

SECOND REGULAR SESSION

HOUSE BILL NO. 1747

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BASYE.

3295H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 162.091, RSMo, and to enact in lieu thereof two new sections relating to school boards, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 162.091, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 162.089 and 162.091, to read as follows:

162.089. 1. (1) Each member of any school board of any public school district shall be subject to recall from office by the registered voters of the school district such member was elected to represent. Such recall election shall be held upon the submission of a petition signed by registered voters of the district equal in number to at least ten percent of the number of voters who voted in the most recent election held to elect a district board member in such district.

(2) No proceedings shall be commenced against any member under this section if, at the time of commencement, such member:

(a) Has not held office during the member's term for more than ninety days;

(b) Has fewer than one hundred eighty days remaining in the member's term; or

(c) Has had a recall election determined in the member's favor during the member's current term of office.

2. (1) Proceedings may be commenced for the recall of any school board member by the filing of a notice of intention to circulate a recall petition under this section. The notice shall be filed with the election authority having jurisdiction over the school district under chapter 115. Each notice shall contain the following:

(a) The name and office of the board member sought to be recalled;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (b) A statement of grounds, not exceeding two hundred words in length, listing
19 the particular reasons for the proposed recall;

20 (c) A sworn statement of at least three proponents of the recall that they are
21 registered voters in the school district and that the information in the statement of
22 grounds is true, correct, and complete to the best of the knowledge and belief of the
23 proponent;

24 (d) The printed names and the business or residential addresses of the
25 proponents of the recall making the sworn statement under paragraph (c) of this
26 subdivision; and

27 (e) The notarized signature of each of the proponents of the recall making the
28 sworn statement under paragraph (c) of this subdivision.

29 (2) (a) The grounds for recall required to be stated in paragraph (b) of
30 subdivision (1) of this subsection may include, but shall not be limited to, the following:

31 a. Conduct that relates to and adversely affects the rights and interests of the
32 public;

33 b. Commission of an act or acts of malfeasance;

34 c. Moral turpitude as that phrase shall be taken in the plain or ordinary and
35 usual sense;

36 d. Violation of the member's oath of office;

37 e. Abuse of power or authority;

38 f. Misuse or misappropriation of public property or public moneys;

39 g. Conviction of a felony;

40 h. Willful violation of any code of ethics applicable to such member as provided
41 in the revised statutes of Missouri;

42 i. Violation of any school board policy of the school district in which the member
43 serves;

44 j. Breach of public trust;

45 k. Lack of responsiveness to concerns raised by the public or staff;

46 l. Promotion and implementation of measures that are counterproductive to the
47 best interests of the students and staff of the school district; or

48 m. Violation of any applicable provision of chapter 610; except that,
49 discretionary performance of a lawful act or a prescribed duty shall not constitute a
50 ground for recall.

51 (b) The election authority shall neither have nor assume the authority to
52 determine the validity of the grounds for recall.

53 (3) No notice of intention shall name more than one board member sought to be
54 recalled.

55 (4) (a) If the election authority finds that the notice of intention contains the
56 required information under this section, the election authority shall attach to the
57 affidavit a certification showing that the notice has been properly filed.

58 (b) Within three business days after the certification, the election authority shall
59 send notification of the filing of the notice by registered mail to the school district
60 administration, the school board, and the board member sought to be recalled.

61 (c) Within fourteen days after the receipt of the notice, the board member who is
62 the subject of the notice may file with the election authority a statement, not exceeding
63 two hundred words in length, in answer to the statement of the proponents. If an
64 answer is filed, the election authority shall make the answer available for public viewing
65 upon request at the election authority's office.

66 3. (1) After the election authority certifies the notice, the proponents of the
67 recall may begin circulating a petition for recall and collecting signatures on such
68 petition.

69 (a) Any person circulating a petition for recall shall be a registered voter in the
70 district of the board member sought to be recalled.

71 (b) Collection of signatures may begin after seven days have passed following the
72 election authority's certification with the date of the certification counted as the first
73 day. The election authority shall indicate the date on which collection of signatures may
74 begin in the certification of the notice. The number of signatures required to equal the
75 ten percent of voters necessary under subsection 1 of this section shall be determined by
76 the election authority.

77 (2) Each page of the petition for recall shall include:

78 (a) The name and office of the member for whom recall is sought;

79 (b) The grounds for recall described in particular, in no more than two hundred
80 words;

81 (c) A statement that the petition signatories are registered voters of the district
82 in which the member sought to be recalled serves; and

83 (d) Space for the date of the signing, the signer's printed name, the house
84 number and street name of each signer's residence, and each signer's signature.

85 (3) Each signer shall be a registered voter in the school district.

86 (4) Each signer shall provide the date of the signing, the signer's printed name,
87 the house number and street name of the signer's residence, and the signer's signature.

88 (5) Every person signing a petition shall do so in the presence of the person who
89 is circulating the petition and who will execute the affidavit of verification for each page
90 of the petition.

91 **4. (1) Within sixty days after the beginning date for the collection of signatures,**
92 **the completed petition with the required number of signatures shall be filed with the**
93 **election authority. The signatures to the petition need not all be attached to one paper,**
94 **but the person who files the petition with the election authority shall sign each page**
95 **attesting that the signatures attached are true and correct to the best of such person's**
96 **knowledge and belief. Such signature on each page of the petition shall be notarized.**

97 **(2) Within fifteen business days after the date of filing the signed petition, the**
98 **election authority shall examine the petition and determine whether the petition is**
99 **signed by the required number of registered voters. Signatures that cannot be verified**
100 **shall not be counted.**

101 **(3) (a) If the election authority finds the signed petition to be insufficient, the**
102 **election authority shall, within three business days after such determination, send**
103 **notification of the insufficiency by registered mail to the person who filed the signed**
104 **petition. The election authority shall specify the errors, omissions, or other problems**
105 **that cause the insufficiency.**

106 **(b) The signed petition shall be returned to the person who filed the signed**
107 **petition, without prejudice to the refiling of the petition or the filing of a new petition.**

108 **(c) The person who filed the signed petition shall have thirty days after the date**
109 **of notification of insufficiency to correct the insufficiencies and refile the petition. If the**
110 **petition is not corrected and refiled, the petition and all its signatures shall be void.**

111 **(4) If the election authority finds the signed petition to be sufficient, the election**
112 **authority shall attach to the petition a certificate showing the result of the examination.**
113 **The election authority shall, within three business days after the certification, send**
114 **notification of the sufficiency and certification by registered mail to the person who filed**
115 **the signed petition, the school district administration, the school board, and the board**
116 **member sought to be recalled.**

117 **5. (1) Upon receipt of the notification of the sufficiency of the petition and the**
118 **election authority's certification, the election authority shall order the question to be**
119 **submitted to the voters of the district on one of the following days:**

120 **(a) The next general election day;**

121 **(b) At a special election to be called on the first Tuesday after the first Monday in**
122 **November of odd-numbered years if that date is no fewer than ninety calendar days**
123 **after the date of notification; or**

124 **(c) At the next election in which the voters of the school district vote for any**
125 **school board member on the general municipal election day, if that date is no fewer than**
126 **ninety calendar days after the date of notification.**

(2) If no election will occur or can be called at the times described in this subsection before the term of the member who is the subject of the recall petition expires, no recall election shall be held and such member may serve the remainder of the member's term.

6. (1) The name of the member who is the subject of the recall shall appear on the ballot under the separate heading "(name of school district) Recall Election".

(2) The question on the ballot shall be in substantially the following form: "Shall school board member (name of member) be removed from the school board?".

(3) (a) If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to removing the member, the member shall remain in office and shall not be subject to another recall election during the remainder of the member's term.

(b) If a majority of the votes cast on the question by the qualified voters voting thereon in a November election are in favor of removing the member, a successor shall be chosen in the same manner as any vacancy on the district board is filled.

(c) If a majority of the votes cast on the question by the qualified voters voting thereon in an April election are in favor of removing the member and the number of candidates on the ballot is greater than the number of seats for expired board member terms, the successor shall be the candidate receiving the next highest number of votes after the seats for expired board member terms are filled. If the number of candidates is not greater than the number of seats of expired board member terms, a successor shall be chosen in the same manner as any vacancy on the district board is filled.

7. A school board member who has been recalled shall not fill the vacancy created by the recall, but such member may seek election to the school board at any election not held to fill the vacancy created by the member's recall.

8. Except as otherwise provided in this section, the provisions of chapter 115 governing the conduct of elections shall apply, if appropriate, to recall elections held under this section. The costs of the election shall be paid as provided in chapter 115.

162.091. 1. As used in this section, the term "public official" means any:

(1) County clerk[;];

(2) County treasurer[;];

(3) School board member, officer, or employee[;]; or

(4) Other officer[;].

2. Any public official who willfully neglects or refuses to perform any duty imposed upon ~~him~~ such public official by chapters 160 to 168[;] or chapter 170, 171, 177 ~~and~~, or 178, or who willfully violates any provision of ~~these~~ such chapters, is guilty of a

9 misdemeanor and on conviction shall be punished by a fine of not more than five hundred
10 dollars or by imprisonment in the county jail not to exceed one year.

11 **3. Any person aggrieved by the willful neglect or refusal of a public official to**
12 **perform any duty imposed upon such public official by chapters 160 to 168 or chapter**
13 **170, 171, 177, or 178 shall have a civil claim for damages against such public official for:**

14 **(1) Injunctive relief;**

15 **(2) Compensatory damages;**

16 **(3) Punitive damages;**

17 **(4) Costs of litigation including, but not limited to, expert witness fees; and**

18 **(5) Reasonable attorney's fees for the prosecution of the action.**

19 **4. Neither sovereign immunity nor official immunity shall be a defense in any**
20 **such civil action.**

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