PRINTER'S NO. 985

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 922 Session of 2011

INTRODUCED BY GIBBONS, BENNINGHOFF, DeLUCA, GROVE, HORNAMAN AND KIRKLAND, MARCH 3, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 3, 2011

AN ACT

Amending Title 65 (Public Officers) of the Pennsylvania Consolidated Statutes, providing for recall election of State and local officers, for recall petition process, for review of recall petitions, for recall election and for prohibited practices.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 65 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 14

RECALL ELECTIONS

Sec.

1401. Definitions.
1402. Grounds for recall.
1403. Initiating proceedings.
1404. Review of proposed petition.
1405. Issuing, circulating and verifying petition.
1406. Recall election.
1407. Prohibited practices.

1408. Rules and regulations.

§ 1401. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Election official." The term includes:

(1) In the case of a Statewide elected public officer or member of the General Assembly, the Secretary of the Commonwealth.

(2) In the case of any other elected public officer, the local election official for the jurisdiction in which the officer resides.

"Malfeasance." The willful commission of an unlawful or wrongful act in the performance of an elected public officer's duties that is substantially outside the scope of the authority of the officer and infringes on the rights of any person or entity.

"Nonfeasance." The willful, repeated failure of an elected public officer to perform a specific act that is a required part of the duties of the officer.

"Officer." A person elected by the public in the executive or legislative branch of the Commonwealth or any political subdivision of the Commonwealth.

§ 1402. Grounds for recall.

An officer is subject to recall by the voters of this Commonwealth, or the political subdivision from which elected, for malfeasance or nonfeasance.

§ 1403. Initiating proceedings.

(a) Proposed petition.--Whenever 25 or more eligible voters of this Commonwealth or of any political subdivision of the

Commonwealth desire to demand the recall and discharge of an officer under section 8 of Article VI of the Constitution of Pennsylvania, the voters shall prepare a proposed petition stating that the officer has committed an act or acts of malfeasance or nonfeasance while in office as grounds for recall. Judicial officers are not subject to recall.

(b) Form and content.--The Secretary of the Commonwealth shall prescribe by rule the form required for a recall petition. Each page of the petition shall include:

(1) The name and office held by the officer who is the subject of the recall petition.

(2) The specific grounds upon which the officer is sought to be recalled and a concise synopsis of the facts that are alleged to warrant recall on those grounds.

(3) A statement that a recall election, if conducted, will be conducted at public expense.

(4) A statement that persons signing the petition:

(i) Are eligible voters residing within the district where the officer serves, or in the case of a Statewide officer, in this Commonwealth.

(ii) Know the purpose and content of the petition.

(iii) Are signing of their own free will and may only sign once.

(5) A space for the following information regarding each signer:

(i) Signature and signature date.

(ii) Printed first, middle and last name.

(iii) Residence address, including municipality and county.

(iv) Date of birth.

(c) Filing.--The persons submitting the petition shall designate in writing no more than three persons among them to represent all petitions in matters relating to the recall. The proposed petition shall be filed as follows and accompanied by a fee of $100:

(1) For a Statewide official or member of the General Assembly, with the Secretary of the Commonwealth.

(2) For all other officers, with the local election official for the jurisdiction in which the officer resides.

(d) Notice.--Within ten days of receiving a proposed petition that satisfies the requirements of this section, the election official shall notify in writing the officer named in the petition and forward the proposed petition for action under section 1404 (relating to review of proposed petition) as follows:

(1) For a Statewide official or member of the General Assembly, to the Supreme Court.

(2) For all other officers, to the court of common pleas for the jurisdiction in which the officer resides.

§ 1404. Review of proposed petition.

(a) Review of petition.--Upon receiving a proposed petition, the court shall review the proposed petition to determine whether it alleges specific facts that, if proven, would constitute grounds for recall of the officer under section 8 of Article VI of the Constitution of Pennsylvania and section 1402 (relating to grounds for recall). If it does not, the court shall immediately issue an order dismissing the petition and stating the reasons for dismissal. If the proposed petition does allege specific facts that, if proven, would constitute grounds for recall, the court shall assign the case for a public

hearing. The court shall complete the review under this section and dismiss the proposed petition or assign the case for hearing within ten days of receiving the petition.

(b) Hearing.--A public hearing on the allegations of a proposed petition shall be held within 20 days after issuance of the order assigning the case for hearing under subsection (a). The court shall determine:

(1) whether the persons proposing the petition have shown by a preponderance of the evidence that the factual allegations supporting the petition are true; and

(2) if true, whether the persons proposing the petition have shown that the facts found to be true are sufficient grounds for recall.

If the court decides that the standard expressed in paragraph (2) has not been met, the court shall dismiss the petition. If the court decides that the standard for decision expressed in paragraph (2) has been met, the court shall prescribe, by order to the appropriate election official, the statement of the specific facts and grounds that must appear on the petition for recall issued under section 1405 (relating to issuing, circulating and verifying petition).

(c) Bad faith.--If the court dismisses a petition under this section because the persons proposing the petition have acted in bad faith in violation of section 1407 (relating to prohibited practices), the court may assess the persons proposing the petition reasonable costs of conducting the hearing.

§ 1405. Issuing, circulating and verifying petition.

(a) Issuance.--Upon receipt of the order from the court reviewing a proposed petition, the election official shall issue a recall petition.

(b) Circulation.--The number of signatures required on a petition are as follows:

(1) For a Statewide officer or member of the General Assembly, signatures of eligible voters equal to 25% of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

(2) For any officer not included in paragraph (1), signatures of eligible voters equal to 35% of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election.

When the required number of signatures on the petition has been secured, the petition may be filed with the appropriate election official. The petition must be filed within 90 days after the date of issuance.

(c) Verification.--Upon the filing of a petition, the election official shall verify the number and eligibility of signers in the manner provided by the Secretary of the Commonwealth. If the election official determines that the petition has been signed by a sufficient number of eligible voters, the election official shall certify the petition and immediately notify in writing the petitioners and the officer named in the petition. If the petition is not signed by a sufficient number of eligible voters, the election official shall dismiss the petition.

§ 1406. Recall election.

(a) Date.--If an election official certifies that a petition bears the required number of signatures, the election official shall promptly fix a date for the election to determine whether

or not the officer charged shall be recalled and discharged from office. The election shall be held at the next primary or general election not less than 45 days from the certification.

(b) Conduct of election.--The election shall be conducted in the manner provided under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(c) Result.--If a majority of the votes cast in a recall election favor the removal of the officer, upon certification of that result, the officer is removed from office and the office is vacant.

(d) Vacancy.--An office that is vacant following a recall election shall be filled by special election conducted in accordance with the Pennsylvania Election Code.

§ 1407. Prohibited practices.

(a) General rule.--A person proposing a petition may not allege any material fact in support of the petition that the person knows is false or has alleged with reckless disregard of whether it is false. A person may not intentionally make any false entry on a petition or aid, abet, counsel or procure another to do so. A person may not use threat, intimidation, coercion or other corrupt means to interfere or attempt to interfere with the right of any eligible voter to sign or not to sign a recall petition of the voter's own free will. A person may not, for any consideration, compensation, gift, reward or thing of value or promise, sign or not sign a recall petition.

(b) Dismissal.--The court reviewing a proposed recall petition may dismiss the petition for violation of this section.

§ 1408. Rules and regulations.

The Secretary of the Commonwealth may promulgate rules and regulations necessary to administer this chapter.

Section 2. This act shall take effect in 60 days.