
HOUSE BILL No. 1098

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-8-7; IC 36-8-3.5-7.

Synopsis: Recall of elected and appointed officials. Establishes a procedure for the recall of a person who holds a state, legislative, local, or school board office (other than a justice, judge, or prosecuting attorney) or who is appointed to an office of the state or a political subdivision. Requires that a recall petition must be signed by at least 10% of the registered voters in the jurisdiction served by the official (or a number of voters equal to at least 10% of the total number of votes cast in the last election for secretary of state if the official holds an elected state office). Removes an officeholder if: (1) at least 60% of the votes cast; or (2) a majority of the registered voters in the election district; vote for the recall. Specifies that a commissioner of a police and fire merit commission may be removed by the recall procedure under current law.

Effective: July 1, 2012.

Stevenson

January 9, 2012, read first time and referred to Committee on Elections and Apportionment.

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Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1098



A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-8-7 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]:

4 **Chapter 7. Recall From Office**

5 **Sec. 1. (a) This chapter applies to the following:**

6 **(1) A person who holds an elected office other than the**
7 **following:**

8 **(A) A federal office.**

9 **(B) A justice, judge, or prosecuting attorney subject to**
10 **removal under Article 7 of the Constitution of the State of**
11 **Indiana and IC 5-8-1.**

12 **(2) A person who holds an appointed office of the state or a**
13 **political subdivision.**

14 **(b) This chapter does not apply to an elector for President and**
15 **Vice President of the United States.**

16 **Sec. 2. The definitions in IC 3-5-2 and IC 36-1-2 apply to this**
17 **chapter.**



1 **Sec. 3. A person may be removed from office under Article 6,**
 2 **Section 8 of the Constitution of the State of Indiana by recall by the**
 3 **voters of:**

4 **(1) the election district, in the case of a person who holds an**
 5 **elected office; or**

6 **(2) the state or political subdivision, in the case of a person**
 7 **who holds an appointed office subject to this chapter.**

8 **Sec. 4. (a) The commission shall prescribe the following:**

9 **(1) The form for an application for a certified recall petition.**

10 **(2) The form for a certified recall petition.**

11 **(b) The forms described in subsection (a) must identify:**

12 **(1) the official who is subject to the petition; and**

13 **(2) the office the person holds.**

14 **Sec. 5. (a) Before circulating a recall petition or obtaining**
 15 **signatures, the sponsor of the recall petition must fulfill the**
 16 **requirements of this section.**

17 **(b) The sponsor of the recall petition must complete an**
 18 **application for a certified recall petition and file the completed**
 19 **application:**

20 **(1) with the circuit court clerk of the county in which the**
 21 **official subject to the petition resides; or**

22 **(2) with the office of the secretary of state if the official**
 23 **subject to the petition holds an elected state office.**

24 **(c) The sponsor of the recall petition must obtain from the**
 25 **officer with whom the application was filed the form for a certified**
 26 **recall petition, with the date the application was filed noted on the**
 27 **petition.**

28 **Sec. 6. The sponsor of a recall petition may make duplicate**
 29 **copies of the form obtained under section 5(c) of this chapter to**
 30 **obtain more signatures if no signatures were placed on the form**
 31 **before duplication.**

32 **Sec. 7. (a) To have a recall petition certified, the sponsor of the**
 33 **recall petition must fulfill the requirements of this section.**

34 **(b) Except as provided in subsection (c), the sponsor of the recall**
 35 **petition must obtain the signatures of at least ten percent (10%) of**
 36 **the registered voters of:**

37 **(1) the election district of the elected official who is subject to**
 38 **the recall; or**

39 **(2) the political subdivision served by the appointed official**
 40 **who is subject to the recall.**

41 **(c) If the official subject to the recall petition represents the**
 42 **entire state, the recall petition must comply with the following:**

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1 (1) The petition must be signed by a number of voters equal
 2 to not less than ten percent (10%) of the total number of votes
 3 cast at the last election for secretary of state.

4 (2) At least one percent (1%) of the minimum number of
 5 voters that must sign the petition under subdivision (1) must
 6 come from each of five (5) different counties, and not more
 7 than fifty percent (50%) of those signing the petition may
 8 come from any one (1) county.

9 (d) The sponsor of the recall petition must file the recall petition
 10 with the officer who received the sponsor's application for a
 11 certified recall petition under section 5 of this chapter not later
 12 than noon:

13 (1) one hundred twenty (120) days before a primary election;
 14 or

15 (2) June 30 before a general or municipal election.

16 Sec. 8. The officer who receives a recall petition under section
 17 7(d) of this chapter shall determine if the required number of
 18 registered voters has signed the petition by examining the
 19 registration records of the circuit court clerk or board of
 20 registration of each county in which the election district or political
 21 subdivision is located.

22 Sec. 9. Not later than noon thirty (30) days after a recall petition
 23 is filed under section 7(d) of this chapter, the circuit court clerk or
 24 secretary of state shall do one (1) of the following:

25 (1) Determine that the petition complies with section 7 of this
 26 chapter and certify the recall petition.

27 (2) Deny certification and require the petition's sponsor to
 28 make specific amendments to the petition to comply with
 29 section 7 of this chapter before granting certification.

30 Sec. 10. (a) If the officer who receives a recall petition under
 31 section 7(d) of this chapter denies certification of the recall petition
 32 under section 9 of this chapter, the officer shall notify the petition's
 33 sponsor immediately by certified mail.

34 (b) The petition's sponsor may file an amended recall petition
 35 not later than noon five (5) days after the sponsor receives the
 36 notice provided under subsection (a).

37 (c) If the amended recall petition satisfies the requirements of
 38 section 7 of this chapter, the officer who receives the amended
 39 recall petition shall certify the amended recall petition not later
 40 than noon seventy-four (74) days before a primary, general, or
 41 municipal election. A certified amended recall petition shall be
 42 treated as a certified petition for purposes of this chapter.

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1 (d) If the sponsor of the recall petition fails to file an amended
 2 petition, or the amended petition fails to satisfy the requirements
 3 of section 7 of this chapter, the officer who receives the recall
 4 petition or the amended recall petition may not certify an amended
 5 recall petition under section 9 of this chapter for the same official
 6 for at least twelve (12) months after the date the certification of the
 7 petition is denied.

8 Sec. 11. When the officer who receives a recall petition under
 9 section 7(d) of this chapter certifies the recall petition under section
 10 9 of this chapter, the officer shall certify this determination to:

11 (1) the commission, if the official subject to the recall holds a
 12 state or legislative office; or

13 (2) the county election board of the county where the recall
 14 petition was certified under section 9 of this chapter, if the
 15 person holds a local or school board office.

16 Sec. 12. (a) The commission or election board receiving a
 17 certification under section 11 of this chapter shall issue an order
 18 for a recall election to be held on the same day as the first primary,
 19 general, or municipal election scheduled to be held after the date
 20 an amended recall petition must be certified under section 10(c) of
 21 this chapter.

22 (b) The commission shall transmit to each county election board
 23 a copy of an order issued by the commission under subsection (a).

24 (c) If the official subject to the recall resigns from office and the
 25 resignation is effective not later than twelve (12) days after the
 26 recall petition is certified, the commission or election board is not
 27 required to order an election under this section.

28 (d) Unless the official subject to the recall resigns as provided
 29 under subsection (c), a recall election shall be held on the date
 30 specified by the commission or election board in the order issued
 31 under subsection (a).

32 Sec. 13. A recall election ordered under this chapter shall be
 33 held in:

34 (1) the election district of the elected official subject to the
 35 recall; or

36 (2) each precinct wholly or partially located in the political
 37 subdivision of the appointed person subject to the recall.

38 Sec. 14. Except as provided in this chapter, IC 3 governs a recall
 39 election under this chapter.

40 Sec. 15. The county election board of each county in which a
 41 recall election is conducted under this chapter shall place the
 42 following question on the ballot in the form provided by

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1 **IC 3-10-9-4:**

2 "Shall _____ (insert the name of the
3 official as the name appeared on the certified recall petition)
4 be recalled from the office of _____
5 (insert the title of the office as the title appeared on the
6 certified recall petition)?"

7 **Sec. 16. (a)** If the number of votes cast in the affirmative on the
8 question under section 15 of this chapter is equal to not less than
9 the number required under subsection (b), the person named in the
10 question is removed from office when the public question is
11 declared approved:

- 12 (1) under IC 3-12-4-9;
13 (2) under IC 3-12-5-2; or
14 (3) by the secretary of state if a person holding a state office
15 is subject to a recall election.

16 **(b)** In order to remove a person from office under this chapter,
17 either:

- 18 (1) not less than sixty percent (60%) of the votes must be cast
19 in the affirmative on the question under section 15 of this
20 chapter; or
21 (2) a majority (without regard to the percentage of votes cast)
22 of the registered voters in:
23 (A) the election district of an elected official named in the
24 question; or
25 (B) each precinct wholly or partially located in the political
26 subdivision of an appointed person named in the question;
27 must vote in the affirmative on the question under section 15
28 of this chapter.

29 **(c)** If the person named in the question resigns or is removed
30 from office under this chapter, the person may not be selected or
31 elected to fill the vacancy created by the resignation or removal,
32 regardless of any law to the contrary.

33 **Sec. 17.** If a majority of the votes cast on the question under
34 section 15 of this chapter are in the negative, the following apply
35 during the remainder of the term of office or appointment of the
36 official subject to the recall election:

- 37 (1) The official subject to the recall election may not be
38 subject to another recall election.
39 (2) The officer who received the recall petition may not certify
40 another recall petition for the recall of the official.

41 **Sec. 18.** An elected office vacancy resulting from a recall
42 election under this chapter shall be filled under IC 3-13.

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1 SECTION 2. IC 36-8-3.5-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) The term of a
3 commissioner is four (4) years. However, one (1) of the executive's
4 initial selections and one (1) of the department's initial selections are
5 for terms of two (2) years.

6 (b) A vacancy on the commission shall be filled within thirty (30)
7 days by the appointing or electing authority. The selection is for the
8 remainder of the unexpired term.

9 (c) A commissioner serves at the pleasure of the appointing or
10 electing authority and may be removed at any time. In the case of a
11 commissioner elected by the department, the safety board shall call a
12 meeting of the active members of the department under the procedures
13 specified in section 4 of this chapter if a recall petition signed by a
14 majority of the active members is submitted to the board. **A recall
15 petition submitted under this section is not subject to IC 5-8-7.**

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