2001 DRAFTING REQUEST

Senate Amendment (SA-SB55)

Received: **05/25/2001**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **onsager**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters: **kuesejt**

Subject: **Elections - miscellaneous**
Munis - miscellaneous
Education - school boards

Extra Copies: **MES**
PG

Submit via email: **NO**

Requester's email:

Pre Topic:

LFB:.....Onsager -

Topic:

Recall of local elected officials

Instructions:

To recall local elected official, petition must state grounds that constitute cause for the recall. Officials have right to contest petition in circuit court. If petition is contested, court must decide whether there is cause for the recall within 10 days.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rmarchan 05/29/2001	csicilia 05/30/2001		_____ _____			

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1			kfollet 05/30/2001	_____ _____	lrb_docadmin 05/30/2001		

FE Sent For:

<END>

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/?	rmarchan	/1 cjs 5/30 01	kjf 5/30	kjf/pg 05/30			

FE Sent For:

<END>

Senator Shibilski
Senator Welch

ELECTIONS BOARD

Recall Elections

Motion:

Move to provide that in order for a recall election of an elected official of a city, village, town or school district to be held, the recall petition must state the grounds that would constitute the cause (defined as neglect of duty or official misconduct) upon which removal is sought. Provide that the official subject to the recall could petition the circuit court to determine if the cause standard had been met. Provide that within 10 days after receipt of the petition, the circuit court must determine whether the petition met the cause standard for recall.

Note:

Under current law, a recall petition for a city, village, town or school district office must contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. This motion would require that a recall petition for those local offices state the grounds that would constitute cause (defined as neglect of duty or official misconduct) upon which removal is sought. The local official subject to the recall would have the right to petition the circuit court to determine whether the cause standard had been met. A circuit court would be required to make this determination within 10 days after receipt of the petition.

Shibilski/
Welch

MO#_____

Burke	Y	N
Decker	Y	N
Moore	Y	N
Shibilski	Y	N
Plache	Y	N
Wirch	Y	N
Darling	Y	N
Welch	Y	N
Gard	Y	N
Kaufert	Y	N
Albers	Y	N
Duff	Y	N
Ward	Y	N
Huebsch	Y	N
Huber	Y	N
Coggs	Y	N

9-7
Passes

Motion #788

2001 Date (time) needed Wed. 5-30-01 TODAY LRB b 0428 / 1

LFB BUDGET AMENDMENT
[ONLY FOR LFB]

RJM + JTK : cjs : ____

D-NOTE

See form **AMENDMENTS — COMPONENTS & ITEMS.**

RMNR

DNOTE

LFB AMENDMENT
TO 2001 ASSEMBLY BILL 144 AND 2001 SENATE BILL 55

>>FOR JT. FIN. SUB. — NOT FOR INTRODUCTION<<

At the locations indicated, amend the bill as follows:

#. Page 179, line 7: after that line insert:
INSERT A

#. Page 1653, line 2: after that line insert:
INSERT B

#. Page 1815, line 25: after that line insert:
INSERT C

LPS: PROOF WITH FOLIO AS INDICATED

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

<end>

a certificate directing the city, village, town or school district to hold a recall election. If the court determines otherwise, no recall election is held.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INSERT A

"SECTION 1. 9.10 (2) (b) of the statutes is amended to read:

9.10 **(2)** (b) A ~~recall~~ petition ~~for~~ requesting the recall of a city, village, town or school district ~~office~~ officer shall contain a statement of ~~a reason for the recall which is related to the official responsibilities of the official for whom removal is sought~~ each cause for the recall and the ~~grounds~~ specific allegations that constitute each cause. In this paragraph, "cause" ~~has the meaning given in s. 17.16 (2)~~ means neglect of duty or official misconduct

SECTION 2. 9.10 (2) (d) of the statutes is amended to read:

9.10 **(2)** (d) No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.05 (1) or (2) with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town or school district officer, a statement of ~~a reason for the recall which is related to the official responsibilities of the official for whom removal is sought~~ each cause, as defined in par. (b), for the recall and the ~~grounds~~ specific allegations that constitute each cause. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of a state, congressional, legislative, judicial or county officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. The last date that a petition for the recall of a city, village, town or school district officer may be offered for filing is 5 p.m. on the 30th day commencing after registration. After the recall petition has been

is offered for filing

Immediately after ~~within~~ a petition for the recall of a city, village, town, or school district officer, the municipal clerk, board of election commissioners, or school district clerk ~~[illegible]~~ shall notify the officer against whom the petition is filed.

offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

94L

SECTION ~~3~~. 9.10 (4) (a) of the statutes is amended to read:

9.10 (4) (a) Within 10 days after ~~a~~ strike the petition ~~for the recall of a city, village, town or school district official,~~ strike strike comma is offered for filing, the officer against whom the petition is filed may file a written challenge with the municipal clerk or board of election commissioners or school district clerk ~~with whom it is filed~~ strike, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the clerk or board of election commissioners within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the clerk or board of election commissioners shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the clerk or board of election commissioners shall determine by careful examination of the face of the petition whether the petition is sufficient and shall so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, the clerk or board of election commissioners shall again carefully examine the face of the petition to determine sufficiency and shall attach ~~to the petition a~~ certificate stating the findings. Immediately upon finding an original or amended petition sufficient, ~~except in cities over 500,000 population,~~ the municipal ~~clerk or~~ school district clerk, in writing, or board of election commissioners shall transmit the petition to the

within 3 days following receipt of the notification

notify the officer against whom the petition is filed. Within 3 days following receipt of the notification, the officer shall inform the municipal clerk, school district clerk, or board of election commissioners, in writing, as to whether the officer contests the petition. If the officer fails to inform the municipal clerk, school district clerk, or board of election commissioners, or if the officer does not contest the petition, the municipal clerk, school district clerk, or → lower

board of election commissioners shall issue a certificate declaring that an election will be held under this section. If the officer contests the petition, the municipal clerk, school district clerk, or board of election commissioners shall

If the certificate is issued by the municipal clerk, the municipal clerk shall immediately transmit the petition and certificate to the governing body of the municipality. If the certificate is issued by the school district clerk, the school district clerk shall immediately transmit the petition and certificate to the school board.

~~governing body or to the school board. Immediately upon finding an original or amended petition sufficient, in cities over 500,000 population, the board of election commissioners shall file the petition in its office~~ circuit court for the county in which the office of the clerk or board of election commissioners is located.

SECTION 4. 9.10 (4) (b) and (c) of the statutes are created to read:

9.10 (4) (b) Within 10 days after receipt of a petition under par. (a), the circuit court shall determine, after hearing, whether the petition ~~states grounds that~~ if true, constitute cause, as defined in sub. (2) (b), for the recall. The clerk of court shall notify the official for whom removal is sought of the hearing date. The official and the person who offers the petition for filing may appear by counsel and the court may take testimony with respect to the petition. If the circuit court determines that the ~~grounds stated~~ in the petition ~~are true~~ constitute cause, as defined in sub. (2) (b), for the recall, the court shall issue a certificate directing that an election be held under this section. If the petition concerns a city, village or town office, the court shall transmit the petition and certificate to the governing body of the city, village or town, except that in cities over 500,000 population the court shall transmit the petition and certificate to the board of election commissioners. If the petition concerns a school district office, the court shall transmit the petition and certificate to the school board. Upon receiving a petition and certificate, the governing body, board of election commissioners or school board shall file the petition and certificate in its office. If the court determines that the ~~grounds stated~~ in the petition ~~are true~~ do not constitute cause for the recall, the court shall not issue the certificate.

(c) Any party aggrieved by a circuit court determination under par. (b) may appeal to the court of appeals within the time period specified in s. 808.04 (2). An appeal under this paragraph shall be given precedence over other matters not

accorded similar precedence by law. The appeal shall stay the holding of a recall primary and election under a certificate issued by the circuit court under par. (b) until the court of appeals determines the validity of the certificate, but other acts required to be undertaken to prepare for the primary and election shall proceed during the pendency of the appeal. upon receiving or

or issuing a certificate under par. (a)

94s SECTION 5. 9.10 (4) (d) of the statutes is amended to read:

9.10 **(4)** (d) The governing body, school board or board of election commissioners, upon receiving ~~the~~ strike a certificate from the circuit court under par. (b), shall call an election to be held on the Tuesday of the 6th week commencing after the date of the certificate. If Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday." (end ins A)

p.w.f.

INSERT B

"SECTION 6. 808.04 (2) of the statutes is amended to read:

388p

808.04 **(2)** An appeal under s. 9.10 (4) (c), 227.60, or 799.445 shall be initiated within 15 days after entry of the judgment or order appealed from." (end ins)

p.w.f.

~~SECTION 7. Initial applicability.~~

RECALL OF LOCAL OFFICERS CS

INSERT C

11q "(1) ~~This act~~ first applies with respect to petitions for recall that are offered for filing on the effective date of this subsection." NON STAT INIT APP

~~(END)~~

The treatment of sections 9.10 (2)(b) and (d) and (4)(a) (d) and 808.04 (2) of the statutes

(end ins)

(b), (c), and

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0428/1dn
RJM&JTK:...

cjs

Currently, the technical sufficiency of a petition may be challenged and examined within a 31-day period after a petition is received.

Paul Onsager:

1. Please note that, if the procedure established under this amendment becomes law, recall of local elected officials may be impractical and ineffective in many cases. The amendment requires a circuit court, in a contested recall action, to hold a hearing to determine whether the allegations in the recall petition are true and, if true, whether they constitute cause for the recall. ~~This~~ determination must be made within 10 days of the filing of the recall petition with the court. The hearing required under this amendment will likely resemble a typical bench trial, with each side desiring an opportunity to take discovery, submit evidence, and cross–examine witnesses. As a practical matter, it will be difficult for the parties to adequately prepare for a hearing of this type in 10 days or less. Also, given the prerogatives of a coequal branch of government, the 10 day deadline may not be entirely effective. Even if the court adheres to the 10 day deadline, the parties have a right to appeal the court's decision. The appellate process may conclude relatively quickly, but may also take a year or more to conclude, if the matter is appealed to the Wisconsin Supreme Court. The fact that most local officials have ~~2 year~~ terms and that local officials ~~can~~ may not be recalled until after their first year in office means that, by the time the appellate process concludes, the term of office of the ~~recalled~~ official for whom recall is sought may have expired. This procedure would be more feasible if the court were required to determine whether the allegations in the recall petition, if true, would constitute cause for the recall, as opposed to determining the ultimate truth of the allegations. This alternative procedure was proposed in 1999 SB–514. Please let us know if we have misunderstood the committee's intent.

then

ten

not Order the amendment, fn.3

ten

ten–

two-year or three-year

ten–

2. ~~Does the committee intend to specify the burden of proof a court must apply when determining the truth of the allegations in a recall petition? For example, the committee may want to require the petition to be proved beyond a reasonable doubt or by the greater weight of the credible evidence. In the absence of a specific standard, it is unclear how a court will determine if the truth of the allegations has been established.~~

allegations in the

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Phone: (608) 261–4454
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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266–6778

¶ 2. Please note that the definition of "cause" approved by the committee is different from the definition currently used in s. 17.16 (2), stats. (removal from office). Please let us know if the committee intends to use a different definition.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0428/1dn
RJM&JTK:cjs:kjf

May 30, 2001

Paul Onsager:

1. Please note that, if the procedure established under this amendment becomes law, recall of local elected officials may be impractical and ineffective in many cases. Currently, the technical sufficiency of a petition may be challenged and examined within a 31–day period after a petition is received. The amendment then requires a circuit court, in a contested recall action, to hold a hearing to determine whether the allegations in the recall petition are true and, if true, whether they constitute cause for the recall. Under the amendment, this determination must be made within ten days of the filing of the recall petition with the court. The hearing required under this amendment will likely resemble a typical bench trial, with each side desiring an opportunity to take discovery, submit evidence, and cross–examine witnesses. As a practical matter, it will be difficult for the parties to adequately prepare for a hearing of this type in ten days or less. Also, given the prerogatives of a coequal branch of government, the ten–day deadline may not be entirely effective.

Even if the court adheres to the ten–day deadline, the parties have a right to appeal the court's decision. The appellate process may conclude relatively quickly, but may also take a year or more to conclude, if the matter is appealed to the Wisconsin Supreme Court. The fact that most local officials have two–year or three–year terms and that local officials may not be recalled until after their first year in office means that, by the time the appellate process concludes, the term of office of the official for whom recall is sought may have expired.

This procedure would be more feasible if the court were required to determine whether the allegations in the recall petition, if true, would constitute cause for the recall, as opposed to determining the ultimate truth of the allegations. This alternative procedure was proposed in 1999 SB–514. Please let us know if we have misunderstood the committee's intent.

2. Please note that the definition of "cause" approved by the committee is different from the definition currently used in s. 17.16 (2), stats. (removal from office). Please let us know if the committee intends to use a different definition.

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LFB:.....Onsager – Recall of local elected officials

FOR 2001–03 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 2001 SENATE BILL 55 AND 2001 ASSEMBLY BILL 144

At the locations indicated, amend the bill as follows:

1. Page 179, line 7: after that line insert:

"**SECTION 94f.** 9.10 (2) (b) of the statutes is amended to read:

9.10 **(2)** (b) A ~~recall~~ petition ~~for~~ requesting the recall of a city, village, town or school district ~~office~~ officer shall contain a statement of ~~a reason for the recall which is related to the official responsibilities of the official for whom removal is sought~~ each cause for the recall and the specific allegations that constitute each cause. In this paragraph, "cause" means neglect of duty or official misconduct.

SECTION 94i. 9.10 (2) (d) of the statutes is amended to read:

9.10 **(2)** (d) No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.05 (1) or (2) with the filing officer with whom the petition is filed. The petitioner shall append to the

registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town or school district officer, a statement of ~~a reason for the recall which is related to the official responsibilities of the official for whom removal is sought~~ each cause, as defined in par. (b), for the recall and the specific allegations that constitute each cause. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of a state, congressional, legislative, judicial or county officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. The last date that a petition for the recall of a city, village, town or school district officer may be offered for filing is 5 p.m. on the 30th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

SECTION 94L. 9.10 (4) (a) of the statutes is amended to read:

9.10 **(4)** (a) Immediately after a petition for the recall of a city, village, town, or school district officer is offered for filing, the municipal clerk, board of election commissioners, or school district clerk shall notify the officer against whom the petition is filed. Within 10 days after ~~a~~ the petition ~~for the recall of a city, village, town or school district official,~~ is offered for filing, the officer against whom the petition is filed may file a written challenge with the municipal clerk or board of election commissioners or school district clerk ~~with whom it is filed~~, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the clerk or board of election commissioners within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is

filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the clerk or board of election commissioners shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the clerk or board of election commissioners shall determine by careful examination of the face of the petition whether the petition is sufficient and shall so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, the clerk or board of election commissioners shall again carefully examine the face of the petition to determine sufficiency and shall attach to the petition a certificate stating the findings. Immediately upon finding an original or amended petition sufficient, ~~except in cities over 500,000 population,~~ the municipal clerk ~~or~~, school district clerk, or board of election commissioners shall notify, in writing, the officer against whom the petition is filed. Within 3 days following receipt of the notification, the officer shall inform the municipal clerk, school district clerk, or board of election commissioners, in writing, as to whether the officer contests the petition. If the officer fails to inform the municipal clerk, school district clerk, or board of election commissioners within 3 days following receipt of the notification, or if the officer does not contest the petition, the municipal clerk, school district clerk, or board of election commissioners shall issue a certificate declaring that an election will be held under this section. If the certificate is issued by the municipal clerk, the municipal clerk shall immediately transmit the petition and certificate to the governing body of the municipality. If the certificate is issued by the school district clerk, the school district

clerk shall immediately transmit the petition and certificate to the school board. If the officer contests the petition, the municipal clerk, school district clerk, or board of election commissioners shall transmit the petition to the ~~governing body or to the school board. Immediately upon finding an original or amended petition sufficient, in cities over 500,000 population, the board of election commissioners shall file the petition in its office~~ circuit court for the county in which the office of the clerk or board of election commissioners is located.

SECTION 94p. 9.10 (4) (b) and (c) of the statutes are created to read:

9.10 **(4)** (b) Within 10 days after receipt of a petition under par. (a), the circuit court shall determine, after hearing, whether the allegations in the petition are true and, if true, whether the allegations constitute cause, as defined in sub. (2) (b), for the recall. The clerk of court shall notify the officer for whom the recall is sought of the hearing date. The officer and the person who offers the petition for filing may appear by counsel and the court may take testimony with respect to the petition. If the circuit court determines that the allegations in the petition are true and constitute cause, as defined in sub. (2) (b), for the recall, the court shall issue a certificate directing that an election be held under this section. If the petition concerns a city, village, or town office, the court shall transmit the petition and certificate to the governing body of the city, village, or town, except that in cities over 500,000 population the court shall transmit the petition and certificate to the board of election commissioners. If the petition concerns a school district office, the court shall transmit the petition and certificate to the school board. Upon receiving a petition and certificate, the governing body, board of election commissioners, or school board shall file the petition and certificate in its office. If the court determines

that the allegations in the petition are not true or do not constitute cause, as defined in sub. (2) (b), for the recall, the court may not issue the certificate.

(c) Any party aggrieved by a circuit court determination under par. (b) may appeal to the court of appeals within the time period specified in s. 808.04 (2). An appeal under this paragraph shall be given precedence over other matters not accorded similar precedence by law. The appeal shall stay the holding of a recall primary and election under a certificate issued by the circuit court under par. (b) until the court of appeals determines the validity of the certificate, but other acts required to be undertaken to prepare for the primary and election shall proceed during the pendency of the appeal.

SECTION 94s. 9.10 (4) (d) of the statutes is amended to read:

9.10 **(4)** (d) The governing body, school board or board of election commissioners, upon receiving ~~the~~ a certificate from the circuit court under par. (b) or upon receiving or issuing a certificate under par. (a), shall call an election to be held on the Tuesday of the 6th week commencing after the date of the certificate. If Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday.".

2. Page 1653, line 2: after that line insert:

"**SECTION 3828p.** 808.04 (2) of the statutes is amended to read:

808.04 **(2)** An appeal under s. 9.10 (4) (c), 227.60, or 799.445 shall be initiated within 15 days after entry of the judgment or order appealed from.".

3. Page 1815, line 25: after that line insert:

1 "(11q) RECALL OF LOCAL OFFICERS. The treatment of sections 9.10 (2) (b) and (d)
2 and (4) (a), (b), (c), and (d) and 808.04 (2) of the statutes first applies with respect to
3 petitions for recall that are offered for filing on the effective date of this subsection.".
4 **(END)**