

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Reps. Forlini, Lane, Goike, Farrington, Liss, Haugh and LaFontaine

ENROLLED HOUSE BILL No. 6060

AN ACT to amend 1954 PA 116, entitled "An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act," by amending sections 23, 951, 952, 961, 963, 967, 968, 969, 972, 974, and 975 (MCL 168.23, 168.951, 168.952, 168.961, 168.963, 168.967, 168.968, 168.969, 168.972, 168.974, and 168.975), section 23 as amended by 1982 PA 456, section 951 as amended by 1993 PA 45, section 952 as amended by 1993 PA 137, sections 961 and 963 as amended by 2005 PA 71, section 968 as amended by 1989 PA 26, and section 972 as amended by 2004 PA 298, and by adding sections 951a, 970a, 970b, 970c, 970e, 970g, 971a, 971c, 973a, 975a, 975c, 975e, 975g, and 977; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 23. (1) The chief or only judge of probate of the county or probate court district, the county clerk, and the county treasurer shall constitute a board of county election commissioners for each county, 2 of whom shall be a quorum for the transaction of business. The chief or only judge of probate of the county or probate court district and the county clerk shall act respectively as chairperson and secretary of the board. In the absence or disqualification of the county clerk from any meeting of the board of county election commissioners, the board may select 1 of the county clerk's deputies to act in the county clerk's place. In the absence or disqualification of any member of the board of county election commissioners other than the county clerk, the members of the board who are present shall appoint some other county officer in the absent or disqualified member's place, and the appointed county officer, on being notified, shall attend without delay and act as a member of the board.

(2) If a member of the board is involved in the recall of an officer, either by assisting in the preparation of the petition for recall or by being an officer whose recall is sought, then the member of the board shall be disqualified with respect to any determination under section 952 and shall be replaced as provided in this section.

Sec. 951. (1) Each elective officer, except a judicial officer, is subject to recall by the voters of the electoral district in which the officer is elected as provided in this chapter. If an officer's term of office is 2 years or less, a recall petition shall not be filed against the officer until the officer has actually performed the duties of the office to which elected for a period of 6 months during the current term of that office and a recall petition shall not be filed against an officer during the last 6 months of the officer's term of office. If an officer's term of office is more than 2 years, a recall petition shall not be filed against the officer until the officer has actually performed the duties of the office to which elected for a period of 1 year during the current term of office and a recall petition shall not be filed against an officer during the last

1 year of the officer's term of office. An officer sought to be recalled shall continue to perform the duties of his or her office until the result of the recall election is certified.

(2) Notwithstanding the provisions of subsection (1), if, on the effective date of the amendatory act that added this subsection, language to recall an officer has been submitted and approved under section 952, then a recall petition may be filed if the officer has actually performed the duties of his or her office for a period of 6 months and it is not within the last 6 months of the term of office, regardless of the officer's term of office.

Sec. 951a. (1) A petition for the recall of an officer listed in section 959 shall meet all of the following requirements:

(a) Comply with section 544c(1) and (2).

(b) Be printed.

(c) State factually and clearly each reason for the recall. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office. The reason for the recall may be typewritten. If any reason for the recall is based on the officer's conduct in connection with specific legislation, the reason for the recall shall not misrepresent the content of the specific legislation.

(d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.

(e) Be in a form prescribed by the secretary of state.

(2) Before being circulated, a petition for the recall of an officer under subsection (1) shall be submitted to the board of state canvassers.

(3) The board of state canvassers, not less than 10 days or more than 20 days after submission to it of a petition for the recall of an officer under subsection (1), shall meet and shall determine by an affirmative vote of 3 of the members serving on the board of state canvassers whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected. Failure of the board of state canvassers to meet as required by this subsection shall constitute a determination that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall.

(4) The board of state canvassers, not later than 24 hours after receipt of a petition for the recall of an officer as provided under subsection (2), shall notify the officer whose recall is sought of each reason stated in the recall petition and of the date of the meeting of the board of state canvassers to consider whether each reason is factual and of sufficient clarity.

(5) The officer whose recall is sought and the sponsors of the recall petition may appear at the meeting and present arguments on whether each reason is factual and of sufficient clarity.

(6) The determination by the board of state canvassers may be appealed by the officer whose recall is sought or by the sponsors of the recall petition drive to the Michigan court of appeals. The appeal shall be filed not more than 10 days after the determination of the board of state canvassers. If a determination of the board of state canvassers is appealed to the Michigan court of appeals, the recall petition is not valid for circulation and shall not be circulated until a determination of whether each reason is factual and of sufficient clarity is made by the Michigan court of appeals or until 40 days after the date of the appeal, whichever is sooner.

(7) A petition is not valid for circulation if at any time the Michigan court of appeals determines that each reason on the recall petition is not factual and of sufficient clarity.

(8) A recall petition is valid for 180 days after either of the following, whichever occurs later:

(a) The date of determination of whether each reason is factual and of sufficient clarity by the board of state canvassers.

(b) The sooner of the following:

(i) The date of determination of whether each reason is factual and of sufficient clarity by the Michigan court of appeals.

(ii) Subject to subsection (7), 40 days after the date of the appeal under subsection (6).

(9) A recall petition that is filed after the 180-day period described in subsection (8) is not valid and shall not be accepted by the filing official under section 961. This subsection does not prohibit a person from resubmitting a recall petition for a determination of sufficient clarity and factualness under this section.

Sec. 952. (1) A petition for the recall of an officer listed in section 960 shall meet all of the following requirements:

(a) Comply with section 544c(1) and (2).

(b) Be printed.

(c) State factually and clearly each reason for the recall. Each reason for the recall shall be based upon the officer's conduct during his or her current term of office. The reason for the recall may be typewritten.

(d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.

(e) Be in a form prescribed by the secretary of state.

(2) Before being circulated, a petition for the recall of an officer under subsection (1) shall be submitted to the board of county election commissioners of the county in which the officer whose recall is sought resides.

(3) The board of county election commissioners, not less than 10 days or more than 20 days after submission to it of a petition for the recall of an officer under subsection (1), shall meet and shall determine whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected. Failure of the board of county election commissioners to meet as required by this subsection shall constitute a determination that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall.

(4) The board of county election commissioners, not later than 24 hours after receipt of a petition for the recall of an officer as provided under subsection (2), shall notify the officer whose recall is sought of each reason stated in the recall petition and of the date of the meeting of the board of county election commissioners to consider whether each reason is factual and of sufficient clarity.

(5) The officer whose recall is sought and the sponsors of the recall petition may appear at the meeting and present arguments on whether each reason is factual and of sufficient clarity.

(6) The determination by the board of county election commissioners may be appealed by the officer whose recall is sought or by the sponsors of the recall petition drive to the circuit court in the county. The appeal shall be filed not more than 10 days after the determination of the board of county election commissioners. If a determination of the board of county election commissioners is appealed to the circuit court in the county, the recall petition is not valid for circulation and shall not be circulated until a determination of whether each reason is factual and of sufficient clarity is made by the circuit court or until 40 days after the date of the appeal, whichever is sooner.

(7) A petition is not valid for circulation if at any time a circuit court determines that each reason on the recall petition is not factual and of sufficient clarity.

(8) A recall petition is valid for 180 days after either of the following, whichever occurs later:

(a) The date of determination of whether each reason is factual and of sufficient clarity by the board of county election commissioners.

(b) The sooner of the following:

(i) The date of determination of whether each reason is factual and of sufficient clarity by the circuit court.

(ii) Subject to subsection (7), 40 days after the date of the appeal under subsection (6).

(9) A recall petition that is filed after the 180-day period described in subsection (8) is not valid and shall not be accepted by the filing official under section 961. This subsection does not prohibit a person from resubmitting a recall petition for a determination of sufficient clarity and factualness under this section.

Sec. 961. (1) A recall petition shall be filed with the filing officer provided in section 959 or 960. The filing official shall give a receipt showing the date of filing, the number of recall petition sheets filed, and the number of signatures claimed by the filer. This shall constitute the total filing, and additional recall petition sheets for this filing shall not be accepted by the filing official.

(2) Within 7 days after a recall petition is filed, the filing official with whom the recall petition was filed shall examine the recall petition. The filing official shall determine if the recall petition is in proper form and shall determine the number of signatures of the recall petition. In determining the number of signatures, the filing official shall not count signatures on a recall petition sheet if 1 or more of the following apply:

(a) The execution of the certificate of circulator is not in compliance with this act.

(b) The heading of the recall petition sheet is improperly completed.

(c) The reasons for recall are different than those determined under section 951a by the board of state canvassers or the Michigan court of appeals or under section 952 by the board of county election commissioners or the circuit court to be factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct which is the basis for this recall.

(d) The signature was obtained before the date of determination as provided under section 951a(8) by the board of state canvassers or the Michigan court of appeals, whichever occurs later, or as provided under section 952(8) by the

board of county election commissioners or the circuit court, whichever occurs later, or more than 60 days before the filing of the recall petition.

(3) If the filing official determines that the form of the recall petition is improper or that the number of signatures is less than the minimum number required in section 955, the filing official shall proceed as provided in section 963(1).

(4) If the filing official determines that the number of signatures is in excess of the minimum number required in section 955, the filing official shall determine the validity of the signatures by verifying the registration of signers under subsection (6) and may determine the genuineness of signatures under subsection (7) or shall forward each recall petition sheet to the clerk of the city or township appearing on the head of the recall petition sheet. However, the recall petition shall not be forwarded to the secretary of a school district.

(5) The city or township clerk shall determine the validity of the signatures by verifying the registration of signers under subsection (6) and may determine the genuineness of signatures under subsection (7). Within 15 days after receipt of the recall petition, the city or township clerk shall attach to the recall petition a certificate indicating the number of signers on each recall petition sheet that are registered electors in the city or township and in the governmental unit for which the recall is sought. The certificate shall be on a form approved by the secretary of state and may be a part of the recall petition sheet. If the recall petition is for the recall of a village official, the county clerk shall forward the recall petition to the clerk of the village, and the duties and responsibilities of the city or township clerk as set forth in this section shall be performed by the village clerk.

(6) The qualified voter file shall be used to determine the validity of recall petition signatures by verifying the registration of signers. If the qualified voter file indicates that, on the date the elector signed the recall petition, the elector was not registered to vote, there is a rebuttable presumption that the signature is invalid. If the qualified voter file indicates that, on the date the elector signed the recall petition, the elector was not registered to vote in the city or township designated on the recall petition, there is a rebuttable presumption that the signature is invalid.

(7) The qualified voter file shall be used to determine the genuineness of a challenged petition signature appearing on a recall petition. Signature comparisons shall be made with the digitized signature in the qualified voter file. If the qualified voter file does not contain a digitized signature of an elector, the official with whom the recall petition was filed shall compare the challenged signature to the signature on the master card.

Sec. 963. (1) Within 35 days after the filing of the recall petition, the filing official with whom the recall petition is filed shall make an official declaration of the sufficiency or insufficiency of the recall petition. If the recall petition is determined to be insufficient, the filing official shall notify the person or organization sponsoring the recall of the insufficiency of the recall petition. It is not necessary to give notification unless the person or organization sponsoring the recall files with the filing official a written notice of sponsorship and a mailing address.

(2) If a recall petition is filed under section 960, immediately upon determining that the recall petition is sufficient, but not later than 35 days after the date of filing of the recall petition, the county clerk with whom the recall petition is filed shall call the recall election and proceed under sections 971c to 975. The recall election shall be held not less than 95 days after the date the recall petition is filed and shall be held on the next May regular election date or the next November regular election date, whichever occurs first.

(3) Except as otherwise provided in subsection (4), if a recall petition is filed under section 959, the filing official with whom the recall petition is filed shall call the recall primary election and proceed under sections 970b to 970g. The recall primary election shall be held on the next regular election date that is not less than 95 days after the date the recall petition is filed.

(4) If a recall petition is filed under section 959 demanding the recall of the governor, the filing official with whom the recall petition is filed shall call a special recall election and proceed under sections 975c to 975g. The special recall election shall be held not less than 95 days after the date the recall petition is filed and shall be held on the next February regular election date or the next August regular election date, whichever occurs first.

Sec. 967. The expenses of a special recall election, a recall primary election, a recall general election, or a recall election shall be payable in the same manner as are the costs of a regular election to fill the office in question.

Sec. 968. If a recall petition is filed under section 960, the board of county canvassers in the county where the recall petition is filed shall conduct the canvass of the recall election. The canvass of other recall elections, including a special recall election as provided under section 963(4), shall be by the board of state canvassers.

Sec. 969. After filing a recall petition and after a recall election, a recall general election, or special recall election under this chapter, no further recall petition shall be filed against the same incumbent of that office during the term for which he or she is elected.

Sec. 970a. Sections 970b to 970g apply to the recall primary election and recall general election for an office listed in section 959.

Sec. 970b. Unless the incumbent declines within 10 days after the filing of a recall petition, the incumbent shall be the nominee of that political party at the recall general election to be held as described in section 970e and that political party shall not conduct a recall primary election as described in sections 970c and 970e.

Sec. 970c. (1) Except as otherwise provided in subsection (2), for the recall primary election, a political party candidate may qualify for the recall primary election by filing a nominating petition or paying a \$100.00 nonrefundable fee with the secretary of state not later than 4 p.m. on the tenth day after the filing official with whom the recall petition is filed calls the recall primary election. The nominating petition shall be filed with the secretary of state and signed by 10% of the number of signatures required under section 544f.

(2) As provided in section 970b, if the incumbent is the nominee of his or her political party at the recall general election, an individual in the incumbent's political party is not eligible as a candidate for the recall primary election and that political party shall not conduct a recall primary election.

Sec. 970e. Subject to section 970b, the candidate of each political party receiving the greatest number of votes cast for candidates at the recall primary election as set forth in the report of the board of state canvassers, based on the returns from the various election precincts, shall be declared the nominee of that political party at the recall general election to be held on the next February regular election date or the next August regular election date, whichever occurs first. In addition, except as otherwise provided in this section, a candidate without a political party affiliation may qualify for the recall general election by filing a qualifying petition with the officer with whom the recall petitions were filed that contains 10% of the number of signatures required under section 544f within 10 days after the recall general election is scheduled. An individual who was an unsuccessful candidate in the recall primary election may not subsequently file a qualifying petition as a candidate without a political party affiliation for the recall general election.

Sec. 970g. The candidate receiving the highest number of votes in the recall general election is elected for the remainder of the term.

Sec. 971a. Sections 971c to 975 apply to the recall election for an office listed in section 960.

Sec. 971c. Unless the incumbent declines within 10 days after the filing of a recall petition, the incumbent shall, without filing, be deemed to have filed for the recall election and his or her name shall appear on the recall election ballot.

Sec. 972. (1) Except as provided in subsection (2) and section 971c, if the recall election involves a nonpartisan office, a candidate for that nonpartisan office shall be nominated and voted for in the recall election by filing a nominating petition or paying a \$100.00 nonrefundable fee not later than 4 p.m. on the tenth day after the filing official with whom the recall petition is filed calls the recall election. The nominating petition shall be filed with the clerk of the electoral district and signed by 10% of the number of qualified and registered electors of the electoral district as required under section 544f. Instead of filing a nominating petition, an individual may become a candidate by paying a \$100.00 nonrefundable fee with the clerk of the electoral district.

(2) This subsection applies to a recall election involving a school board member, if the recall election is scheduled to be held on the same date as a general election. A nominating petition filed by a candidate shall be signed by a number of qualified and registered electors of the school district as determined under section 303. The nominating petition shall be filed with the school district election coordinator, as designated by section 301, not later than 4 p.m. on the tenth day after the filing official with whom the recall petition is filed calls the recall election. Instead of filing a nominating petition, an individual may become a candidate by paying a \$100.00 nonrefundable fee to the school district election coordinator.

Sec. 973a. (1) Subject to subsection (2), if the recall election involves a partisan office, a political party candidate shall be nominated for that partisan office as follows:

(a) If the office is in the office of county commissioner or in a district office within an electoral district of 1 county, the county executive committee of the political party shall nominate a candidate for that office.

(b) If the office is in a district office within an electoral district in less than 1 county and 3 or more members of the county executive committee of a political party reside in the electoral district, the members of the county executive committee of the political party residing in the electoral district shall nominate a candidate for that office. If the office is in a district office within an electoral district in less than 1 county and less than 3 members of the county executive committee of a political party reside in the electoral district, the county executive committee of the political party shall nominate a candidate for that office.

(c) If the office is in a district office having an electoral district in more than 1 county, the members of the several county executive committees of the political party residing in those parts of the counties that are in the district shall nominate a candidate for that office.

(d) If the office is in a ward or township office and 3 or more members of the county executive committee of a political party reside in the ward or township, the members of the county executive committee of the political party residing in that ward or township shall nominate a candidate for that office. If the office is in a ward or township office and less than 3 members of the county executive committee of a political party reside in the ward or township, the county executive committee of the political party shall nominate a candidate for that office.

(2) If the incumbent candidate declines to be a candidate at the recall election as provided in section 971c, the political party of that incumbent candidate shall nominate a candidate using the nominating procedure as provided in subsection (1).

(3) Each nomination by a committee under subsection (1) shall be certified to the officer with whom the recall petitions were filed within 10 days after the calling of the recall election.

(4) A candidate without a political party affiliation may qualify for a partisan office by filing a qualifying petition with the officer with whom the recall petitions were filed that contains 10% of the number of signatures required under section 544f within 10 days after the calling of the recall election.

Sec. 975. The candidate receiving the highest number of votes in the recall election is elected for the remainder of the term.

Sec. 975a. Sections 975c to 975g apply to the special recall election for the office of the governor.

Sec. 975c. The procedure governing the special recall election on the question of the recall of the governor shall be the same, unless otherwise provided in this act, as that by which the governor is elected to office. If the official with whom the recall petition is filed is not required to give public notice of an election concerning the office of the governor, the official shall give notice to the official or officials required to give public notice of the election, cause the ballots to be printed, provide election supplies, and do all other things necessary to conduct the election in the manner provided in this act.

Sec. 975e. (1) Each reason for demanding the recall of the governor as set forth in the recall petition shall be printed on the special recall election ballot used at the special recall election in not more than 200 words. If the statement of reason set forth in the petition contains more than 200 words, then the statement shall be condensed by the sponsor of the recall petition for use on the special recall election ballot. If the sponsor fails to furnish the condensed statement within 48 hours following written demand, then the statement shall be condensed by the official preparing the special recall election ballots.

(2) The official preparing the special recall election ballot shall provide in writing to the governor the statement of reason which shall appear on the special recall election ballot. The governor, in not more than 200 words, may submit a justification of his or her conduct in office. The justification shall be submitted to the official preparing the special recall election ballot within 72 hours after receipt of the notification. If submitted in the prescribed time, the justification shall be printed on the special recall election ballot.

(3) The statement "Vote no on the recall" or "Vote yes on the recall" or words of similar import shall not be permitted on the special recall election ballot. A part of the reason for demanding the recall of the governor or the governor's justification of conduct in office shall not be emphasized by italics, underscoring, or in any other manner.

(4) There shall be printed on the special recall election ballot the following question:

Shall (Name the person against whom the recall petition is filed) be recalled from the office of governor? Printed below the question in separate lines in clearly legible type shall be the words "Yes" [] and "No" [] or in a form as prescribed by the secretary of state.

Sec. 975g. If the board of state canvassers determines that a majority of the votes are in favor of recall, the board of state canvassers immediately upon the determination shall certify the result to the officer with whom the recall petition was filed. Upon certification, the governor shall be replaced as provided under section 26 of article V of the state constitution of 1963.

Sec. 977. (1) An officer who is recalled under this chapter shall not be appointed to fill a vacancy in an elective office in the electoral district or governmental unit from which the recall was made during the term of office from which the officer was recalled.

(2) An officer who resigns subsequent to the filing of a recall petition shall not be appointed to fill a vacancy in elective office in that electoral district or governmental unit during the term of the office from which the officer resigned.

(3) If an officer resigns subsequent to the filing of petitions to recall that officer from office, it is not necessary for the office with which the recall petitions have been filed to proceed under sections 961 and 963.

(4) If an officer whose recall is sought resigns after the calling of a recall primary election, recall general election, recall election, or special recall election, the election shall not be held.

Enacting section 1. Sections 964, 966, 970, 971, 973, and 974 of the Michigan election law, 1954 PA 116, MCL 168.964, 168.966, 168.970, 168.971, 168.973, and 168.974, are repealed.

Enacting section 2. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable.

Enacting section 3. The legislature recognizes the importance of the electoral process, and it is the intent of the legislature that this amendatory act uphold each of the following:

- (a) Section 4 of article II of the state constitution of 1963.
- (b) Section 8 of article II of the state constitution of 1963.
- (c) Section 26 of article V of the state constitution of 1963.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor