

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on
Campaigns &
Elections
(AC-CE)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

Published Documents

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

*Information Collected For Or
Against Proposal*

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

**

➤ Hearing Records ... HR (bills and resolutions)

➤ **03hr_ab0320_AC-CE_pt01**

➤ Miscellaneous ... Misc

➤ **

DAVE TRAVIS
STATE REPRESENTATIVE



STATE CAPITOL
P.O. BOX 8953
MADISON, WI 53708
(608) 266-5340
rep.travis@legis.state.wi.us

MEMO

TO: Steve Freeze, Chair
Campaigns & Elections

FROM: REP. DAVE TRAVIS

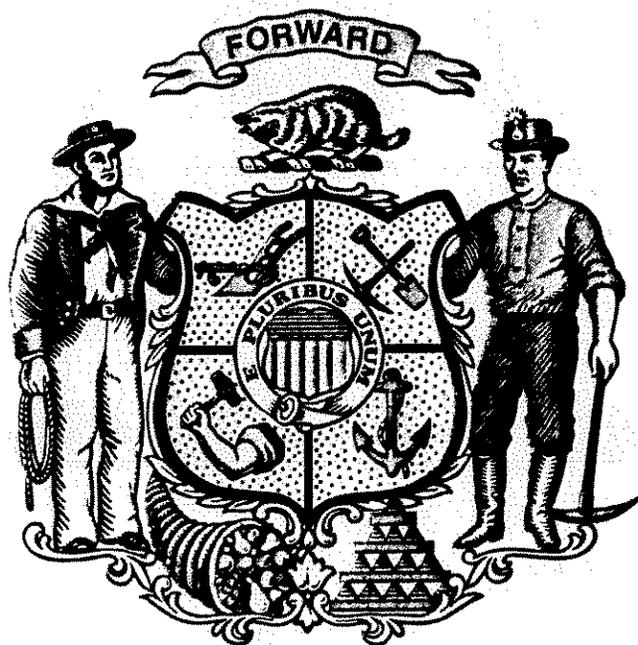
DATE: September 17, 2003

RE: Campaigns & Elections Executive Session

Please accept my votes on the following bills:

~~Assembly Bill 320: Aye~~
Assembly Bill 333: Aye

Thank you in advance for your assistance.





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E-mail: league@lwm-info.org
www.lwm-info.org

To: Representative Steve Freese, Chair, Assembly Committee on Campaigns & Elections
Members of the Assembly Committee on Campaigns & Elections

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: July 22, 2003

Re: **Support for Assembly Bill 320**

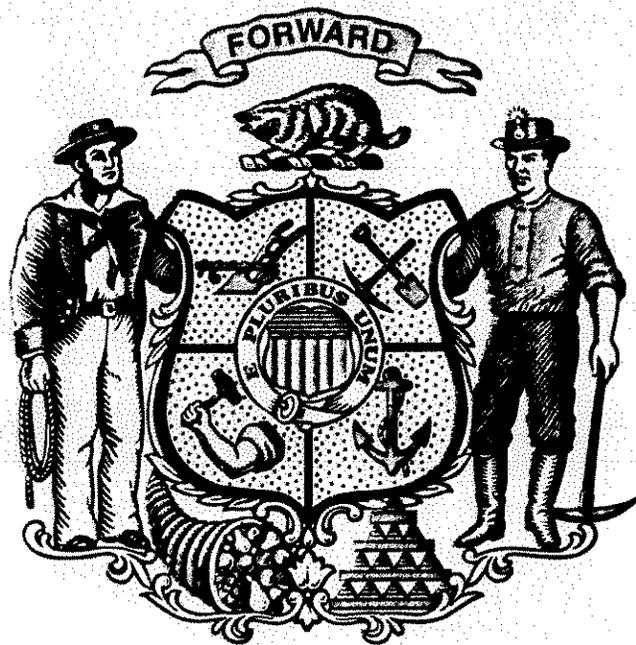
The League of Wisconsin Municipalities supports Assembly Bill 320, modifying the procedure for recalling a municipal officer. The bill requires that a petition for the recall of a municipal officer include a statement of the grounds that constitute cause for the recall. "Cause" is defined as inefficiency, neglect of duty, official misconduct, or malfeasance in office. The bill also requires that municipal recall petitions be submitted to a circuit court which must then determine, after a hearing, whether the grounds stated in the petition, if true, would constitute a cause for the recall.

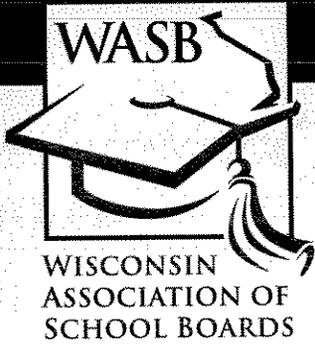
We believe this process would be substantially fairer to elected local officers than the current procedure, which only requires that a recall petition state a reason for the recall that is related to the "official responsibilities of the official for whom removal is sought." Under this standard, a recall petitioner may list any reason it chooses as long as it's related to the officer's official responsibilities. Thus, a petitioner could validly list a political difference of opinion regarding votes taken by the officer as the sole basis for the recall.

The current recall process also does not provide for circuit court review of recall petitions. Such a procedural step, involving review by a neutral third party, would help ensure that the reasons stated in a recall petition, if true, constitute inefficiency, neglect of duty, official misconduct or malfeasance in office.

The League supports AB 320 because it imposes stricter requirements and safeguards upon those filing recall petitions. Such safeguards would be fairer for municipal elected officials and help municipalities avoid wasting time and money on recall petitions filed for purely political purposes. Most city and village officials are elected for two-year terms. If the voters are dissatisfied with an officer's political decisions they can vote him or her out of office at the end of the term. The recall process should be limited to situations in which petitioners assert that the officer has engaged in misconduct in office, neglect of duty, malfeasance or inefficiency.

For these reasons, we urge you to recommend passage of AB 320. Thanks for considering our comments on this important municipal issue.





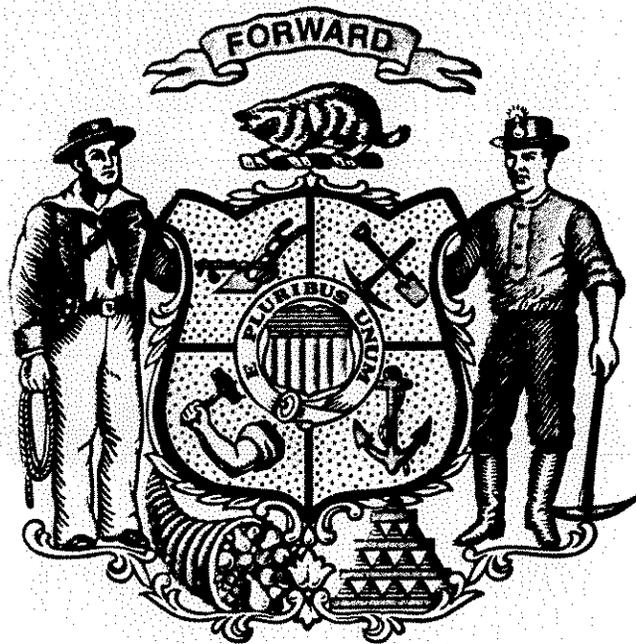
122 W. WASHINGTON AVENUE, MADISON, WI 53703
PHONE: 608-257-2622 • FAX: 608-257-8386

KEN COLE, EXECUTIVE DIRECTOR

TO: Assembly Committee on Campaigns and Elections
FROM: Joelle Lester, Legislative Services Coordinator
DATE: July 24, 2003
RE: Assembly Bill 320, relating to the recall of local elected officials

The Wisconsin Association of School Boards encourages your support of AB 320, relating to the recall of local elected officials. In January 2003, the WASB Delegate Assembly voted to support legislation to appropriately narrow permissive reasons for recalling school board members and other elected officials to illegal or immoral activities. We commend Rep. Ott and the co-sponsors for authoring this important legislation.

The reasons for recall of public officials were broadened in 1992 to allow recalls for good-faith differences of political opinion. While the recall process is a necessary component of our representative democracy, the broadening of permissive reasons for initiating the process has been the cause of much upheaval in several districts statewide, taking time, attention and resources away from students. Because of the time and resources it requires, and in light of the regular election schedule that allows voters to change their representation, the recall process should be reserved for instances of illegal or immoral activity. AB 320 will ensure that our elected leaders are not distracted from the real priority, which is student learning and achievement. Thank you for your consideration.





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEPHEN FREESE

FROM: Robert J. Conlin ^{RJC} Senior Staff Attorney

RE: Legislative History of Repeal of "Cause" Standard for Recall of City, Village, Town, and School District Offices

DATE: August 5, 2003

In a recent hearing of the Assembly Committee on Campaigns and Elections, the committee heard testimony on 2003 Assembly Bill 320, relating to establishing grounds for the recall of city, village, town, and school district officials. You will recall that under that bill, the recall law is changed to require the petition to recall an elected city, village, town, or school district official to contain a statement of the grounds that constitute each cause for the recall. Under the bill, "cause" means inefficiency, neglect of duty, official misconduct, or malfeasance in office. Under current law, such petition must state a reason for recall related to the official responsibilities of the official for whom removal is sought. Those appearing in support of the bill noted that the bill was reinstating a recall standard that had existed in Wisconsin but was altered by the Legislature in the 1989 Session. You asked for a synopsis of why the "cause" standard was abandoned in that session. This memorandum responds to that inquiry.

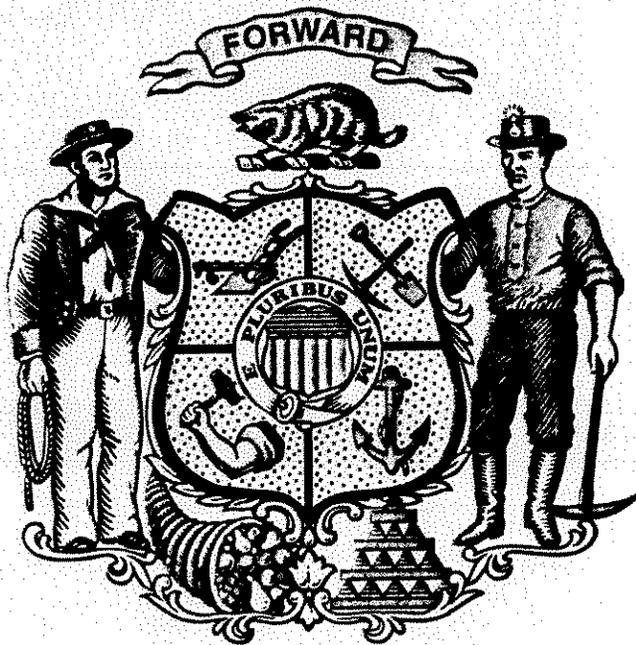
Currently, s. 9.10 (2) (b), Stats., requires that a recall petition for a city, village, town, or school district office must contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. [s. 9.10 (2) (b), Stats.] The language of current s. 9.10 (2) (b), Stats., resulted from the enactment of 1989 Wisconsin Act 192 (1989 Senate Bill 260) which amended s. 9.10 (2) (b), Stats., to substitute the current recall standard for the standard: "the grounds which constitute the cause and the cause upon which removal is sought," and defined "cause" to mean "inefficiency, neglect of duty, official misconduct or malfeasance." The amendment to 1989 Senate Bill 260, which created the new standard for recall of local elective officials, was contained in Assembly Amendment 10, which was offered by former Representatives David Deininger and Timothy Carpenter and Representative Steven Foti. The pre-1990 standard for removal of local elective officials [i.e., the grounds which constitute "cause"], which was replaced by the current standard, was created by the enactment of 1983 Wisconsin Act 491 (1983 Assembly Bill 612).

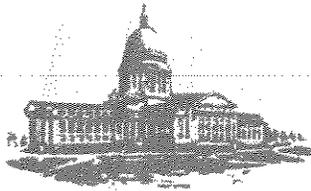
With respect to the change made during the 1989-90 Session, according to Kevin Kennedy, Executive Director, Wisconsin State Elections Board, the authors of the change had two major concerns with the recall standard then in existence. According to Mr. Kennedy, one concern was that it was too easy to recall a local elected official despite the statutory requirement that the petition state specific grounds that constituted cause. The second reason was that officials who were subject to a recall were able to delay the process by appealing the decision to circuit court and the court of appeals. According to Mr. Kennedy, it was believed that in most cases where the targeted office-holder alleged that the cause standard had not been met, the courts upheld statements that essentially met the current test, i.e., any reason related to the duties of the office-holder. According to Mr. Kennedy, the authors were concerned that the courts were not really applying the cause standard and that the courts realized that the recall process is essentially a political process and the courts were unwilling to be used as a forum for testing the truth of the alleged grounds for recalling an elected official.

Mr. Kennedy noted that the cause standard was not the only change made in 1989 Act 192. In addition, the Legislature shortened the period to gather signatures from 60 to 30 days and raised the threshold number of signatures required by requiring 25% of the vote for President rather than 25% of the vote for Governor.

I hope you find the information in this memorandum useful. If I can provide additional assistance, please feel free to contact me at the Legislative Council staff offices.

RJC:jal:tlu;ksm





Al Ott

State Representative • 3rd Assembly District

August 27, 2003

Representative Steve Freese
Chair, Assembly Committee on Campaigns and Elections
115 West, State Capitol
Hand-Delivered

Dear Representative Freese,

I would like to take this opportunity to thank you for holding a public hearing on Assembly Bill 320 (AB 320), relating to the recall of a city, village, town, or school district officer.

I sincerely hope the testimony presented clearly conveyed the importance of re-establishing a more reasonable approach to the local recall process. Unfortunately, we are seeing more and more instances in which the power of recall is being abused. Less often is the recall process utilized because of misconduct in office or neglect of duties. Rather, we regularly see recall efforts initiated based on selfish agendas or hot-headed differences of opinions.

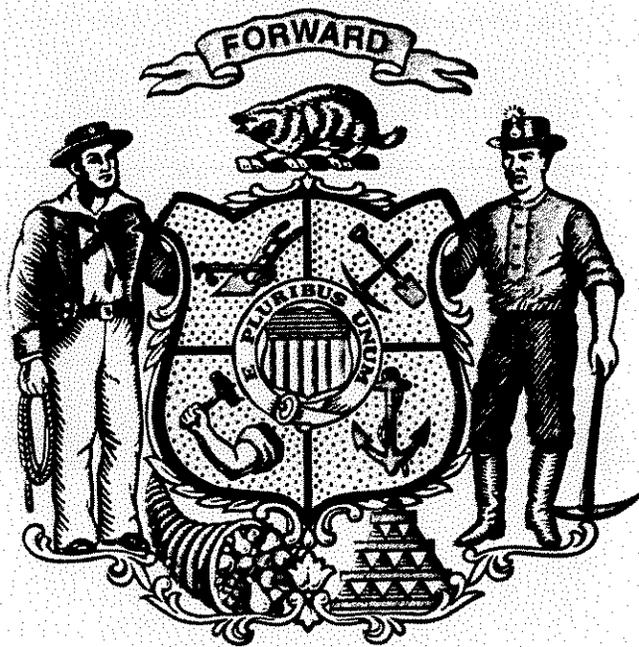
Abuse of the current system of local recall is a major threat to sound local policy making. AB 320 will not take away the ability to recall local officials. It simply assures the process is used when appropriate.

Again, thank you for your time and consideration of this matter. Please do not hesitate to contact me if you have any questions or concerns regarding AB 320.

Sincerely,

AL OTT
State Representative
3rd Assembly District

AO:en



OSSEO-FAIRCHILD SCHOOL DISTRICT

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Testimony to the Committee on Campaigns and Elections Assembly Bill 320

Thank you for your attention to this important matter of recall elections.

There are times when the recall of a publicly elected official is appropriate. There are times when it is not. Four school board members from Osseo-Fairchild were certainly subjected to recall at an inappropriate time in November 2002.

In July 2002 after a long period of study, education and citizen input, the school board acted upon the recommendation of a community-wide committee representing all points of view and adopted a compromise on the civil rights issue of retaining a Native American nickname. The nickname "Chieftains" was kept. The logo (a caricature of a Native American) was altered to the neutral "OF" symbol. The school board became subject to the wrath of several people in the community who felt it was important to retain the Chieftain head logo.

In November, by a narrow 52 to 48 percent margin, four school board members were individually recalled and replaced in a very contentious election campaign. Three of the new school board members stood for reelection in April 2003 and retained their seats, this time by the narrowest of margins (less than 51 percent each). In one case, a recount was necessary to determine that the recall candidate had retained her seat by two votes. This second election came less than one month after the new school board had voted to reinstate the official Chieftain head logo.

Regardless of one's position on the use of Native American stereotypes for athletic team nicknames, mascots and logos, the issue of purposes for recalling public officials becomes clearer when this case is examined. In Osseo-Fairchild, the original school board members were never accused of taking any action that was illegal or immoral. Nor were they ever accused of doing something that was harmful to children or contrary to the primary purposes of public education. Simply put, they were accused of not doing the politically popular thing. Particularly where civil rights are concerned, the actions required of public servants are often not in concert with the majority of an electorate. Be that as it may, it is now interesting to note that the school district is under threat of a major civil rights lawsuit from those opposed to Native American mascot use. The community continues to struggle to find an appropriate solution to this particular issue. The proposals on the table at the current time are very similar to the original compromise adopted by the original school board.

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Testimony to the Committee on Campaigns and Elections
Assembly Bill 320
Page 2

The primary point is this. Four very dedicated, distinguished and brave public servants lost their seats on the school board through a law that is flawed. The Osseo-Fairchild school board members who were recalled had the legal requirement of providing a non-discriminatory climate in which all students can comfortably learn. They were clearly "doing their job." The threat of recall based upon a difference of opinion will serve to keep public officials from making difficult decisions as well as discouraging persons from seeking elected service. The appropriate venue for advocating for political positions is in the general election not a recall election.

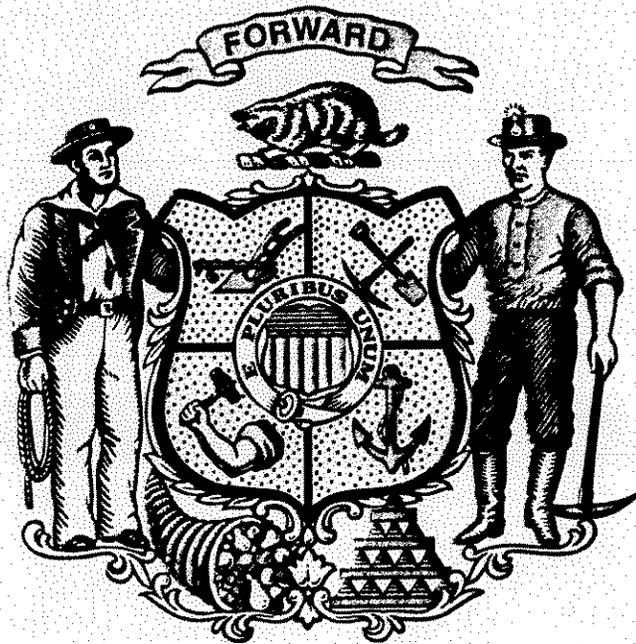
We ask that your committee support this bill that would revise Wisconsin Statute 9.10(2)(b). We believe that the recall law should be limited to cases of official misconduct or malfeasance in office. The protection of public officials from recall efforts in instances such as that experienced in Osseo-Fairchild is mandatory and is consistent with the intentions of the original framers of the representative government in Wisconsin.

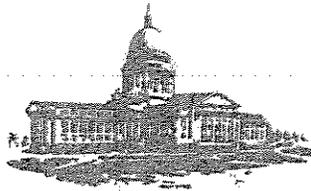
Thank you for your efforts in this matter.

Sincerely,



Kerry Jacobson
Superintendent of Schools





Al Ott

State Representative • 3rd Assembly District

Testimony for Assembly Bill 320

- My intent in authoring this bill is very simple – I want to see the re-establishment of a more reasonable approach to the local recall process (city, town, village and school boards).
- It is first important to note that AB 320 applies only to elected town, village, city and school board officials. The bill has no impact on county or state officials, members of Congress, or judges, as Constitutional Recall covers these offices. The issue here is local recall, which is established under statute.
- Also, AB 320 does not take away the ability to recall local officials. It simply assures it is used when appropriate.
- Prior to a change in the law in 1990 (1989 Wisconsin Act 192), the recall petition needed to contain a statement of grounds that constitute **cause** for the recall. **Cause is defined as inefficiency, neglect of duty, official misconduct, or malfeasance in office.** Additionally, the petition was subject to review by the circuit court in order to determine legitimacy of the recall effort.
- Under current law, a petition for recall must only state a reason for the recall that is related to the official responsibility of the officer. The reason need not be substantiated or legitimate.
- In recent years, a pattern has emerged of attempting to recall local officials based on one vote or viewpoint rather than actual misconduct in office. We are seeing more and more instances in which the power of recall is being abused.
- Consequently, qualified people are often discouraged from running for local office. The, “Not in My Backyard Syndrome” runs rampant in this state and makes the job of local elected officials all the more difficult.
- I feel the current law is counterproductive to good decision-making, and ultimately fosters misguided policy. Continuing on this course will result in very ineffective local governments.
- An elected official should be able to stand up for what they feel is right; citizens, in turn, should be able to cast their votes at election time if they are unhappy with the *views* of those who they elected.
- In an effort to ensure that the local recall process is used appropriately, AB 320 returns the local recall in Wisconsin to the system in place prior to 1990.
- This bill implements a mechanism of checks and balances in the recall process by providing for a neutral party to make the distinction between misconduct versus an unpopular decision as sufficient grounds for removing a person from public office during their term.

- Recall elections are costly to local governments. In this time of fiscal difficulty, costly recall elections are a waste of valuable resources.
- Mayor of Menomonie – Dennis Kropp – contacted me and said it well when he said, “With elections for these offices being held every two years, there is ample opportunity for the public to address candidates’ positions without the need for a separate, often divisive election.”

Egregious examples of local recall:

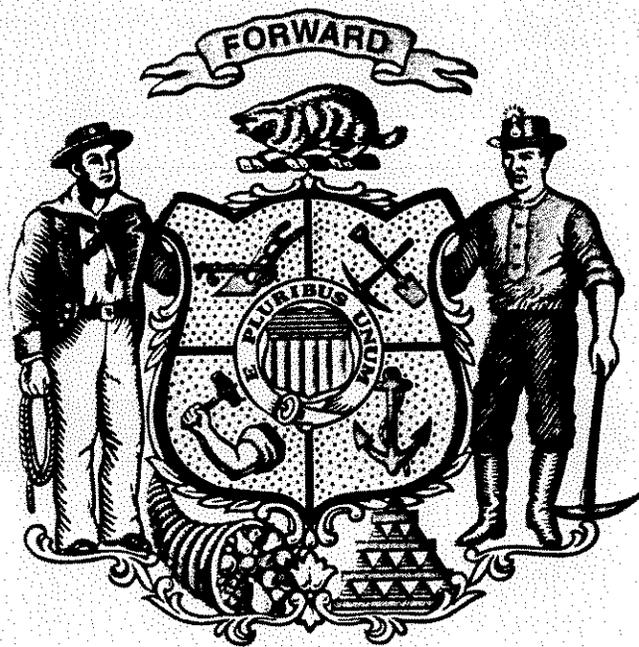
- Several incumbents on the Osseo-Fairchild school board faced a recall and were ousted in 2002, because they favored phasing out the school’s Chieftain logo as they felt it was possibly demeaning to Native Americans and could result in lawsuits against the districting lawsuits.
- A similar situation, regarding the same issue, occurred in the Milton School District in the 1999-2000 school year, but those members survived the election
- In December of 1999, a member of the Parkview School District in Orfordville was removed from office because of the firing of a basketball coach. The ousted member was, however, returned to the board in the April general election.

Summation:

- The goal is to return reasonableness to the local recall process in providing a system of checks and balances.
- Abuse of the current system is a major threat to sound local policy making.
- Recalls are costly, in more ways than one, so let the people exercise their right to recall local elected officials when it is necessary, not when selfish agendas or hot-headed differences of opinions dictate.

Other Helpful Notes:

- Circuit Court does not determine truth of the grounds for cause – rather determines validity of the grounds if they were true. The goal is to eliminate frivolous local recalls.
- Municipalities are not required to report recall elections to the State Elections Board.
- Counties are subject to constitutional recall requirements, and therefore, not impacted by AB 320.
- The circuit court would be given 10 days from the receipt of the petition to make its determination.
- Local recall is statutory, while the recall of state and county officials and members of Congress and judges, is guaranteed under Article 13, sec. 12 of the state Constitution.
- A procedure for the recall of local officials was first instituted in Wisconsin in 1913.



AB 320

- to create a more responsible process.
 - pattern has begun to recall on one vote or issue, but not relating to conduct/misconduct in office.
 - implements checks and balances to process
 - AB 320 returns to law pre 1990
 - local recall is statutory
- "people are using recall to leverage their way."
Kurt Woods