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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2549

01/29/2016 Authored by Laine  
The bill was referred to the Committee on Education Innovation Policy

A bill for an act

relating to elections; authorizing recall elections for school board members; modifying procedures for filling a vacancy in school board office; amending Minnesota Statutes 2014, sections 123B.09, by adding a subdivision; 351.14, by adding a subdivision; 351.15; 351.16, subdivisions 1, 2; 351.18; 351.19, subdivision 4; 351.20; 351.21; 351.22, subdivisions 1, 2; repealing Minnesota Statutes 2014, section 123B.09, subdivision 9; Minnesota Statutes 2015 Supplement, section 123B.095.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 123B.09, is amended by adding a subdivision to read:

Subd. 5b. School board vacancy appointment; public hearing. (a) Any vacancy in a board must be filled by board appointment at a regular or special meeting. Before making an appointment to fill a vacancy under subdivision 3, the school board must hold a public hearing not more than 30 days after the vacancy occurs with public notice given in the same manner as for a special meeting of the school board. At the public hearing, the board must invite public testimony from persons residing in the district in which the vacancy occurs relating to the qualifications of prospective appointees to fill the vacancy. Before making an appointment, the board must also notify public officials in the school district of the appointment, including county commissioners, town supervisors, and city council members, and must enter into the record at the board meeting in which the appointment is made the names and addresses of the public officials notified. The appointment shall be evidenced by a resolution entered in the minutes and shall continue until an election is held under this subdivision.

(b) The appointed person shall serve until the qualification of the successor elected to fill the unexpired part of the term. All elections to fill vacancies shall be for the unexpired

2.1 term. If the vacancy occurs before the first day to file affidavits of candidacy for the next  
 2.2 school district general election and more than two years remain in the unexpired term, a  
 2.3 special election shall be held in conjunction with the school district general election. If  
 2.4 the vacancy occurs within 30 days before the first day to file affidavits of candidacy for  
 2.5 the school district general election, no appointment shall be made, and the appropriate  
 2.6 election shall be held at the next school district general election. If the vacancy occurs  
 2.7 when less than two years remain in the unexpired term, the appointed person shall serve  
 2.8 the remainder of the unexpired term and until a successor is elected and qualifies at the  
 2.9 school district election.

2.10 Sec. 2. Minnesota Statutes 2014, section 351.14, is amended by adding a subdivision  
 2.11 to read:

2.12 Subd. 6. **Filing official.** "Filing official" means:

2.13 (1) the county auditor for county offices; or

2.14 (2) the school district clerk for school board members.

2.15 Sec. 3. Minnesota Statutes 2014, section 351.15, is amended to read:

2.16 **351.15 REMOVAL OF ELECTED ~~COUNTY~~ LOCAL OFFICIAL.**

2.17 An elected county or school board official may be removed from office in accordance  
 2.18 with the procedures established in sections 351.14 to 351.23.

2.19 Sec. 4. Minnesota Statutes 2014, section 351.16, subdivision 1, is amended to read:

2.20 Subdivision 1. **Form of petition.** Any registered voter may petition the ~~county~~  
 2.21 ~~auditor~~ filing official requesting a removal election and setting forth facts which allege  
 2.22 with specificity that an elected county official committed malfeasance or nonfeasance in  
 2.23 the performance of official duties during the current or any previous term in the office  
 2.24 held by the ~~elected county~~ official, except that a petition may not be submitted during the  
 2.25 180 days immediately preceding a general election for the office which is held by the  
 2.26 ~~county~~ official named in the petition. The petitioner must attach to the petition documents  
 2.27 which contain the signatures of supporters who are registered voters totaling at least 25  
 2.28 percent of the number of persons who voted in the preceding election for the office which  
 2.29 is held by the ~~county~~ official named in the petition. Each page on which signatures are  
 2.30 included must clearly identify the purpose of the petition. In a removal election involving  
 2.31 a countywide office, the registered voters must be residents of the county or, In a removal  
 2.32 election involving a county commissioner, the registered voters must be residents of the  
 2.33 commissioner district which elected the named county commissioner. In a removal election

3.1 involving a school board member, the registered voters must be residents of the school  
 3.2 district. The signatures of supporters must be on forms provided by the county auditor.

3.3 Sec. 5. Minnesota Statutes 2014, section 351.16, subdivision 2, is amended to read:

3.4 Subd. 2. ~~County auditor's~~ **Filing official's duties.** The ~~county auditor~~ filing official  
 3.5 shall examine the petition to determine whether it contains the requisite number of valid  
 3.6 signatures of registered voters. If so, the ~~county auditor~~ filing official shall forward the  
 3.7 petition, but not the signatures, to the clerk of appellate courts within 15 days of receipt  
 3.8 of the petition. If the ~~county auditor~~ filing official determines that the petition does not  
 3.9 include the requisite number of signatures, the ~~county auditor~~ filing official shall deny the  
 3.10 petition within 15 days of receipt of the petition.

3.11 Sec. 6. Minnesota Statutes 2014, section 351.18, is amended to read:

3.12 **351.18 WAIVER.**

3.13 An elected ~~county~~ official who is the subject of a petition under section 351.16 may  
 3.14 waive in writing the right to a public hearing. If the hearing is waived, the case must be  
 3.15 certified by order of the chief justice to the ~~county auditor~~ filing official for a removal  
 3.16 election to be held within 30 days of the receipt of the order.

3.17 Sec. 7. Minnesota Statutes 2014, section 351.19, subdivision 4, is amended to read:

3.18 Subd. 4. **Legal counsel.** (a) In a removal election involving a county official, the  
 3.19 petitioners and the elected county official shall be represented by legal counsel at their  
 3.20 own expense, and shall pay their costs associated with the hearing except that the county  
 3.21 may assume the legal costs incurred by the elected county official. The county shall  
 3.22 pay all other costs of the hearing.

3.23 (b) In a removal election involving a school board member, the petitioners and the  
 3.24 school board member shall be represented by legal counsel at their own expense and shall  
 3.25 pay their costs associated with the hearing except that the school district may assume the  
 3.26 legal costs incurred by the school board member. The school district shall pay all other  
 3.27 costs of the hearing.

3.28 Sec. 8. Minnesota Statutes 2014, section 351.20, is amended to read:

3.29 **351.20 DECISION; CERTIFICATION.**

3.30 If the special master determines that the ~~elected county~~ official committed  
 3.31 malfeasance or nonfeasance in the performance of official duties, the case must be certified

4.1 to the ~~county auditor~~ filing official for a removal election on a date to be fixed by the  
4.2 ~~county auditor~~ filing official and held within 30 days of the order of the special master.

4.3 Sec. 9. Minnesota Statutes 2014, section 351.21, is amended to read:

4.4 **351.21 APPEAL.**

4.5 An ~~elected county~~ official may appeal the decision of a special master under section  
4.6 351.20 to the Supreme Court within ten days. The removal election is stayed until 20  
4.7 days after the Supreme Court issues a decision on the appeal. The Supreme Court shall  
4.8 grant an expedited appeal.

4.9 Sec. 10. Minnesota Statutes 2014, section 351.22, subdivision 1, is amended to read:

4.10 Subdivision 1. **Majority vote; form of question.** (a) An ~~elected county~~ official  
4.11 may be removed pursuant to sections 351.14 to 351.23 by majority vote. ~~The~~ A removal  
4.12 election for a county official is a special election conducted under applicable provisions  
4.13 of section 375.20. A removal election for a school board official is a special election  
4.14 conducted under applicable provisions of chapter 205A.

4.15 (b) The question submitted to the voters must be:

4.16 "Should ..... (Name) elected (appointed) to the office of  
4.17 ..... (title) be removed from that office?

4.18 Yes .....

4.19 No ..... "

4.20 Any resulting vacancy must be filled as provided by law.

4.21 Sec. 11. Minnesota Statutes 2014, section 351.22, subdivision 2, is amended to read:

4.22 Subd. 2. **Disqualification.** A removed ~~county~~ official may not thereafter hold the  
4.23 same office for the remainder of the term to which the official was elected.

4.24 Sec. 12. **REPEALER.**

4.25 (a) Minnesota Statutes 2014, section 123B.09, subdivision 9, is repealed.

4.26 (b) Minnesota Statutes 2015 Supplement, section 123B.095, is repealed.

4.27 Sec. 13. **EFFECTIVE DATE; APPLICABILITY.**

4.28 This act is effective the day following final enactment. Provisions related to removal  
4.29 of a school board member apply to incumbent officials and officials elected or appointed  
4.30 on or after that date. Provisions related to filling school board vacancies apply to vacancies  
4.31 occurring on or after that date.

**123B.09 BOARDS OF INDEPENDENT SCHOOL DISTRICTS.**

Subd. 9. **Removing board members.** The board may remove, for proper cause, any member or officer of the board and fill the vacancy; but such removal must be by a concurrent vote of at least four members, at a meeting of whose time, place, and object the charged member has been duly notified, with the reasons for such proposed removal and after an opportunity to be heard in defense against the removal.

**123B.095 VACANCY IN OFFICE OF SCHOOL BOARD MEMBER.**

Subdivision 1. **Option for filling vacancies; special election.** (a) Except as provided in section 123B.09, subdivision 4, a vacancy in the office of school board may be filled as provided in this subdivision and subdivision 2, or as provided in subdivision 3. If the vacancy is to be filled under this subdivision and subdivision 2, it must be filled at a special election. The school board may by resolution call for a special election to be held according to the earliest of the following time schedules:

- (1) not less than 120 days following the date the vacancy is declared, but no later than 12 weeks prior to the date of the next regularly scheduled primary election;
- (2) concurrently with the next regularly scheduled primary election and general election; or
- (3) no sooner than 120 days following the next regularly scheduled general election.

(b) The person elected at the special election shall take office immediately after receipt of the certificate of election and upon filing the bond and taking the oath of office and shall serve the remainder of the unexpired term.

Subd. 2. **When victor seated immediately.** If a vacancy for which a special election is required occurs less than 120 days before the general election preceding the end of the term, the vacancy shall be filled by the person elected at that election for the ensuing term who shall take office immediately after receiving the certificate of election, filing the bond and taking the oath of office.

Subd. 3. **Vacancies of less than one year; appointment option.** Except as provided in section 123B.09, subdivision 4, and as an alternative to the procedure provided in subdivisions 1 and 2, any other vacancy in the office of school board member may be filled by board appointment at a regular or special meeting. The appointment shall be evidenced by a resolution entered in the minutes and shall continue until an election is held under this subdivision. All elections to fill vacancies shall be for the unexpired term. If one year or more remains in the unexpired term, a special election must be held under subdivision 1. If less than one year remains in the unexpired term, the school board may appoint a person to fill the vacancy for the remainder of the unexpired term, unless the vacancy occurs within 90 days of the next school district general election, in which case an appointment shall not be made and the vacancy must be filled at the general election. The person elected to fill a vacancy at the general election takes office immediately in the same manner as for a special election under subdivision 1, and serves the remainder of the unexpired term and the new term for which the election was otherwise held.

Subd. 4. **School board vacancy appointment; public hearing.** Before making an appointment to fill a vacancy under subdivision 3, the school board must hold a public hearing not more than 30 days after the vacancy occurs with public notice given in the same manner as for a special meeting of the school board. At the public hearing, the board must invite public testimony from persons residing in the district in which the vacancy occurs relating to the qualifications of prospective appointees to fill the vacancy. Before making an appointment, the board also must notify public officials in the school district on the appointment, including county commissioners, town supervisors, and city council members, and must enter into the record at the board meeting in which the appointment is made the names and addresses of the public officials notified. If, after the public hearing, the board is unable or decides not to make an appointment under subdivision 3, it must hold a special election under subdivision 1, but the time period in which the election must be held begins to run from the date of the public hearing.