition sheet should contain signatures from one county only. Use separate sheets for different counties.
- Review and train circulators on signer and circulator requirements
- Comply with applicable Accountability and Disclosure requirements

Submitting the Signatures

- Petitions submitted no later than 5:00 PM at least 4 months prior to the general election
- Monitor verification process
- Review ballot question and title when submitted by Attorney General

After Certification of Measure for Ballot

- Submit suggestions for informational pamphlet
- Attend public hearings on measure

B. DO'S and DON'TS

Do



- ✓ Have signers sign the petition as closely as possible to how they are registered. This aids in the verification process.
- ✓ Have circulators completely fill out the circulator portion of the petition.
- ✓ Make sure the circulator portion is notarized.
- ✓ If a signer makes a mistake on one line, cross it out and complete the next line.
- ✓ Have signers write as legibly as possible. This also helps with verification.

Don't



- ✗ Have signers from more than one county sign a petition sheet.
- ✗ Leave a petition at a location and pick it up later. A circulator must witness each signature on a sheet they are circulating.