

## 2005 ASSEMBLY BILL 393

April 27, 2005 – Introduced by Representatives OTT, BIES, GOTTLIEB, LOTHIAN, AINSWORTH, MUSSER, OWENS, BOYLE, TOWNS, KRAWCZYK, SHERMAN, TOWNSEND, HAHN, JESKEWITZ, HINES, LOEFFELHOLZ, KESTELL, MEYER and ALBERS, cosponsored by Senators A. LASEE, ROESSLER, HARS DORF and BRESKE. Referred to Committee on Campaigns and Elections.

1     **AN ACT** *to amend* 9.10 (2) (b), 9.10 (2) (d), 9.10 (4) (a), 9.10 (4) (d) and 808.04 (2);  
 2             and *to create* 9.10 (4) (b) and (c) of the statutes; **relating to:** establishing a  
 3             requirement that a petition for the recall of a city, village, town, or school  
 4             district officer include a statement of the grounds that constitute cause for the  
 5             recall.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a petition for the recall of a city, village, town, or school district officer, in addition to other requirements, must state a reason for the recall that is related to the official responsibilities of the officer. Current law also provides for the removal of elective village, town, and school district officers and certain elective 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 governing removal from office. The bill provides that, 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

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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.

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***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:

2           9.10 (2) (b) A recall petition for requesting the recall of a city, village, town or  
3 school district office 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 each cause for the recall and the grounds that constitute each cause. In this  
6 paragraph, “cause” has the meaning given in s. 17.001.

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  
16 each cause. No petitioner may circulate a petition for the recall of an officer prior to  
17 completing registration. The last date that a petition for the recall of a state,  
18 congressional, legislative, judicial or county officer may be offered for filing is 5 p.m.  
19 on the 60th day commencing after registration. The last date that a petition for the  
20 recall of a city, village, town or school district officer may be offered for filing is 5 p.m.

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1 on the 30th day commencing after registration. After the recall petition has been  
2 offered for filing, no name may be added or removed. No signature may be counted  
3 unless the date of the signature is within the period provided in this paragraph.

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

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

**ASSEMBLY BILL 393****SECTION 3**

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

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

7 **9.10 (4) (b)** Within 10 days after receipt of a petition under par. (a), the circuit  
8 court shall determine, after hearing, whether the petition states grounds that, if  
9 true, constitute cause, as defined in sub. (2) (b), for the recall. The clerk of court shall  
10 notify the official for whom removal is sought of the hearing date. The official and  
11 the person who offers the petition for filing may appear by counsel and the court may  
12 take testimony with respect to the petition. If the circuit court determines that the  
13 grounds stated in the petition, if true, constitute cause, as defined in sub. (2) (b), for  
14 the recall, the court shall issue a certificate directing that an election be held under  
15 this section. If the petition concerns a city, village, or town office, the court shall  
16 transmit the petition and certificate to the governing body of the city, village, or town,  
17 except that in cities over 500,000 population the court shall transmit the petition and  
18 certificate to the board of election commissioners. If the petition concerns a school  
19 district office, the court shall transmit the petition and certificate to the school board.  
20 Upon receiving a petition and certificate, the governing body, board of election  
21 commissioners, or school board shall file the petition and certificate in its office. If  
22 the court determines that the grounds stated in the petition, if true, do not constitute  
23 cause for the recall, the court shall not issue the certificate.

24 (c) Any party aggrieved by a circuit court determination under par. (b) may  
25 appeal to the court of appeals within the time period specified in s. 808.04 (2). An

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1 appeal under this paragraph shall be given precedence over other matters not  
2 accorded similar precedence by law. The appeal shall stay the holding of a recall  
3 primary and election under a certificate issued by the circuit court under par. (b)  
4 until the court of appeals determines the validity of the certificate, but other acts  
5 required to be undertaken to prepare for the primary and election shall proceed  
6 during the pendency of the appeal.

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

8 9.10 (4) (d) Promptly upon receipt of a certificate from the circuit court under  
9 par. ~~(a)~~ (b), the governing body, school board, or board of election commissioners shall  
10 call a recall election. The recall election shall be held on the Tuesday of the 6th week  
11 commencing after the date on which the certificate is filed, except that if Tuesday is  
12 a legal holiday the recall election shall be held on the first day after Tuesday which  
13 is not a legal holiday.

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

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

17 **SECTION 7. Initial applicability.**

18 (1) This act first applies with respect to petitions for recall that are offered for  
19 filing on the effective date of this subsection.

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(END)