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STATE OF NEBRASKA
OFFICIAL
JUL 8 1994
DEPT. OF JUSTICE

DATE: July 7, 1994

SUBJECT: Signature Requirements for Initiative and Referendum Petitions

REQUESTED BY: Senator Kate Witek

WRITTEN BY: Don Stenberg, Attorney General

You have submitted to us proposed language for a legislative resolution to be introduced during either a special or regular session of the Legislature to return the required number of signatures on initiative and referendum petitions to that which existed prior to the Nebraska Supreme Court's decision in ***Duggan v. Beermann***, 245 Neb. 907 (1994).

We have reviewed the proposed language. We do not generally draft legislation, since the Legislature already employs the bill drafter's office for this purpose. However, because of the fundamental importance of the initiative and referendum powers to the people of Nebraska, and because we find it simpler and perhaps more helpful to suggest language to accomplish your purpose rather than simply providing an analysis of your proposed language, we have set forth the following proposed constitutional amendments to carry out your stated purpose.

Article III, §2 would be amended as follows:

Sec. 2. First power reserved; initiative. The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. This power may be invoked by petition wherein the proposed measure shall be set forth at length. If the petition be for the enactment of a

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law, it shall be signed by ~~seven percent of the~~ registered voters of the state equal in number to seven percent of the whole number of votes cast for Governor at the general election next preceding the filing of the petition, and if the petition be for the amendment of the Constitution, the petition therefor shall be signed by ~~ten percent of such~~ registered voters of the state equal in number to ten percent of the whole number of votes cast for Governor at the general election next preceding the filing of the petition. In all cases the registered voters signing such petition shall be so distributed as to include the signatures of ~~five percent of the~~ registered voters ~~of~~ from each of two-fifths of the counties of the state equal in number to five percent of the whole number of votes cast for Governor in each of said respective counties at the general election next preceding the filing of the petition, and when thus signed, the petition shall be filed with the Secretary of State who shall submit the measure thus proposed to the electors of the state at the first general election held not less than four months after such petition shall have been filed. The same measure, either in form or in essential substance, shall not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once in three years. If conflicting measures submitted to the people at the same election be approved, the one receiving the highest number of affirmative votes shall thereby become law as to all conflicting provisions. The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative.

Article III, §3 would be amended as follows:

Sec. 3. Second power reserved; referendum. The second power reserved is the referendum which may be invoked, by petition, against any act or part of an act of the Legislature, except those making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act. Petitions invoking the referendum shall be signed by ~~not less than five percent of the~~ registered voters of the state equal in number to not less than five percent of the whole number of votes cast for Governor at the general election next preceding the filing of the petition, distributed as required for initiative petitions, and filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed shall have adjourned sine die or for more than ninety days. Such petition shall set out the title of the act against which the referendum is invoked and,

in addition thereto, when only a portion of the act is sought to be referred, the number of the section or sections or portion of sections of the act designating such portion. When the referendum is thus invoked, the Secretary of State shall refer the same to the electors for approval or rejection at the first general election to be held not less than thirty days after the filing of such petition.

When the referendum is invoked as to any act or part of act, other than emergency acts or those for the immediate preservation of the public peace, health, or safety, by petition signed by ~~not less than ten percent of the~~ registered voters of the state equal in number to not less than ten percent of the whole number of votes cast for Governor at the general election next preceding the filing of the petition distributed as aforesaid, it shall suspend the taking effect of such act or part of act until the same has been approved by the electors of the state.

We hasten to point out that the above language is by no means the only way to amend Article III, §§ 2 and 3 to achieve your purpose. It may well be that you or other members of the Legislature could develop alternative language that achieves the same objective, but for one reason or another, the Legislature finds preferable.

Respectfully submitted,

Don Stenberg
Attorney General

cc: Clerk of the Legislature