

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2781 Session of
2008

INTRODUCED BY GIBBONS, GALLOWAY, GOODMAN, HARHAI, KORTZ,
LONGIETTI, ROCK, SAINATO, SIPTROTH AND SWANGER,
SEPTEMBER 23, 2008

REFERRED TO COMMITTEE ON STATE GOVERNMENT, SEPTEMBER 23, 2008

AN ACT

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

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

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

10 CHAPTER 14

11 RECALL ELECTIONS

12 Sec.

13 1401. Definitions.

14 1402. Grounds for recall.

15 1403. Initiating proceedings.

16 1404. Review of proposed petition.

17 1405. Issuing, circulating and verifying petition.

18 1406. Recall election.

19 1407. Prohibited practices.

1 1408. Rules and regulations.

2 § 1401. Definitions.

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

6 "Election official." The term includes:

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

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

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

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

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

24 § 1402. Grounds for recall.

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

28 § 1403. Initiating proceedings.

29 (a) Proposed petition.--Whenever 25 or more eligible voters
30 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 State 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.

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

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

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

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

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

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

20 § 1404. Review of proposed petition.

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

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

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

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

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

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

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

27 § 1405. Issuing, circulating and verifying petition.

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

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

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

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

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

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

26 § 1406. Recall election.

27 (a) Date.--If an election official certifies that a petition
28 bears the required number of signatures, the election official
29 shall promptly fix a date for the election to determine whether
30 or not the officer charged shall be recalled and discharged from

1 office. The election shall be held at the next primary or
2 general election not less than 45 days from the certification.

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

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

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

13 § 1407. Prohibited practices.

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

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

27 § 1408. Rules and regulations.

28 The Secretary of State may promulgate rules and regulations
29 necessary to administer this chapter.

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