

1983 Assembly Bill 612

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1983 Wisconsin Act 491

AN ACT *to repeal* 9.10 (2) (b) and 9.10 (4) (b); *to renumber and amend* 9.10 (2) (c) and 9.10 (5); *to amend* 9.10 (1), 9.10 (2) (a), 9.10 (3), 9.10 (4) (a), 9.10 (6), 11.01 (16) (intro.) and (a) 1, 11.20 (8) (intro.) and 12.13 (3) (a); and *to create* 9.10 (1) (c) and (d) and (2) (title), 9.10 (2) (c) and (e) to (s), 9.10 (3) (d) to (f) and (4) (title), 9.10 (4) (e) to (h) and (5) (title), 9.10 (5) (a), 9.10 (7) (title), 11.02 (3m), 11.20 (4m), 11.20 (8) (d) and 11.30 (2) (em) of the statutes, *relating to* recall petition and election procedures and providing a penalty.

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

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

9.10 (1) (title) RIGHT TO RECALL; PETITION SIGNATURES. (a) The qualified electors of the state, of any county, city, village, town, or of any congressional, legislative, judicial or school district may petition for the recall of any incumbent elective official after the first year of the term for which the official is elected by filing a petition with the same official or agency with whom ~~the petition for nomination to papers or declarations of candidacy for the office was~~ are filed demanding the recall of the officeholder. ~~The~~

(b) A petition for recall of an officer shall be signed by electors equal to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled. ~~If at the last election any group of candidates were voted for in common to fill 2 or more offices of the same designation, the required number of petition signers shall be equal to 25% of the number computed by dividing the total vote for that office by the number of offices filled jointly.~~

SECTION 2. 9.10 (1) (c) and (d) and (2) (title) of the statutes are created to read:

9.10 (1) (c) If no statistics are available to calculate the required number of signatures on a petition for recall of an officer, the number of signatures shall be determined as follows:

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1. The area of the district in square miles shall be divided by the area of the municipality in square miles in which it lies.

2. The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by the quotient determined under subd. 1 to determine the required number of signatures.

3. If a district is in more than one municipality, the method of determination under subs. 1 and 2 shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are kept.

(d) The official or agency with whom nomination papers are filed for each office shall determine and certify to any interested person the number of signatures required on a recall petition for that office.

(2) (title) PETITION REQUIREMENTS.

SECTION 3. 9.10 (2) (a) of the statutes is amended to read:

9.10 (2) (a) The Every recall petition shall have on the face at the top in bold print the words "RECALL PETITION". Other requirements as to preparation and form of the recall petition shall be governed by s. 8.15. In addition, a

(b) A recall petition for a city, village, town or school district office shall contain a specific statement of good and sufficient reason the grounds which constitute the cause and the cause upon which removal is sought. In this paragraph, "cause" has the meaning given under s. 17.16 (2).

SECTION 4. 9.10 (2) (b) of the statutes is repealed.

SECTION 5. 9.10 (2) (c) of the statutes is renumbered 9.10 (2) (d) and amended to read:

9.10 (2) (d) No petition may be offered for filing for the recall of an officer unless the petitioner first registers with the filing officer with whom the petition is filed, indicating his or her intent to circulate a recall petition and the name of the officer for whom recall is sought. The petitioner may circulate a petition at any time after completing registration. The last date the petition may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name shall may be erased added or removed. No signature shall may be valid or counted unless the date of the signature is less than 60 days before the date offered for filing within the 60-day period provided in this paragraph.

SECTION 6. 9.10 (2) (c) and (e) to (s) of the statutes are created to read:

9.10 (2) (c) A petition requesting the recall of each elected officer shall be prepared and filed separately.

(e) An individual signature on a petition sheet may not be counted if:

1. The signature is not dated.
2. The signature is dated outside the circulation period.
3. The signature is dated after the date of the notarization contained on the petition sheet.
4. The residency of the signer of the petition sheet cannot be determined by the address given.
5. The signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.
6. The signer has been adjudicated not to be a qualified elector on grounds of incompetency or limited incompetency as provided in s. 6.03 (3).
7. The signer is not a qualified elector by reason of age.

8. The circulator knew or should have known that the signer, for any other reason, was not a qualified elector.

9. The petition sheet circulator fails to sign the affidavit of circulator.

10. The residency of the circulator cannot be determined by the information given on the petition.

11. The notary or person authorized to administer the oath fails to sign the jurat of the affidavit of circulator.

12. The title of the individual, other than a notary, administering the oath is not listed.

13. The notary commission or term of office of the individual administering the oath has expired.

(f) The filing officer or agency shall review a verified challenge to a recall petition if it is made prior to certification.

(g) The burden of proof for any challenge rests with the individual bringing the challenge.

(h) Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with statutory requirements.

(i) If a challenger can establish that a person signed the recall petition more than once, the 2nd and subsequent signatures may not be counted.

(j) If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.

(k) If a challenger demonstrates that the date of a signature is altered and the alteration changes the validity of the signature, the signature may not be counted.

(L) If a challenger establishes that an individual is ineligible to sign the petition other than in the circumstances set forth in par. (f), the signature may not be counted.

(m) No signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.

(n) No signature may be stricken if the individual administering the affidavit of circulator does not date the jurat.

(o) No signature may be stricken if the date of administering the oath is shown to be incorrect.

(p) If a signature on a petition sheet is crossed out by the petitioner before the sheet is offered for filing, the elimination of the signature does not affect the validity of other signatures on the petition sheet.

(q) Challenges are not limited to the categories set forth in pars. (i) to (L).

(r) A petitioner may file affidavits or other proof correcting insufficiencies, including but not limited to:

1. An expired notary commission date.
2. Failure of a notary to sign the petition.
3. Failure to indicate the duration of a notary commission or title of an office.
4. Failure of the circulator to sign an affidavit.
5. Failure of the circulator to include all necessary information.

SECTION 7. 9.10 (3) of the statutes is amended to read:

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9.10 (3) (title) STATE, COUNTY, CONGRESSIONAL, LEGISLATIVE AND JUDICIAL OFFICES. (a) ~~The provisions of this~~ This subsection apply for ~~applies to~~ the recall of all elective officials other than city, village, town and school district officials. City, village, town and school district officials are recalled under sub. (4).

(b) Within 3 days after the petition is offered for filing, the official with whom the petition is left shall determine by careful examination whether the petition is sufficient and so state in a certificate attached to the petition. Upon application to the circuit court for the county in which the filing office is located, the court may grant the filing officer or agency not more than 7 additional days for examination of the petition upon showing of cause for an extension of the examination period. Upon further application, the court may further extend the examination period upon showing of cause for an additional extension. 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, it shall again be carefully examined to determine sufficiency and a certificate stating the findings shall be attached. An allegation that the petition has not been carefully examined and that an insufficiency exists may be made by mandamus action only. Immediately upon finding an original or amended petition sufficient, the official shall file the petition and call a special recall election to be held not less than 40 nor more than 45 days from the filing on the Tuesday of the 6th week commencing after the date of filing of the petition, or the date of amended filing if the petition is amended. If Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday.

(c) The official against whom the recall petition is filed shall be a candidate at the special recall election without nomination unless ~~he~~ the official resigns within 10 days after the original filing of the petition. ~~There shall be no primary.~~ Candidates for the office may be nominated under the usual procedure of nomination for a primary special election by filing nomination papers not later than 5 p.m. 4 weeks on the 4th Tuesday preceding the election and have their names placed on the ballot at the special recall election.

SECTION 8. 9.10 (3) (d) to (f) and (4) (title) of the statutes are created to read:

9.10 (3) (d) If more than 2 persons compete for a nonpartisan office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any candidate receives a majority of the total number of votes cast in the recall primary, that candidate shall assume the office for the remainder of the term and a recall election shall not be held. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.

(e) For any partisan office, a recall primary shall be held for each political party which is entitled to a separate ballot under s. 5.62 (1) (b) or (2) and from which more than one candidate competes for the party's nomination in the recall election. The person receiving the highest number of votes in the recall primary for each political party shall be that party's candidate in the recall election. Independent candidates shall be shown on the ballot for the recall election only.

(f) If a recall primary is required, the date specified under par. (b) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(4) (title) CITY, VILLAGE, TOWN AND SCHOOL DISTRICT OFFICES.

SECTION 9. 9.10 (4) (a) of the statutes is amended to read:

9.10 (4) (a) For the recall of any city, village, town or school district official, the municipal clerk shall ~~verify the eligibility of the respective signers and circulators, determine by careful examination the sufficiency of the petition and shall certify thereto and 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, it shall again be carefully examined to determine sufficiency and a certificate stating the findings shall be attached. Immediately upon finding an original or amended petition sufficient, the municipal clerk shall transmit the petition to the clerk of circuit court within 10 days of the filing date.~~

(b) The circuit court within 10 days after receipt of the petition shall determine by hearing whether the petition states ~~good and sufficient reason cause~~ for the recall as defined in s. 17.16 (2). ~~The court has jurisdiction only to determine cause for recall.~~ The clerk of circuit court shall notify the incumbent of the hearing date. The person subject to recall and the petition circulators may appear by counsel and the court may take testimony with respect to the recall petition. If the circuit court judge determines the grounds stated in the petition and proof offered at the hearing ~~show good and sufficient reasons state cause for recall,~~ the judge shall issue a certificate directing the governing body or school board to hold an election under this section. ~~The judge may not determine the truth or falsity of the grounds alleged in the petition or proof offered at the hearing.~~ If the grounds stated in the petition and proof offered at the hearing do not ~~show good and sufficient reason state cause~~ for recall, issuance of the certificate shall be denied.

(c) Any party aggrieved by the circuit court determination may appeal to the court of appeals within 10 days following the circuit court determination by filing a notice of appeal with the clerk of the court of appeals. An appeal under this section shall have ~~preference precedence on the court of appeals calendar over other matters not accorded similar precedence by law.~~ The appeal shall stay ~~enforcement of the holding of a recall primary and election under~~ a certificate issued by the circuit court until the court of appeals determines the validity of the certificate, but other acts required to be undertaken preparatory to the primary and election shall proceed during the pendency of the appeal.

(d) The governing body or school board upon receiving the certificate from the circuit court shall call a special an election not less than 50 nor more than 60 days from on the Tuesday of the 6th week commencing after the date of the certificate. The special election for recall of more than one official may be held on the same day. If Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday.

SECTION 10. 9.10 (4) (b) of the statutes is repealed.

SECTION 11. 9.10 (4) (e) to (h) and (5) (title) of the statutes are created to read:

9.10 (4) (e) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the date of the certificate. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers or declarations of candidacy not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.

(f) If more than 2 persons compete for an office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if the incumbent receives a majority of the total number of votes cast in the recall primary, the incumbent shall be retained in office for the remainder of the term and a recall election shall not be held.

Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.

(g) If a recall primary is required, the date specified under par. (d) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(h) All candidates for any town or village office, other than the official against whom the recall petition is filed, shall file nomination papers, regardless of the method of nomination of candidates for town or village office under s. 8.05.

(5) (title) VOTING METHOD; ELECTION RESULTS.

SECTION 12. 9.10 (5) of the statutes is renumbered 9.10 (5) (b) and amended to read:

9.10 (5) (b) The official against whom a recall petition has been filed shall continue to perform the duties of his or her office until ~~the result of the special election is officially declared a certificate of election is issued to his or her successor.~~ The person receiving the highest number a plurality of votes at the special recall election or a majority of votes at a primary when authorized under sub. (3) (d) or (4) (f) shall be declared elected for the remainder of the term. If the incumbent receives the highest required number of votes he or she shall continue in office. ~~If Except as provided in sub. (4) (f), if another person receives the highest required number of votes he that person shall succeed the incumbent if he or she qualifies within 10 days after receiving notification a certificate of election.~~

SECTION 13. 9.10 (5) (a) of the statutes is created to read:

9.10 (5) (a) The recall primary or election of more than one official may be held on the same day. If more than one official of the same office designation elected at large for the same term from the same district or territory is the subject of a recall petition, the names of all candidates for the office shall appear jointly with instructions to electors to vote for the number of positions contested.

SECTION 14. 9.10 (6) of the statutes is amended to read:

9.10 (6) (title) LIMITATION ON RECALL ELECTIONS. After one recall petition and special recall election, no further recall petition ~~shall may~~ be filed against the same official during the term for which he or she was elected.

SECTION 15. 9.10 (7) (title) of the statutes is created to read:

9.10 (7) (title) PURPOSE.

SECTION 16. 11.01 (16) (intro.) and (a) 1 of the statutes are amended to read:

11.01 (16) (intro.) An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, or for the purpose of influencing the outcome of any referendum. In the case of a candidate, or a committee or group which is organized primarily for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, or for the purpose of influencing the outcome of any referendum, all administrative and overhead expenses for the maintenance of an office or staff which are used principally for any such purpose are deemed to be for a political purpose.

(a) 1. The making of a communication which expressly advocates the election ~~of~~, defeat, recall or retention of a clearly identified candidate or the passage or defeat of a referendum.

SECTION 17. 11.02 (3m) of the statutes is created to read:

11.02 (3m) The “filing officer” for an individual who or committee which supports or opposes an effort to circulate and file a petition to recall an individual who holds an office is the filing officer for candidates for that office.

SECTION 18. 11.20 (4m) of the statutes is created to read:

11.20 (4m) An individual who or committee which supports or opposes an effort to circulate and file a petition to recall an officer shall file a report with the appropriate filing officer no later than 30 days after registration of the petitioner for recall of the officer under s. 9.10 (2) (d), if the petition has not been filed within 3 days of that date, and no later than 5 days after a petition is filed demanding the recall of the officer.

SECTION 19. 11.20 (8) (intro.) of the statutes is amended to read:

11.20 (8) (intro.) Reports filed under subs. (3) ~~and~~, (4) ~~and~~ (4m) shall include all contributions received and transactions made as of the end of:

SECTION 20. 11.20 (8) (d) of the statutes is created to read:

11.20 (8) (d) Five days preceding the deadline for filing of the report in the case of the report required under sub. (4m).

SECTION 21. 11.30 (2) (em) of the statutes is created to read:

11.30 (2) (em) The source of each printed advertisement, billboard, handbill, paid television or radio advertisement or other communication made for the purpose of influencing the recall from or retention in office of an individual holding a state or local office shall clearly appear thereon in the manner prescribed in pars. (b) and (c).

SECTION 22. 12.13 (3) (a) of the statutes is amended to read:

12.13 (3) (a) Falsely make, make an oath to or fraudulently deface or destroy a certificate of nomination ~~or~~, nomination paper or recall petition; or file or receive for filing a certificate of nomination ~~or~~, nomination paper or recall petition knowing any part is falsely made.

SECTION 23. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

| A | B | C |
|------------------|----------------------|----------------------|
| Statute Sections | Old Cross-References | New Cross-References |
| 808.04 (2)(a) | 9.10 (4)(a) | 9.10 (4)(c) |

SECTION 24. **Initial applicability.** This act first applies to petitions for the recall of officers initially circulated on the 30th day commencing after the effective date of this act.
