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# Wisconsin Briefs

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## INITIATIVE, REFERENDUM, AND RECALL IN WISCONSIN

### INTRODUCTION

This brief summarizes the laws relating to the initiative, referendum, and recall in Wisconsin.

Unlike many states, Wisconsin does not have a statewide initiative process, but residents of cities and villages may initiate legislation by petition. In addition, statewide and local referenda are required in numerous circumstances. The state legislature or any city, village, or county may also enact a law or ordinance contingent upon approval at a referendum. The state legislature or these local governing bodies may, at their discretion, submit questions to the voters in the form of advisory referenda.

Citizens may use the recall process to remove almost any statewide or local government elective official. As with an initiative, the recall process is started via petition. If enough valid signatures are gathered, then an election is held to decide whether an elective official will remain in office or if not, who will replace the official for the remainder of the term.

### 1. INITIATIVE

The American system of government is based on representative democracy, in which the people elect individuals to make the laws under which we live. In contrast, the initiative is an example of direct democracy, in which the people may petition to require that a proposed law or resolution be put to a vote in a referendum election.

**Initiative in Cities and Villages.** Wisconsin law does not provide for a statewide initiative process. However, residents of cities and villages (but not counties, towns, school districts, or other local

government bodies) may submit petitions proposing legislation.

While Section 9.20, Wisconsin Statutes, is titled “Direct legislation,” the initiative process in Wisconsin cities and villages is actually an indirect form. A direct initiative process enables a measure to be placed directly on the ballot if a sufficient number of signatures are gathered on petitions, thus enabling citizens to bypass the legislative body completely and avoid any threat of an executive veto.

In contrast, under the indirect initiative process available to residents of Wisconsin cities and villages, electors may propose, via petition, that the city common council or village board pass a desired ordinance or resolution without amendment. In addition, s. 66.0101 (6) permits electors to initiate the enactment, amendment, or repeal of city or village charter ordinances, using the procedures provided in s. 9.20. In either case, if the council or board fails to enact the measure within 30 days, the question appears on a referendum ballot for the voters to decide the issue.

**Petition Requirements.** The initiative process begins with the circulation of petitions. Once begun, proponents have 60 days to gather a number of valid signatures of qualified city or village electors (generally, legal residents of voting age who are U.S. citizens) equal to at least 15% of the votes cast for governor in that municipality at the last gubernatorial election.

1989 Wisconsin Act 192 established a uniform petition format for all referenda, including city and village initiatives. Form GAB-172, “Petition for Direct Legislation,” is available on the Wisconsin Government

Accountability Board's (GAB) Web site at: <http://gab.wi.gov/forms/gab-172>.

Section 8.40 requires that the word "PETITION" must appear in boldface print at the top of each separate petition sheet. Those signing the petition must indicate their municipality of residence for voting purposes, their street address, and the date on which they signed.

A certification containing the signature and address of the person who circulated the petition must appear at the bottom of each petition page. It must state that:

- The petition circulator personally obtained each of the signatures.
- The circulator knows that each person who signed is a qualified elector of the municipality.
- Each signer did so with full knowledge of the content and purpose of the petition.
- The circulator knows that each signer indicated the correct residence address.
- Each signer signed on the date indicated.
- The circulator is a qualified elector of this state, or if not a qualified elector of this state, that the circulator is a U.S. citizen at least 18 years of age who, if he or she were a resident of this state, would not be disqualified from voting.
- The circulator is aware that the penalties for submitting a petition with a false certification are a fine of up to \$10,000 or imprisonment not to exceed three years and six months, or both.

Although it is not required by law, the GAB recommends that the complete text of the proposal (or a summary of it) be printed on or attached to each petition page.

**Initiative Timetable.** If enough signatures are gathered in the 60-day period, the petitions are filed with the municipal clerk. Within 15 days after receipt of the petitions, the clerk rules on their sufficiency, including verifying that the correct number of signatures has been obtained and whether the proposal has been properly worded. An individual must be designated in writing as the person to

be notified if there are problems with the petitions.

The GAB has prescribed rules regarding the standards by which election officials and governing bodies must judge the validity of petitions (Chapter GAB 2, Wisconsin Administrative Code, titled "Elections Related Petitions"). Clerks must list any insufficiencies they find in a signed and dated certificate attached to the petition, and the designated individual is notified and given 10 days to correct any problems. When everything is in order, the clerk immediately forwards the proposal and the verified petitions to the city council or village board.

The city council or village board has 30 days from receipt of the petition to either pass the proposal in unaltered form or put it on the ballot at the next spring or general election, if it is more than six weeks after the expiration of the 30-day period. If the next election scheduled is in less than six weeks, the referendum is delayed until the next spring or general election, unless the council or board agrees by a three-fourths vote of the entire elected membership of the body to order a special election for purposes of voting on the proposal. (No more than one such special election may be held in any six-month period.)

**Voting on the Referendum.** It is not necessary that the full wording of the proposed ordinance or resolution be printed on the ballot. If it is not, a concise statement of the nature of the proposal must appear. The wording of the ballot question must permit the voter to clearly indicate approval or rejection by a straightforward "yes" or "no" vote. If the majority of those voting in the referendum favor the ordinance or resolution, it takes effect on the date of its official publication, which must occur within 10 days after the election.

**Repeals or Amendments to an Initiative.** City legislation adopted via initiative cannot be vetoed by the mayor, and the city council or village board may not repeal or amend the law within two years of its adoption. Initiated legislation may, however, be repealed or

amended anytime by a subsequent initiative action.

**Limitations on Use of Municipal Initiatives.** A series of decisions by the Wisconsin Supreme Court have dealt with direct legislation. In particular, *Landt v. Wisconsin Dells*, 30 Wis. 2d 470 (1966); *Heider v. Wauwatosa*, 37 Wis. 2d 466 (1967); *State ex rel. Althouse v. Madison*, 79 Wis. 2d 97 (1977); and *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 263 Wis. 2d 544 (2003) have set limits on the use of this procedure. The court has ruled that:

- Voters may exercise only such legislative powers as are conferred upon the city council or village board by the Wisconsin Constitution or state statutes.
- Direct legislation must relate to new legislation. It cannot be designed to amend or repeal existing legislation that has been properly enacted by a city council or village board. (This is not necessarily an absolute prohibition because the supreme court has not specifically addressed the question of incidental partial repeal or amendment that may occur in the process of creating affirmative legislation on a new subject.)
- Direct legislation may not be used to require the city council or village board to enact legislation that clearly conflicts with a prior ordinance and would thereby constitute implied rescission.
- Direct legislation is restricted to legislative-type actions (e.g., ordinances and resolutions) and is not applicable to executive, administrative, or judicial actions.
- If it does not enact a direct legislative proposal, the city council or village board is obligated to put the question to a vote, even if it feels the measure is invalid or vulnerable to being declared unconstitutional.

**Other Local Actions Initiated by Petitions.** Residents of particular jurisdictions may prompt actions through the initiative-petition process. Electors may propose the relocation of a county seat by

submitting petitions signed by two-fifths of the legal electors of the county, in which case the county board must submit the question to the electors. [s. 59.05] Residents of adjoining counties may similarly require an election on the consolidation of 2 or more counties. [s. 59.08] Residents in counties having a population of less than 500,000 may use the s. 9.20 initiative process to create or abolish the office of elected county executive. [s. 59.17 (1)] Residents of an unincorporated area seeking annexation to an adjacent city or village may initiate the action via petition and ratify it in a referendum. [ss. 66.0203 and 66.0211] An annexation of land to a city or village may be initiated by electors and property holders and ratified in a referendum. [s. 66.0217]

**History.** The concept of direct democracy, in which the people make the laws which govern them, has ancient roots, going back at least to the assemblies in Athens and the plebiscites in Rome. In the United States, initiatives were promoted by the Populists and Progressives in the late 1800s and early 1900s to facilitate government reform by bypassing state legislatures. About half the states now have some form of a statewide initiative and referendum process, with most states also having provisions for initiatives at the local government level.

The evolution of the local initiative in Wisconsin occurred over almost eight decades. The power to initiate ordinances and resolutions was granted to city residents by Chapter 513, Laws of 1911. Charter ordinance initiatives in cities and villages were authorized by Chapter 198, Laws of 1925. 1989 Wisconsin Act 273 gave electors in Wisconsin villages the general initiative option. Counties were originally included in the 1911 initiative law, but the provisions for initiatives at the county level were repealed by Chapter 177, Laws of 1943. There have been numerous bills and resolutions over the years proposing to extend the initiative power to towns, to again authorize it in counties, and to institute a statewide process.

## 2. REFERENDA

A referendum, broadly defined, is any vote of the people taken on a particular question. Referenda may be binding or advisory, and are required in some situations and optional in others. However, the term “referendum” is often used in reference to a specific mechanism whereby the voters may, via petition, require that a law already enacted by a legislative body be put to a popular vote to determine if the law will stand or be rejected. For example, in Wisconsin, a city council or village board may enact, amend, or repeal by ordinance the city or village charter, but such an ordinance may not take effect for 60 days. Section 66.0101 (5) provides that, if a petition with sufficient signatures is filed within 60 days of passage of the ordinance, it must be submitted to a referendum. The petition must be signed by a number of electors equal to not less than 7% of the votes cast for governor in the municipality in the last election. If a majority of those voting in the referendum reject the charter ordinance, it is nullified.

**Binding Referenda.** Certain measures must be submitted to referendum votes before they take effect. The most notable example is amending the Wisconsin Constitution. As provided by Article IV, Section 1 of that document, a proposal to amend the constitution must first be passed in identical form by two consecutive sessions of the legislature (known as “first consideration” and “second consideration”). Then, in order to take effect, the amendment must be ratified by a majority of voters in a statewide ballot.

In a number of situations, state law requires local units of government to hold referenda to ratify actions initiated by the governing body. Most familiar are two related to school finances. Section 67.05 (6a) provides that bonding proposals for public school districts, including borrowing money to finance school building construction, must be submitted to a vote if the project exceeds specified amounts or if the bonding will cause aggregate indebtedness to exceed a threshold.

Section 121.91 (3) provides that a school district may exceed the statutory property tax revenue limits only upon approval by district voters in a referendum.

The state legislature or any city council or village or county board may choose to pass a law that will not take effect unless ratified by the electors in a referendum. This is sometimes known as a “contingent” referendum.

**Advisory Referenda.** The state legislature or any city council or village or county board may choose to submit questions to the electorate in referendum elections. The results of an advisory referenda, while useful in gauging the opinion of residents on a certain public policy topic, are not binding on the legislative body and the legislative body is not required to take any action in response to the vote.

## 3. RECALL

Recall is the procedure by which electors may submit petitions to require a special election to remove an incumbent elective official from office. If an incumbent loses a recall election, the successful challenger serves the remainder of the current term of office. A recall petition may be filed at any time after the completion of the first year of office, but an elective official may be subject to only one recall election during any particular term of office.

Recalls are authorized in Article XIII, Section 12, Wisconsin Constitution, and Section 9.10, Wisconsin Statutes.

### WHO MAY BE RECALLED

A recall may be held for statewide constitutional officers (governor, lieutenant governor, secretary of state, state treasurer, attorney general, and superintendent of public instruction); state legislators; district attorneys; members of the United States Congress; members of the judiciary (circuit courts, court of appeals, supreme court); and elective officials of counties, cities, villages, towns, town sanitary districts, and school districts. However, it is not clear if the U.S.

Constitution permits the state recall of a member of Congress.

**Reasons for Recalls.** The recall has often been used to remove from office those accused or convicted of official misconduct or criminal behavior. A recall petition for a city, village, town, town sanitary district, or school district officer must contain a reason which is related to the official responsibilities of the official for whom removal is sought. No reason need be provided for other offices. Chapter 44, Laws of 1933, contained a requirement that a statement of the reason for the recall of constitutional officers, judicial, legislative, or county officials be provided. In 1948, however, the Wisconsin Attorney General advised that this provision was invalid for the reason that a later law could not impose an obligation on the electorate which had been expressly omitted in the constitutional provision (37 OAG 91).

2011 Assembly Joint Resolution 63, a constitutional amendment introduced on first consideration, proposed requiring that an elective official in Wisconsin may only be recalled if he or she has been charged with a serious crime or if a finding of probable cause has been made that he or she violated the state code of ethics. It also would have required that the applicable elections official determine, before a recall election is scheduled, that the petition demonstrates sufficient grounds for recalling the officer. AJR-63 passed the Assembly on March 6, 2012, but failed to receive a vote in the Senate.

**Reasons for Recalls in Other States.** Some states require that recalls be justified. For example, Minnesota's constitution generally provides that statewide officeholders may be recalled only for serious malfeasance in their performance of official duties or conviction of a serious crime during the term of office. In addition, the supreme court must certify that the facts alleged are true and constitute sufficient grounds to warrant recall. Specific reasons for recall of statewide officers are required in eight states.

## PROCEDURAL REQUIREMENTS

**Initiation.** Electors must, before circulating recall petitions, register with the appropriate filing officer, such as the municipal, county, or district clerk, or the Government Accountability Board in the case of statewide offices or legislators. There are no campaign contribution limits on contributions made to officeholders who are the subject of recall petitions before a recall election is called, but such limits are applicable to recall election candidates, including incumbent officeholders, after a recall election is called.

**Signatures.** In general, petitions must contain valid signatures of electors equal to at least 25% of the total votes cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled. Only qualified resident electors of that district or territory may sign, and they must indicate the date of signing and provide their address.

**Petition Time Limit.** The last date that a petition for recall of an officer may be filed is 5:00 p.m. on the 60th day commencing after registration. All signatures must have been dated within the petition gathering period.

**Review of Petitions.** The statutes provide time frames for the filing officer to review the petitions for sufficiency, and for challenges, rebuttals, and court reviews.

**Setting the Election Date(s).** When more than two persons compete for a nonpartisan office, a recall primary is held. The two persons receiving the highest number of votes in the primary appear on the recall ballot, except that if any candidate receives a majority of votes in the primary, he or she automatically assumes office for the remainder of the term. For any partisan office, a primary is held for each political party that is by law entitled to a separate ballot and from which more than one candidate files for the party's nomination. Unless he or she resigns, the incumbent's name automatically appears on the ballot. The recall election is held on the Tuesday of the 6th

week commencing after the date that the filing officer finds that the recall petition is sufficient except that if there is a primary, the recall election is held on the Tuesday of the 4th week commencing after the primary. If the incumbent prevails, the incumbent continues to serve for the remainder of his or her term. If the incumbent does not prevail, he or she continues to perform the duties of the office until the recall results are certified, after which the winner of the election serves for the remainder of the term.

## HISTORY

Like the initiative and referendum, the recall is a product of the progressive movement of the early 20th century. The recall was first authorized in the U.S. in 1903 in Los Angeles, California. In 1908, Oregon became the first state to apply the recall to elected state officials. Nineteen states and the District of Columbia now provide for the recall of state-level officials. Recalls may be held in local jurisdictions in at least 29 states.

The recall of city officials in Wisconsin was suggested in the message of Governor Robert M. La Follette to the Legislature in 1905, and was authorized by Chapter 635, Laws of 1911. The authorization to recall state, congressional, judicial, legislative, and county officials was created by an amendment to the Wisconsin Constitution ratified in 1926. The ability to recall officials of villages, towns, and school districts was created by Chapter 403, Laws of 1977; district attorneys by 1989 Wisconsin Act 31; and officials of town sanitary districts by 2007 Wisconsin Act 56.

Numerous local government officials have been recalled through the years. A noteworthy example was the unseating of seven members of the Milwaukee County Board of Supervisors in 2002 due to controversy over costly changes to the county employee pension system. Before 2012, no statewide elective official has ever faced a recall, and only one member of the judiciary, Dane County Judge Archie Simonson, has been recalled (1977).

Prior to 2011, four Wisconsin state legislators have been subject to recall elections:

- Senator Otto Mueller (R-Wausau) won a recall election in 1932. This effort was part of a Progressive Republican plan to recall state legislators who opposed the tax bill submitted by Governor Philip La Follette.
- Representative James Holperin (D-Eagle River) won a recall election in 1990. He had angered some constituents by his support of a proposed 10-year state settlement of Chippewa tribal hunting and spearfishing rights.
- Senator George Petak (R-Racine) lost his seat in a 1996 recall election after he had cast the deciding vote for a regional sales tax to pay for the Milwaukee Brewers' Miller Park professional baseball stadium. Democrat Kim Plache won the election, which shifted control of the state senate to the Democrats.
- Senator Gary George (D-Milwaukee) lost in a Democratic Party recall primary election in 2003 to Spencer Coggs, who ran unopposed in the recall election. Senator George had upset constituents in his Democratic-leaning district by siding with Republicans on several issues.

**2011 Recalls.** In 2011, nine state senators were the subjects of recall elections. The six Republicans were primarily targeted as a result of their support for 2011 Wisconsin Act 10, which substantially limited the collective bargaining powers of state and local government public employee unions, with the exception of public safety employees such as police officers and firefighters. Act 10 also required that most public employees pay larger shares of the cost of their health insurance and pension contributions. A prominently cited reason the three Democrats were targeted was that they were among the 14 Democrats, the entire minority caucus in the Senate, to leave the state for approximately three weeks during the debate over Act 10. Their absence, which prevented the three-fifths quorum of the elected membership required to act on appropriation bills, delayed the passage of the law. They returned to the state after the fiscal items were

removed from the legislation and the collective bargaining limits were passed with only Republican votes.

The following retained their seats in July and August 2011 recalls:

- Senator Robert Cowles (R-Green Bay).
- Senator Alberta Darling (R-River Hills).
- Senator Sheila Harsdorf (R-River Falls).
- Senator Luther Olsen (R-Ripon).
- Senator Jim Holperin (D-Conover).
- Senator Robert Wirch (D-Pleasant Prairie).
- Senator Dave Hansen (D-Green Bay).

The following lost their seats in July 2011:

- Senator Randy Hopper (R-Fond du Lac).
- Senator Dan Kapanke (R-La Crosse).

**2012 Scheduled Recalls.** Governor Scott Walker, Lieutenant Governor Rebecca

Kleefisch, and Senators Scott Fitzgerald, Van Wanggaard, Terry Moulton, and Pam Galloway, all Republicans, will be subject to recall elections in June 2012. While Senator Galloway resigned her seat in March 2012, there will still be an election for the seat. While other issues have been cited as being involved in prompting the recalls, news accounts suggest that Act 10, which limits the collective bargaining powers of public employees, is the primary factor motivating the recall efforts.

#### 4. FOR MORE INFORMATION

For information about procedures for conducting initiatives, referenda, and recalls, and the campaign finance laws relating to these topics, contact the Wisconsin Government Accountability Board at (608) 266-8005, <http://gab.wi.gov/>.