

CHAPTER 9

POST ELECTION ACTIONS; DIRECT LEGISLATION

9.01 Recount.
9.10 Recall

9.20 Direct legislation.

9.01 Recount. (1) PETITION; FEES; GENERAL PROCEDURES. (a) Any candidate voted for at any election or any elector who voted upon any referendum question at any election may request a recount. The petitioner shall file a verified petition or petitions accompanied by the fee prescribed in par. (ag), if any, with the proper clerk or body under par. (ar) not earlier than the time of completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the municipal or county board of canvassers determining the election for that office or on that referendum question or, if more than one board of canvassers makes the determination not later than 5 p.m. on the 3rd business day following the last meeting day of the last board of canvassers which makes a determination. If the board of state canvassers makes the determination for the office or the referendum question, the petitioner shall file the petition not earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and not later than 5 p.m. on the 3rd business day following the day on which the elections board receives the last statement from a county board of canvassers for the election or referendum. Each verified petition shall state that at the election the petitioner was a candidate for the office in question or that he or she voted on the referendum question in issue; that the petitioner is informed and believes that a mistake or fraud has been committed in a specified ward or municipality in the counting and return of the votes cast for the office or upon the question; or shall specify any other defect, irregularity or illegality in the conduct of the election. The petition shall specify each ward, or each municipality where no wards exist, in which a recount is desired. If a recount is requested for all wards within a jurisdiction, each ward need not be specified. The petition may be amended to include information discovered as a result of the investigation of the board of canvassers after the filing of the petition, if the petitioner moves to amend the petition as

soon as possible after the petitioner discovered or reasonably should have discovered the information which is the subject of the amendment and the petitioner was unable to include information in the original petition.

(ag) 1. Each petition for a recount shall be accompanied by the fee prescribed in this paragraph. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is less than 10 if 1,000 or less votes are cast or less than .5% of the total votes cast for the office or on the question if more than 1,000 votes are cast, the petitioner is not required to pay a fee.

2. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is at least 10 if 1,000 or less votes are cast or at least .5% if more than 1,000 votes are cast, the petitioner shall pay a fee of \$5 for each ward for which the petition requests a ballot recount, or \$5 for each municipality where no wards exist.

3. All fees shall be prepaid in cash or another form of payment which is acceptable to the officer to whom they are paid. No petition for which a fee is required is valid unless the proper fee is paid at the time of filing.

4. The board shall deposit all moneys received by it into the account under s. 20.510 (1) (g), and shall pay the fees required for each recount to the county clerks of the counties in which the recount is to be held. The county clerk shall deposit fees received by him or her with the county treasurer. The municipal clerk shall deposit fees received by him or her with the municipal treasurer.

5. In this paragraph, the "leading candidate" includes every individual whose vote total at the time of the filing of the recount petition would entitle the individual to election or nomination to office.

(ar) 1. In the event of a recount for any office, the petition shall be filed with the clerk or body

POST ELECTION ACTIONS; DIRECT LEGISLATION 9.01

with whom nomination papers are filed for that office.

2. In the event of a recount for a referendum, the petition shall be filed with the clerk of the jurisdiction in which the referendum is called, and in the case of the state with the county clerk of each county any part of which is petitioned to be recounted, except in the case of a request for a statewide recount, the petition shall be filed only with the elections board.

3. Upon receipt of a valid petition, the clerk shall thereupon notify the proper board of canvassers. Upon receipt of a valid petition by the elections board, the board shall promptly by certified mail or other expeditious means order the proper boards of canvassers to commence the recount. Returns from a recount ordered by the elections board shall be transmitted to the office of the board as soon as possible, but in no case later than 13 days from the date of the order of the board directing the recount. The board of state canvassers may not make a determination in any election if a recount is pending before any county board of canvassers in that election. The board of state canvassers need not recount actual ballots, but shall verify the returns of the county boards of canvassers in making its determinations.

(b) The proper board of canvassers shall reconvene at 9 a. m. on the day following the last day for filing of a petition and proceed to recount the ballots in all wards specified and otherwise check the fact allegations of the petition or petitions. The recount shall proceed for each ward as follows:

1. The board of canvassers shall first compare the registration or poll lists and determine the number of voting electors.

2. The board of canvassers shall then examine the absentee ballot envelopes. Any defective absentee ballot envelopes shall be laid aside, properly marked and carefully preserved. The number of voters shall be reduced by the number of ballot envelopes set aside under this subdivision. An absentee ballot envelope is defective only if it is neither sworn nor witnessed, if it is not signed by the voter or if the affidavit supporting the absentee ballot envelope has such a number of technical errors that the board of canvassers is doubtful of the legal effect of the affidavit.

3. They shall then examine the container or bag containing the ballots to be certain it has not been tampered with, opened, or opened and resealed. Any irregularities or possible tampering with the container or bag shall be noted.

4. When the container or bag has been checked, it shall be opened and the contents removed. The board of canvassers shall, with-

out examination other than is necessary to determine that each is a single ballot, count the number of ballots therein, excluding ballots removed under s. 7.51 (1) (ar). Then, for each opened absentee ballot envelope that was laid aside as defective under subd. 2, the board of canvassers shall, without inspection, randomly draw one absentee ballot from the container or bag. In differentiating absentee ballots from other ballots, the board of canvassers shall presume that a ballot initialed only by the municipal clerk, the executive secretary of the board of elections commissioners or a deputy clerk or secretary is an absentee ballot. If there are more defective absentee ballot envelopes than there are probable absentee ballots, all of the probable absentee ballots shall be removed from the container or bag. Additional ballots shall be removed only if the number of remaining ballots still exceeds the number of voting electors recorded under subd. 1, reduced by the number of defective envelopes set aside under subd. 2. If the number of ballots still exceeds the number of voters, the board of canvassers shall place all ballots face up to check for blank ballots. Any blank ballots shall be so marked, laid aside and carefully preserved. If the number of ballots still exceeds the number of voters reduced by the number of defective envelopes set aside under subd. 2, the board of canvassers shall place all ballots face down to check the initials. Any ballot not properly initialed by 2 inspectors or any absentee ballot not properly initialed by the municipal clerk shall be temporarily laid aside and the board of canvassers shall, without inspection, randomly draw from these ballots as many as are necessary to reduce the number of ballots to equal the number of voters. Any ballots removed for lack of initials shall be so marked, laid aside and carefully preserved. If the number of ballots still exceeds the number of voters reduced by the number of defective envelopes set aside under subd. 2, the remaining ballots shall be returned to the container or bag and the board of canvassers shall draw a number of ballots equal to the excess number of ballots by chance and without inspection from the container or bag. These ballots shall be specially marked as having been removed by the canvassers on recount due to an excess number of ballots and carefully preserved.

5. When the number of ballots and voters agree, or after noting that the number of voters exceeds the number of ballots, the board of canvassers shall return all ballots to be counted to the ballot box and shall turn the ballot box in such manner as to thoroughly mix the ballots. The recanvass shall then begin.

9.01 POST ELECTION ACTIONS; DIRECT LEGISLATION

170

5m. Except as otherwise provided in this section, the recanvass shall be conducted in accordance with s. 7.51.

6. In recanvassing a voting machine in which the record of the votes cast is contained in the machine, the board of canvassers shall make a record of the number of the seal, if any, the number of the protective counter or other device, if one is provided, and shall open the recording compartment of the machine, and without unlocking the machine against voting, shall recanvass the votes thereon. If the machine is an electronic voting machine utilizing a detachable record of votes cast, the record shall be retabulated under s. 5.90.

7. When a machine is recounted, the board of canvassers shall proceed to inspect and examine the machine showing the votes cast for each office or referendum specified in the petition, and shall make a record of the votes for that office or referendum as shown on that voting machine, which they shall certify as correct, in the presence of at least one witness.

8. If, upon the recanvass, it is found that the original canvass of the returns has been correctly made from a voting machine, and that the discrepancy still remains unaccounted for, the board of canvassers shall publicly unlock the voting and counting mechanism of the machine, and shall proceed to examine and test the machine to determine the cause of the discrepancy in returns from the machine. A similar test shall be performed for electronic voting machines to ascertain whether there is any malfunction in the machine. After the completion of the examination and test, the board of canvassers shall prepare a statement giving the results of the examination and test. The statement shall be witnessed by at least one witness.

8m. Where a voting machine or electronic voting system is used, and an error in the vote total as shown on the machine or record of votes cast is clearly apparent, the board of canvassers may change the vote total as shown by the machine or system and certify or use a different total to certify a different result than is indicated by the machine or system if there is evidence of a specific malfunction in the machine or system, if the malfunction could reasonably have caused the error, and if extrinsic evidence exists which indicates beyond a reasonable doubt the exact actual total number of votes cast. The burden of demonstrating that a vote total shown on a machine or record of votes cast is incorrect rests with the party seeking to change the recorded result on the basis of clear and convincing evidence.

9. If, upon the recanvass, it appears that the original canvass of the returns by the election officials was incorrect, the statements and de-

terminations of the board of canvassers shall be corrected accordingly.

10. Recounts at polling places utilizing an electronic voting system in which ballots are distributed to electors shall be performed in accordance with the procedure for recounting paper ballots insofar as applicable, except as provided in s. 5.90. Recounts at polling places utilizing electronic voting machines shall be performed in accordance with the procedure for recounting votes cast on mechanical voting machines, insofar as applicable, except as provided in s. 5.90.

11. All steps of the recount shall be performed publicly and all materials and ballots may be viewed and identified by the candidates, the person demanding the recount and their authorized representatives and counsel, but only members of the board of canvassers and tabulators assisting them are allowed to touch any of the materials or ballots. Any errors shall be corrected.

(2) NOTICE TO CANDIDATES. When the recount concerns a candidate, notification of the intent to file a petition shall first be sent by the petitioner by registered mail or served by the petitioner in the manner provided for service of a summons in civil actions in circuit court on each opposing candidate at the address given on the candidate's nomination papers. In recount proceedings for a partisan primary, the notice to the candidates shall be served on opposing candidates for the same party nomination and on opposing candidates of other parties and independent candidates qualifying to have their names placed on the ballot for the succeeding election. The petition and the affidavit of service upon each opposing candidate shall be filed with the proper clerk or agency.

(3) REPRESENTATION AND OBSERVATION. The petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel to observe the proceedings.

(4) RIGHT TO COMPLETE RECOUNT. Whenever a recount petition for part of the wards within a jurisdiction or district, or for part of the municipalities within a district where there are no wards, is filed under this section, the opposing candidate, or any voter or other interested party including a municipality if on a referendum question, may similarly file a petition for recount in any or all of the remaining wards or municipalities in the jurisdiction or district. The petition shall be filed not later than 5 p.m. 2 days after the board of canvassers completes the first recount. The proper board of canvassers shall reconvene at 9 a.m. on the next business day following the filing of the petition and

proceed to recount the ballots in all wards or municipalities specified and to otherwise review the allegations of fact contained in the petition. Any errors shall be corrected.

(5) OATHS; MINUTES; WITNESS FEES; TABULATORS; TIMING; PUBLICATION. (a) The board of canvassers shall keep complete minutes of all its proceedings. The minutes shall include a record of objections and offers of evidence. If the board of canvassers receives exhibits from any party, it shall number and preserve the exhibits. The board of canvassers shall make specific findings of fact with respect to any irregularity raised in the petition or discovered during the recount. Any member of the board of canvassers may administer oaths, certify official acts and issue subpoenas for purposes of this section. Witness fees shall be paid by the county. In the case of the board of state canvassers, witness fees shall be paid by the elections board.

(b) The board of canvassers conducting a recount may select and employ tabulators to assist it in its duties. Tabulators shall perform their duties under the direction of the board of canvassers. Only the members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. Compensation of tabulators shall be determined under s. 7.03.

(c) If the recount is made by a municipal or county board of canvassers and the result is required to be reported to a county board of canvassers or to the board of state canvassers, the board of canvassers making the initial recount shall immediately certify the results to the county board of canvassers or board of state canvassers. If a county board of canvassers receives such results, it shall convene not later than 9 a.m. on the next business day following receipt to examine the returns and determine the results. If the board of state canvassers receives such results, it shall convene not later than 9 a.m. on the 3rd business day following receipt to examine the returns and determine the results, but if that day is earlier than the latest meeting day permitted for that election under s. 7.70 (3) (a), the board of state canvassers may convene not later than the day specified in s. 7.70 (3) (a).

(d) Whenever publication of an original determination is required, the county or municipal clerk shall publish the recount determination in the same manner.

(6) APPEAL TO CIRCUIT COURT. (a) Within 5 days after completion of the recount determination by the board of canvassers in all counties concerned, or within 5 days after completion of the recount determination by the board of state canvassers whenever a determination is made by that body, any candidate, or any elector

when for a referendum, aggrieved by the recount may appeal to circuit court. The appeal shall commence by serving a written notice of appeal on the other candidates and persons who filed a written notice of appearance before each board of canvassers whose decision is appealed, or in the case of a statewide recount, before the board of state canvassers. The notice shall be served in person upon each candidate's representative before the board of canvassers, if any, and shall be served upon candidates and other persons by certified mail or in person. The appellant shall file the notice with the clerk of circuit court together with an undertaking and surety in the amount approved by the court, conditioned upon the payment of all costs taxed against the appellant.

(b) If an appeal is filed from a recount determination in an election which is held in more than one judicial circuit, the chief judge of the judicial administrative district in which the election is held shall appoint a circuit judge, who shall be a reserve judge if available, to consolidate all cases relating to the matter and hear the appeal. If the election is held in more than one judicial administrative district, the chief justice of the supreme court shall make the appointment.

(7) COURT PROCEDURES; COSTS. (a) The court with whom an appeal is filed shall forthwith issue an order directing each affected county or municipal clerk or board to transmit immediately all ballots, papers and records affecting the appeal to the clerk of court or to impound and secure such ballots, papers and records, or both. The order shall fix a place and a time for the hearing within 5 days of the order either in open court, at chambers or before a referee. The order shall be served upon each affected county or municipal clerk or board and all other candidates and persons who filed a written notice of appearance before any board of canvassers involved in the recount. A reference may be ordered upon any question. At the assigned time and place, the matter shall be summarily heard and determined and costs taxed as in other civil actions.

(b) The appeal shall be heard by a judge without a jury. Within 10 days after an appeal is filed, the appellant shall file a complaint enumerating with specificity every alleged irregularity, defect, mistake or fraud committed during the recount. The court shall promptly require an answer from the other parties to the appeal. The court shall hold a hearing on the matter within 15 days of the date that the answer is filed. Those provisions of chs. 801 to 806 which are inconsistent with a prompt and expeditious hearing do not apply to appeals under this section.

(8) **SCOPE OF REVIEW.** Unless the court finds a ground for setting aside or modifying the determination of the board of canvassers, it shall affirm the determination. The court shall separately treat disputed issues of procedure, interpretations of law and findings of fact. The court may not receive evidence not offered to the board of canvassers except for evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount, and except that the court may receive evidence not offered at an earlier time because a party was not represented by counsel in all or part of a recount proceeding. A party who fails to object or fails to offer evidence of a defect or irregularity during the recount waives the right to object or offer evidence before the court except in the case of evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount or evidence received by the court due to unavailability of counsel during the recount. The court shall set aside or modify the determination if it finds that the board of canvassers has erroneously interpreted a provision of law and a correct interpretation compels a particular action. If the determination depends on any fact found by the board of canvassers, the court may not substitute its judgment for that of the board of canvassers as to the weight of the evidence on any disputed finding of fact. The court shall set aside the determination if it finds that the determination depends on any finding of fact that is not supported by substantial evidence.

(9) **APEAL TO COURT OF APPEALS.** (a) Within 30 days after entry of the order of the circuit court, a party aggrieved by the order may appeal to the court of appeals.

(b) If an appeal is filed in respect to an election which is held in more than one court of appeals district, the chief justice of the supreme court shall designate one district to consolidate the cases and hear the appeal, except that if an appeal is filed in respect to an election for statewide office or a statewide referendum, the appeal shall be heard by the 4th district court of appeals.

(c) The court of appeals shall give precedence to the appeal over other matters not accorded similar precedence by law.

(10) **STANDARD FORMS AND METHODS.** The elections board shall prescribe standard forms and procedures for the making of recounts under this section.

(11) **EXCLUSIVE REMEDY.** This section constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.

History: 1971 c. 251; 1971 c. 304 s. 29 (2); 1971 c. 336; 1973 c. 313; 1973 c. 334 ss. 23 to 26, 57; 1975 c. 41, 422; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 200; 1979 c. 260 ss. 66 to 68, 93; 1979 c. 311, 355; 1983 a. 183; 1983 a. 484 s. 172 (3); 1983 a. 538.

Challenge of compliance with procedures for absent voting is within board's jurisdiction. Absent connivance, fraud or undue influence, substantial compliance with statutory voting procedures is sufficient. Appeal From Recount in Election Contest, 105 W (2d) 468, 313 NW (2d) 869 (Ct. App. 1981).

9.10 Recall. (1) 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 nomination papers or declarations of candidacy for the office are filed demanding the recall of the officeholder.

(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.

(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:

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 subds. 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) **PETITION REQUIREMENTS.** (a) 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 petition shall be governed by s. 8.15.

(b) A recall petition for a city, village, town or school district office shall contain the grounds which constitute the cause and the

POST ELECTION ACTIONS; DIRECT LEGISLATION 9.10

cause upon which removal is sought. In this paragraph, "cause" has the meaning given under s. 17.16 (2).

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

(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 may be added or removed. No signature may be counted unless the date of the signature is within the 60-day period provided in this paragraph.

(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.

(3) STATE, COUNTY, CONGRESSIONAL, LEGISLATIVE AND JUDICIAL OFFICES. (a) This subsection 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 recall election to be held 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 recall election without nomination unless the official resigns within 10 days after the original filing of the petition. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers 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.

(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) CITY, VILLAGE, TOWN AND SCHOOL DISTRICT OFFICES. (a) For the recall of any city, village, town or school district official, the municipal clerk shall determine by careful examination the sufficiency of the petition 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, 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.

(b) The circuit court within 10 days after receipt of the petition shall determine by hearing whether the petition states cause for the recall as defined in s. 17.16 (2). The court has jurisdiction only to determine cause for recall. The clerk of 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 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 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 the time period specified in s. 808.04 (2). An appeal under this section 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 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 an election 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.

(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) VOING METHOD; ELECTION RESULTS. (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.

(b) The official against whom a recall petition has been filed shall continue to perform the duties of his or her office until a certificate of election is issued to his or her successor. The person receiving a plurality of votes at the 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 required number of votes he or she shall continue in office. Except as provided in sub. (4) (f), if another person receives the required number of votes that person shall succeed the incumbent if he or she qualifies within 10 days after receiving a certificate of election.

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

(7) PURPOSE. The purpose of this section is to facilitate the operation of article XIII, section 12, of the constitution and to extend the same rights to electors of cities, villages, towns and school districts.

History: 1977 c. 187 s. 134; 1977 c. 403, 447; 1979 c. 260; 1983 a. 219, 491, 538.

Reasons, to be good and sufficient, under (2) (a), must not only relate to the incumbent's official duties, involving actions which are proven to be politically unpopular with a significant percentage of the voters, but must be set forth in a petition with sufficient specificity to give notice to him so that he can respond to the electors. *Mueller v. Jensen*, 63 W (2d) 362, 217 NW (2d) 277.

Where the mayor at the hearing did not argue that the allegations were insufficient but sought to offer proof that they were untrue, the trial court properly refused to hear such testimony and correctly ruled that the matter was political and not judicial. *Beckstrom v. Kornsi*, 63 W (2d) 375, 217 NW (2d) 283.

This section applies to members of Congress. 68 Atty Gen 140.

9.20 Direct legislation. (1) A number of electors equal to at least 15% of the votes cast for governor at the last general election in their city may sign and file a petition with the city clerk requesting that an attached proposed ordinance or resolution, without alteration, either be adopted by the common council or referred to a vote of the electors. The individual filing the petition on behalf of the electors shall designate in writing an individual to be notified of any insufficiency or improper form under sub. (3).

(2) The preparation and form of the direct legislation petition shall be governed by s. 8.15.

(2m) After the petition has been offered for filing, no name may be erased or removed. No signature may be considered valid or counted unless the date is less than 60 days before the date offered for filing.

(3) Within 15 days after the petition is filed, the city clerk shall determine by careful examination whether the petition is sufficient and

whether the proposed ordinance or resolution is in proper form. The clerk shall state his or her findings in a signed and dated certificate attached to the petition. If the petition is found to be insufficient or the proposed ordinance or resolution is not in proper form, the certificate shall give the particulars, stating the insufficiency or improper form. The petition may be amended to correct any insufficiency or the proposed ordinance or resolution may be put in proper form within 10 days following the affixing of the original certificate and notification of the individual designated under sub. (1). When the original or amended petition is found to be sufficient and the original or amended ordinance or resolution is in proper form, the city clerk shall so state on the attached certificate and forward it to the common council immediately.

(4) The common council shall, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors at the next spring or general election, if the election is more than 6 weeks after the date of the council's action on the petition or the expiration of the 30-day period, whichever first occurs. If there are 6 weeks or less before the election, the ordinance or resolution shall be voted on at the next election thereafter. The council by a three-fourths vote of the members-elect may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election, but not more than one special election for direct legislation may be ordered in any 6-month period.

(5) The city clerk shall cause notice of the ordinance or resolution that is being submitted to a vote to be given as provided in s. 10.06 (3) (f).

(6) The ordinance or resolution need not be printed in its entirety on the ballot, but a concise statement of its nature shall be printed together with a question permitting the elector to indicate approval or disapproval of its adoption.

(7) If a majority vote in favor of adoption, the proposed ordinance or resolution shall take effect upon publication under sub. (5). Publication shall be made within 10 days after the election.

(8) City ordinances or resolutions adopted under this section shall not be subject to the veto power of the mayor and shall not be repealed or amended within 2 years of adoption except by a vote of the electors. The common council may submit a proposition to repeal or amend the ordinance or resolution at any election.

History: 1977 c. 102; 1983 a. 484.

This section does not apply to villages. State ex rel. Poole v. Menomonee Falls, 55 W (2d) 555, 200 NW (2d) 580.

This section implements legislative powers reserved by the people. Subject to certain conditions, common council has no authority to make initial judgment of the constitutionality or validity of proposed direct legislation. State ex rel. Alt-house v. Madison, 79 W (2d) 97, 255 NW (2d) 449.

Proposal that is administrative, rather than legislative in character, is not proper subject of initiative proceedings. State ex rel. Becker v. Common Council, 101 W (2d) 680, 305 NW (2d) 178 (Ct. App. 1981)

City clerk has mandatory duty to forward to common council a sufficient petition and ordinance in proper form. State ex rel. North v. Goetz, 116 W (2d) 239, 342 NW (2d) 747 (Ct. App. 1983).