
HOUSE BILL No. 1405

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 at least 10% of the total vote 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, 2009.

Stevenson

January 13, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1405



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, 2009]:
 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 of 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 **that the person represents.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **(c) If the official subject to the recall petition represents the**

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entire state, a recall petition must comply with the following:

(1) The petition must be signed by at least the number of voters equal to ten percent (10%) of the total votes cast at the last election for secretary of state.

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

(d) The sponsor of the recall petition must file the recall petition with the officer who received the application for a certified recall petition in section 5 of this chapter not later than noon:

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

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

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

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

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

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

Sec. 10. (a) If the officer who received a recall petition denies certification of the recall petition under section 9 of this chapter, the officer shall notify the petition's sponsor immediately by certified mail.

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

(c) If the amended recall petition satisfies the requirements of section 7 of this chapter, the officer who received the amended recall petition shall certify the amended recall petition not later than seventy-four (74) days before a primary, general, or municipal election. A certified amended recall petition shall be 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 received the recall
4 petition or the amended recall petition may not certify the
5 amended recall petition under section 9 of this chapter for the same
6 official for at least twelve (12) months after the date the
7 certification of the petition was denied.

8 Sec. 11. When the officer who receives a recall petition certifies
9 the recall petition, the officer shall certify this determination to:

- 10 (1) the commission if the official subject to the recall holds a
11 state or legislative office; or
- 12 (2) the county election board of the county where the recall
13 petition was certified under section 9 of this chapter if the
14 person holds a local or school board office.

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

20 (b) If the official subject to the recall resigns from office and the
21 resignation is effective not later than twelve (12) days after the
22 recall petition is certified, the election board is not required to
23 order an election under this section.

24 (c) Unless the official subject to the recall resigns as provided
25 under subsection (b), a recall election shall be held on the date
26 specified by the election board in the order issued under subsection
27 (a).

28 Sec. 13. A recall election ordered under this chapter shall be
29 held in:

- 30 (1) the election district of an elected official; or
- 31 (2) each precinct wholly or partially located in the political
32 subdivision of an appointed person;
33 subject to a recall.

34 Sec. 14. Except as provided in this chapter, IC 3 governs a recall
35 election.

36 Sec. 15. The county election board of each county in which the
37 recall election is conducted shall place the following question on the
38 ballot in the form provided by IC 3-10-9-4:

39 "Shall _____ (insert the name of the
40 official as the name appeared on the certified recall petition)
41 be recalled from the office of _____
42 (insert the title of the office as the title appeared on the

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certified recall petition)?"
Sec. 16. (a) If the number of votes described in subsection (b) are cast in the affirmative on the question under section 15 of this chapter, the person is removed from office when the public question is declared approved:

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

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

- (1) sixty percent (60%) of the votes must be cast; or**
 - (2) a majority (without regard to the percentage of votes cast) of the registered voters in:**
 - (A) the election district of an elected official; or**
 - (B) each precinct wholly or partially located in the political subdivision of an appointed person;**
- must vote;**

in the affirmative on the question under section 15 of this chapter.

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

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

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

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

SECTION 2. IC 36-8-3.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) The term of a commissioner is four (4) years. However, one (1) of the executive's initial selections and one (1) of the department's initial selections are for terms of two (2) years.

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

(c) A commissioner serves at the pleasure of the appointing or

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1 electing authority and may be removed at any time. In the case of a
2 commissioner elected by the department, the safety board shall call a
3 meeting of the active members of the department under the procedures
4 specified in section 4 of this chapter if a recall petition signed by a
5 majority of the active members is submitted to the board. **A recall**
6 **petition submitted under this section is not subject to IC 5-8-7.**

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