



2021 South Dakota Legislature

House Bill 1058

Introduced by: **Representative Ernie Otten**

1 **An Act to authorize the recall of county commissioners.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **7-34-1. Petition--Recall--County commissioner.**

5 A county commissioner may be removed from office at any time by the voters as
 6 provided in this Act. A petition demanding the election of a successor for a county
 7 commissioner sought to be removed must be signed by:

- 8 (1) Fifteen percent of the registered voters of the district that the commissioner
 9 represents; or
 10 (2) Five percent of the registered voters of the county if the commissioner serves the
 11 entire county.

12 The percentage and number of signatures required under this section shall be based upon
 13 the total number of registered voters at the last preceding general election.

14 The allowable grounds for removal are misconduct, malfeasance, nonfeasance,
 15 crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross
 16 partiality. The petition shall contain a specific statement of the grounds on which removal
 17 is sought. The form for the county recall petition shall be prescribed by the state Board of
 18 Elections pursuant to chapter 1-26. No signature on a petition is valid if signed more than
 19 sixty days before the filing of the petitions.

20 If a petition to recall is filed with the county auditor and meets the above
 21 requirements, the county auditor shall present the petition to the county commission at
 22 its next meeting, except in the case of a petition to recall a county auditor, which shall be
 23 given to the county treasurer to present to the county commission and to be filed with the
 24 county. Only the petition signatures may be challenged in the manner established in §§
 25 12-1-13 through 12-1-16. A failure to challenge petition signatures pursuant to §§ 12-1-
 26 13 through 12-1-16, does not prohibit an interested person from challenging the filing of

1 the recall petition or the sufficiency of the specific statement of the grounds of the recall
2 petition.

3 A challenge to the recall petition regarding the specific statement of the grounds
4 of the recall petition must be filed in circuit court within five business days of the filing of
5 the recall petition. The circuit court shall conduct an expedited declaratory judgment
6 hearing with no right to trial by jury.

7 **Section 2.** That a NEW SECTION be added:

8 **7-34-2. Special election--Recall--County commissioner.**

9 A special election shall be held within sixty days after the filing of a petition under
10 § 7-34-1. However, if the petition is filed within ninety days prior to a primary, general,
11 or statewide special election, the question of a successor shall be submitted at that
12 primary, general, or statewide special election.

13 Any commissioner sought to be removed may be a candidate and, unless the
14 incumbent requests otherwise in writing, the auditor shall place the incumbent's name on
15 the official ballot without nomination. The auditor shall also place on the official ballot the
16 name of any other candidate nominated as provided in this Act. If no other candidate is
17 nominated for the position, no recall election may be held, and the incumbent shall remain
18 in office.

19 **Section 3.** That a NEW SECTION be added:

20 **7-34-3. Qualification--Special election--Term.**

21 For an election under § 7-34-2, if the incumbent is elected, the incumbent shall
22 continue in office. If some person other than the incumbent is elected, the incumbent is
23 deemed removed from office upon or at the expiration of the time for qualification of the
24 successor. The successor shall qualify within ten days after receiving notification of
25 election, and in case of a failure to qualify, the office shall be deemed vacant. The qualified
26 successor of any removed commissioner shall hold office during the remainder of the
27 predecessor's unexpired term.