

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND THIRTEENTH LEGISLATURE
4

5 Legislative Document

NO. 111
6

7 H.P. 101 House of Representatives, January 28, 1987
8 Reference to the Committee on State and Local Government
suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative VOSE of Eastport.

Cosponsored by Representatives MOHOLLAND of Princeton and
TAMMARO of Baileyville.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SEVEN
16

17 AN ACT to Allow Recall of County Officers.
18

19 Be it enacted by the People of the State of Maine as
20 follows:

21 30 MRSA §9 is enacted to read:

22 §9. Recall

23 An officer, except the sheriff, who is elected to
24 a county office may be recalled by the voters after
25 the officer has served the first 120 days of the term
26 for which elected.

27 1. Grounds for recall. The only grounds for re-
28 call are misfeasance, misconduct in office, incompe-
29 tence or failure to perform prescribed duties during
30 the term of office which the officer is presently
31 servng.

1 A. "Misfeasance in office" means any wrongful
2 conduct that affects, interrupts or interferes
3 with the performance of official duty or the per-
4 formance of duty in an improper manner.

5 B. "Misconduct in office" means an unlawful act
6 committed willfully by any elected public offi-
7 cial.

8 C. "Incompetence" means gross ignorance of offi-
9 cial duties or gross carelessness in discharge of
10 them or mental or physical incapacity of an offi-
11 cial to perform the duties of office for a period
12 of no less than 60 days.

13 D. "Failure to perform prescribed duties" means
14 the willful neglect or failure by an official to
15 perform faithfully a duty imposed by law.

16 2. Application for recall petition. An applica-
17 tion for a recall petition shall be filed with the
18 county clerk and must contain:

19 A. The signatures and resident addresses of at
20 least 25 registered county voters who will spon-
21 sor the petition;

22 B. The address to which all correspondence re-
23 lating to the petition may be sent; and

24 C. A statement in 200 words or less of the
25 grounds of the recall, including in clear, con-
26 cise language a detailed description of the date,
27 location and nature of each act complained of. If
28 a statement exceeds 200 words or lacks sufficient
29 clarity, the clerk shall notify the sponsors of
30 this fact in writing. If they fail to provide an
31 acceptable statement within 3 weekdays of receiv-
32 ing the letter, the clerk shall make the neces-
33 sary revisions to the statement.

34 An additional sponsor may be added at any time before
35 the petition is filed by submitting the name of the
36 sponsor to the clerk.

37 Each sponsor of an application for a recall petition
38 must certify under penalty of perjury that the spon-

1 sor believes the charges set forth in the application
2 for the recall petition are true. Knowingly submit-
3 ting a false statement in an application for a recall
4 petition is a Class E crime.

5 3. Recall petition. Within 10 days of receiving
6 the recall petition, the county clerk shall make a
7 determination if the application meets the require-
8 ments of subsections 1 and 2. If the application is
9 approved, the clerk shall send a copy of the applica-
10 tion for recall petition to the officer sought to be
11 recalled, along with a notice informing the officer,
12 that the officer may submit to the clerk a rebuttal
13 statement of 200 words or less no later than 10 days
14 after receipt of the petition's statement of grounds
15 and may make appeal to the Superior Court as to the
16 sufficiency of the charges contained in the petition
17 within 15 days of receiving the petition. If a rebut-
18 tal is filed, the clerk shall, within 7 days after
19 the filing of the rebuttal, serve a copy of the re-
20 buttal on one of the sponsors named in the applica-
21 tion.

22 Proponents shall be informed of a disapproved appli-
23 cation and shall have 10 days to submit a corrected
24 petition.

25 Within 5 days after the time period for submitting a
26 rebuttal statement and appealing to the Superior
27 Court has passed, the county clerk shall prepare a
28 recall petition addressed to the county commissioners
29 by name. All copies of the petition shall contain:

30 A. The name of the officer sought to be re-
31 called;

32 B. The statement of the grounds for recall as
33 set out in the application for petition;

34 C. The officer's rebuttal statement if one was
35 submitted in accordance with this subsection;

36 D. The date the petition is issued by the clerk;

37 E. Notice that signatures must be secured within
38 60 days after the date the petition is issued;

1 F. Spaces for each signature, the printed name
2 of each signer, the date of each signature and
3 the residence and mailing addresses of each sign-
4 er;

5 G. A statement, with space for the sponsor's
6 sworn signature and date of signing, that the
7 sponsor personally circulated the petition; that
8 all signatures were affixed in the presence of
9 the sponsor; that, to the best of the sponsor's
10 knowledge, information and belief, the signers
11 are registered voters in the county; and that the
12 sponsor believes the signatures to be those of
13 the persons whose names they purport to be;

14 H. Space for indicating the number of signatures
15 on the petition; and

16 I. The signature and official seal of the county
17 clerk.

18 Copies of the petition shall be provided to each
19 sponsor by the clerk. A separate petition shall be
20 circulated for each officer sought to be recalled.

21 4. Publication or posting; expense. After ap-
22 proval of the petition, a notice of intent to recall
23 containing the items in subsection 2, paragraphs A, B
24 and C shall be published at the proponents' expense.
25 A satisfactory proof of publication shall be required
26 by the county clerk before providing copies of the
27 recall petition to the sponsors.

28 5. Signature requirements. The signatures on a
29 recall petition must be secured within 60 days after
30 the date the clerk issues the petition. The statement
31 provided under subsection 3, paragraph G must be com-
32 pleted and signed by the sponsor. Signatures must be
33 in ink or indelible pencil.

34 The petition must be signed by a number of voters
35 equal to 25% of the registered voters in the county.

36 Illegible signatures shall be rejected by the clerk
37 unless accompanied by a legible printed name.
38 Signatures not accompanied by a legible residence ad-
39 dress shall be rejected.

1 A petition signer may withdraw his signature upon
2 written application to the clerk before certification
3 of the petition.

4 6. Violations by signers or officers. Every per-
5 son who signs a recall petition with any other than
6 his true name is guilty of a Class C crime. Every
7 person who knowingly signs more than one petition for
8 the same recall, signs a recall petition when he is
9 not a legal voter or makes a false statement as to
10 his residence on any recall petition is guilty of a
11 Class D crime. Every registration officer who makes
12 any false report or certificate on any recall peti-
13 tion is guilty of a Class D crime.

14 7. Sufficiency of petition. The copies of a re-
15 call petition must be assembled and filed as a single
16 instrument. A petition may not be filed within 180
17 days before the end of the term of office of the of-
18 ficer sought to be recalled. Not later than the busi-
19 ness day following the filing of a recall petition,
20 the official with whom the recall was filed shall no-
21 tify in writing the officer whose recall is sought
22 that the recall petition has been filed. An officer
23 whose recall is sought may challenge the validity of
24 a signature or the registration of an elector whose
25 name appears upon a recall petition. A challenge must
26 be in writing, specifying the challenged signature
27 and must be delivered to the filing official within
28 10 days after the filing of the petitions. Within 15
29 days after the date a petition is filed, the county
30 clerk shall:

31 A. Certify on the petition whether it is suffi-
32 cient; and

33 B. If the petition is insufficient, identify the
34 insufficiency and notify the sponsors by mail at
35 the address which they have provided.

36 8. Insufficient petition. A petition that is in-
37 sufficient may be supplemented with additional
38 signatures obtained and filed within 10 days after
39 the date on which the petition is rejected if:

40 A. The petition contains an adequate number of
41 signatures, counting both valid and invalid
42 signatures; and

1 B. The supplementary petition is filed more than
2 180 days before the end of the term of office of
3 the official sought to be recalled.

4 A petition that is insufficient shall be rejected and
5 filed as a public record unless it is supplemented
6 under this subsection. Within 10 days after the sup-
7 plementary filing, the clerk shall recertify the pe-
8 tion. If it is still insufficient, the petition
9 shall be rejected and filed as a public record.

10 9. New recall petition application. A new appli-
11 cation for a petition to recall the same officer may
12 not be filed sooner than 6 months after a petition is
13 rejected as insufficient.

14 10. Submission. If a recall petition is suffi-
15 cient, the clerk shall submit it to the county com-
16 missioners at the next regular meeting or at a spe-
17 cial meeting held before the next regular meeting.

18 11. Notification. The county commissioners shall
19 within 10 days of officially receiving the certifi-
20 cate of sufficiency give written notice of the re-
21 ceipt of the certification to the officer sought to
22 be recalled. If the officer does not resign within 5
23 days after that written notice, they shall within the
24 next 5 days order an election.

25 12. Election. If a regular election occurs with-
26 in 75 days, but not sooner than 45 days, after sub-
27 mission of the petition to the county commissioners,
28 the county commissioners shall submit the recall at
29 that election.

30 If no regular election occurs within 75 days, the
31 county commissioners shall hold a special election on
32 a recall question within 45 days, but not sooner than
33 35 days, after a petition is submitted to the county
34 commissioners.

35 If a vacancy occurs in the office after a sufficient
36 recall petition is filed with the clerk, the recall
37 question may not be submitted to the voters. The
38 county commissioners may not appoint to the same of-
39 fice an officer who resigns after a sufficient recall
40 petition is filed naming him.

1 13. Form of recall ballots. A recall ballot
2 shall contain:

3 A. The grounds of recall as stated in 200 words
4 or less on the recall petition;

5 B. A rebuttal statement by the officer named on
6 the recall petition of 200 words or less if the
7 statement is filed in accordance with subsection
8 3;

9 C. The following question: "Shall (name of per-
10 son) be recalled from the office of (office)? Yes
11 () No ();" and

12 D. If an officer other than a county commission-
13 er, the following question: "If the recall pre-
14 vals, shall the county commissioners fill the
15 vacancy by appointment or call a special election
16 for that purpose? By Appointment () By Special
17 Election ()."

18 14. Effect. If a majority vote favors recall,
19 the office becomes vacant upon certification of the
20 recall election.

21 If an officer is not recalled at the election, an ap-
22 plication for a petition to recall the same officer
23 may not be filed sooner than 6 months after the elec-
24 tion.

25 15. Election of successor. If the voters recall
26 a county commissioner or if they indicate that any
27 other recalled officer shall be replaced by election,
28 the clerk shall conduct an election for a successor
29 to fill the unexpired term. The election shall be
30 held at least 10 days, but not more than 45 days,
31 from the date of certification of the recall elec-
32 tion. If a regular or special election occurs within
33 75 days, but not sooner than 20 days, after certifi-
34 cation of the recall election, the successor to the
35 recalled officer shall be chosen at that regular or
36 special election. The procedures and requirements for
37 the regular election for the office from which the
38 incumbent is recalled apply to the election conducted
39 under this section.

1 Nominations for a successor may be filed until 7 days
2 before the last date on which a first notice of the
3 election must be given. Nominations may not be filed
4 before the certification of the recall election.

5 16. Nomination of candidates. Any officer sought
6 to be removed may be a candidate to succeed himself.
7 The nomination of candidates, the publication of the
8 warrant for the removal election and the conduct of
9 the nomination and publication shall all be in ac-
10 cordance with the provisions of law relating to elec-
11 tions, unless otherwise provided in this section.

12 17. Incumbent holds office until election. The
13 incumbent shall continue to perform the duties of his
14 office until the recall election. If then reelected,
15 he shall continue in office for the remainder of his
16 unexpired term, subject to recall as before, except
17 as provided in this section. If not reelected in the
18 recall election, he shall be deemed removed upon the
19 qualification of his successor, who shall hold office
20 during the unexpired term. If the successor fails to
21 qualify within 5 days after receiving notification of
22 his election, the incumbent shall be deemed removed
23 and the office vacant.

24 18. Reappointment of person recalled. No person
25 who has been recalled from an office, or who has re-
26 signed from office while recall proceedings were
27 pending against him, may be appointed to any county
28 office within 2 years after the recall or the resig-
29 nation.

30 19. Application. This section applies to general
31 law counties. It does not supersede the provisions of
32 a county charter relating to recall.

33 20. Jurisdiction of Superior Court. Any person
34 aggrieved by the filing of recall charges, or by the
35 failure of an election official to perform duties in
36 relation to the recall, may file an action in the Su-
37 perior Court. On hearing that action, the Superior
38 Court shall have jurisdiction to consider the follow-
39 ing matters:

40 A. The sufficiency or specificity of the recall
41 charge or charges;

1 2. He has been subject to another recall in the
2 last 6 months; or

3 3. His term of office ends within 6 months.

4 The steps in the recall procedure are as follows:

5	<u>Step</u>	<u>Responsible Party</u>	<u>Time to</u>
6			<u>Accomplish</u>
7	Application for	25 registered	NA
8	Petition	voters	
9	Rebuttal	Officer	(10 days)
10			(Concurrent)
11	Appeal to	Officer	(15 days,)
12	Supreme Court		
13	Decision on	County Clerk	10 days
14	Application		
15	Preparation of	County Clerk	5 days
16	Petition		
17	Securing of	25% of registered	60 days
18	Signatures	voters	
19	Challenging of	Officer	(10 days)
20	Signatures		
21			(Concurrent)
22	Sufficiency of	County Clerk	(15 days)
23	Petition		
24	Submission of	County Clerk	Next or
25	Petition		special
26			Commissioner
27			Meeting
28	Ordering of	County	25 days
29	Election	Commissioners	
30	Election Held	County	35-45 days*
31		Commissioners	
32	Election of	County Clerk	10-45 days*
33	Successor		

1 * Unless regular or special election is scheduled
2 within 75 days.

3 It is the intent of this bill that recall not be
4 used to harass or intimidate officers, be based on
5 flimsy or ridiculous charges or discourage or inhibit
6 discretionary political decision making or voting
7 as one's conscience dictates. Towards this end the
8 bill includes the following provisions:

9 1. Includes specific grounds for recall;

10 2. Requires a certified statement of specific
11 charges;

12 3. Offers the opportunity for rebuttal; and

13 4. May be appealed to the Superior Court based
14 on the sufficiency of the charges.

15 The following provisions apply to the officer to
16 be recalled.

17 1. If the office becomes vacant before the re-
18 call election the recall is not to be held.

19 2. An officer who resigns prior to a recall
20 election or who is recalled may not be appointed to
21 that office again or to any county office for 2
22 years. That officer may be a candidate in the elec-
23 tion to choose his successor.

24 Recalled county commissioners are to be replaced
25 by election. At the recall election for other offi-
26 cers the voters will be asked to indicate whether
27 they wish the recalled officer to be replaced by ap-
28 pointment or election.

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