

LEGISLATIVE BILL 116

Approved by the Governor March 05, 2015

Introduced by Haar, 21.

A BILL FOR AN ACT relating to sanitary and improvement districts; to amend section 31-735.06, Reissue Revised Statutes of Nebraska, and section 31-735, Revised Statutes Cumulative Supplement, 2014; to change election procedures and membership for certain boards of trustees as prescribed; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 31-735, Revised Statutes Cumulative Supplement, 2014, is amended to read:

31-735 (1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of ~~five in number~~ shall be elected. The board of trustees shall have five members except as provided in subsection (2) of this section. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than seventy-five days prior to the election.

(2)(a) For any sanitary and improvement district, a person ~~persons~~ whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes his or her ~~their~~ right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district.

(b) This subdivision applies to a district until the board of trustees amends its articles of association pursuant to subdivision (2)(d) of this section. At the election held four years after the first election of trustees,

two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, ~~except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees,~~ and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section.

(c) Any public, private, or municipal corporation owning any land or lot in the district may vote at ~~an such~~ election the same as an individual. If more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(d) For any sanitary and improvement district which has been in existence for at least ten years, which has less than seventy property owners entitled to vote for trustees, which has at least two resident property owners, and in which less than ten percent of the area of the district is owned for other than residential uses, the board of trustees may amend its articles of association as provided in section 31-740.01 to provide for a reduction in the number of trustees on the board from five members to three members to be effective at the beginning of the term of office for the board of trustees elected at the next election. At the next election and at each election thereafter, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and one member shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for the office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the

election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 5 p.m. on the date set for the election.

Sec. 2. Section 31-735.06, Reissue Revised Statutes of Nebraska, is amended to read:

31-735.06 Notwithstanding the appointment of an administrator for any district pursuant to sections 31-771 to 31-780, special elections shall be held for the election of members of the board of trustees for such district in the same manner and at the same time as such elections would be held under sections 31-735 to 31-735.03. In a district for which such an administrator has been appointed when the board of trustees of such district is not functioning, the administrator shall cause a special election of trustees to be held within sixty days after the issuance of a certificate of appointment of such administrator, at which election a board of trustees ~~of five in number~~ shall be elected to a term of office which shall expire on the first Tuesday of the second September following the appointment of such administrator. The board of trustees shall have five members unless the board has amended its articles of association to decrease the number of trustees on the board to three members pursuant to subdivision (2)(d) of section 31-735.

Sec. 3. Original section 31-735.06, Reissue Revised Statutes of Nebraska, and section 31-735, Revised Statutes Cumulative Supplement, 2014, are repealed.