

1999 DRAFTING REQUEST

Bill

Received: 01/06/2000

Received By: rmarchan

Wanted: Soon

Identical to LRB:

For: Joanne Huelsman (608) 266-2635

By/Representing: ray

This file may be shown to any legislator: NO

Drafter: rmarchan

May Contact:

Alt. Drafters:

Subject: Elections - school elections
Elections - miscellaneous

Extra Copies: JTK
PRG

Pre Topic:

No specific pre topic given

Topic:

Recall elections for municipal and school district officers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 01/20/2000	chanaman 01/25/2000		_____			
/1	rmarchan 03/08/2000		hhagen 01/25/2000	_____	lrb_docadmin 01/25/2000	lrb_docadmin 03/08/2000	

FE Sent For:

<END>

Not Needed

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1?	rmarchan	cm# /1 1/25	hw/25	hw/25 1/25			

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Mtg. w/ Rep on Sen. Helmen's office

- Require petition for recall to state
cause under ch. 17

- Have Ct review petition to see if allegations
of true = "cause";



State of Wisconsin
1999 - 2000 LEGISLATURE

1

LRB-4157

RJM & JTK:.....

5000

CMR

PMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen. cat.

1 AN ACT ^(a) relating to: establishing a requirement that ^{gr} petitions for the recall
2 of a city, village, town or school district officer include a statement of the
3 grounds that constitute cause for the recall.

in addition to other requirements,

Analysis by the Legislative Reference Bureau

Under current law, a petition for the recall of a city, village, town or school district officer must state a reason for the recall that is related to the official responsibilities of the officer. Generally if a recall petition satisfies this requirement, is signed by a sufficient number of city, village, town or school district electors and is properly filed, a recall election must be held. Current law also provides for the removal of elected village, town and school district officers and certain elected city officers, for cause, after notice and a hearing. Under current law, inefficiency, neglect of duty, official misconduct or malfeasance in office constitute cause for removal from office.

This bill requires a petition for the recall of a city, village, town or school district officer to contain a statement of the grounds that constitute ^{each} cause for the recall. Under the bill, "cause" has the same meaning as under the current provisions dealing with removal from office. Upon finding that a petition is valid on its face, the body to which a petition has been submitted must file the petition with the circuit court. The court must then determine, after a hearing, whether the grounds stated in the petition, if true, would constitute cause for the recall. If the court determines that the grounds, if true, would constitute cause for the recall, then the court must issue

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:

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

each cause for the recall and

2 9.10 (2) (b) A recall petition for requesting the recall of a city, village, town or
3 school district officer shall contain a statement of a reason for the recall which
4 is related to the official responsibilities of the official for whom removal is sought
5 the grounds that constitute ^{each} cause ~~for the recall~~. In this paragraph, "cause" has the
6 meaning given in s. 17.16 (2).

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

8 9.10 (2) (d) No petition may be offered for filing for the recall of an officer unless
9 the petitioner first files a registration statement under s. 11.05 (1) or (2) with the
10 filing officer with whom the petition is filed. The petitioner shall append to the
11 registration a statement indicating his or her intent to circulate a recall petition, the
12 name of the officer for whom recall is sought and, in the case of a petition for the recall
13 of a city, village, town or school district officer, a statement of a reason for the recall
14 which is related to the official responsibilities of the official for whom removal is
15 sought ^{each cause, as defined in par. (b), for the recall and} the grounds that constitute ^{each} cause ~~as defined in sub. (2) (b) for the recall~~. No
16 petitioner may circulate a petition for the recall of an officer prior to completing
17 registration. The last date that a petition for the recall of a state, congressional,
18 legislative, judicial or county officer may be offered for filing is 5 p.m. on the 60th day
19 commencing after registration. The last date that a petition for the recall of a city,
20 village, town or school district officer may be offered for filing is 5 p.m. on the 30th
21 day commencing after registration. After the recall petition has been offered for

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

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

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

SECTION 3

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

(END)

5

4

INSERT
4-4

DWSZAT 4-4

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) the petition, ^{under par. (a)} the circuit court shall determine, after hearing, whether the petition states grounds ^{that, if true,} which constitute cause, as defined in sub. (2) (b), ^{the} for 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, ^{as defined in sub. (2) (b),} if true, ^{the} constitute cause for 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, ^{that} except in cities over 500,000 population, ~~the~~ 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 ^{the} determines that the grounds stated in the petition, if true, do not constitute cause for recall, the court shall not issue the certificate.

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

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1 precedence by law. The appeal shall stay the holding of a recall primary and election
2 under a certificate issued by the circuit court ^{under par. (b)} until the court of appeals determines
3 the validity of the certificate, but other acts required to be undertaken ~~preparatory~~ ^{to prepare for}
4 the primary and election shall proceed during the pendency of the appeal.

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

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

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

12 808.04 (2) An appeal under s. 9.10 (4) (c), 227.60 or 799.445 shall be initiated
13 within 15 days after entry of ^{the} judgment or order appealed from.

14 SECTION 7. Initial applicability.

15 (1) This act first applies with respect to petitions for recall ^{that} ~~which~~ are offered
16 for filing on the effective date of this subsection.

17 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 01/25/2000

To: Senator Huelsman

Relating to LRB drafting number: LRB-4157

Topic

Recall elections for municipal and school district officers

Subject(s)

Elections - school elections, Elections - miscellaneous

1. JACKET the draft for introduction _____

in the Senate or the Assembly _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain FISCAL ESTIMATE NOW, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert J. Marchant, Legislative Attorney
Telephone: (608) 261-4454