

HOUSE BILL 1818

By Butler

AN ACT to amend Tennessee Code Annotated, Title 2 and
Title 8, relative to recall of elected officials.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, is amended by adding the following
as a new chapter:

8-45-101. As used in this chapter:

(1) "District" means one (1) or more districts from which a public officer is
elected;

(2) "Non-constitutional public officer":

(A) Means a person who holds an elected public office in this state or
within a political subdivision of this state; and

(B) Does not mean:

(i) The governor, a member of the general assembly, judges of
the supreme court and of inferior courts, chancellors, attorneys for the
state, the treasurer, comptroller, and secretary of state;

(ii) Elected law enforcement officers and officials, including
sheriffs, a county mayor, a member of a county legislative body, a county
trustee, a register, a county clerk, and an assessor of property; or

(iii) A person appointed to a public office;

(3) "Political subdivision" means an incorporated city or town, county,
metropolitan government, school board, or other local governmental unit or political
subdivision of this state; and

(4) "Public office" means an elected position of duty, trust, or authority of this state or within a political subdivision created by the general assembly or by a political subdivision through authority conferred by the Tennessee Constitution or the general assembly that meets the following criteria:

(A) The position possesses a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(B) The powers conferred and the duties to be discharged are defined, directly or impliedly, by the Tennessee Constitution, the general assembly, or by a political subdivision through legislative authority;

(C) The duties are performed independently and without control of a superior power other than the law, unless the general assembly has created the position and placed it under the general control of a superior office or body; and

(D) The position has some permanency and continuity and is not only temporary or occasional.

8-45-102.

(a) A non-constitutional public officer is subject to recall from office under this chapter. This chapter applies to all state and local elected non-constitutional public officers.

(b) A non-constitutional public officer holding an elective office may be recalled by the qualified electors entitled to vote in the district from which the officer was elected.

(c) Physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, lack of confidence, malfeasance, neglect of duty, voter dissatisfaction, or conviction of a felony offense are the only grounds for recall. A person must not be recalled for performing a mandatory duty of the office that the person holds

or for not performing an act that, if performed, would subject the person to prosecution for official misconduct.

8-45-103. The recall process established under this chapter is cumulative and additional to, rather than a substitute for, other methods for removal of non-constitutional public officers.

8-45-104.

(a) A person who is a qualified elector of a district in this state from which a public officer is elected may sign a petition for recall of a non-constitutional public officer.

(b)

(1) A person commits an offense who:

(A) Knowingly signs a name other than the person's own to a petition;

(B) Knowingly signs a petition more than once for the recall;

(C) Signs the petition knowing that the person is not at the time of the signing a qualified elector; or

(D) Knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of a non-constitutional public officer.

(2) A violation under subdivision (b)(1) is a Class C misdemeanor.

8-45-105.

(a) A recall petition must not name more than one (1) non-constitutional public officer to be recalled.

(b) A recall petition against a non-constitutional public officer must not be approved for circulation, as required in § 8-45-109(c), until a non-constitutional public officer has held office for at least two (2) months.

(c) A recall petition must not be filed against a non-constitutional public officer for whom a recall election has been held for a period of two (2) years during the officer's term of office unless this state or the political subdivision financing the recall election is first reimbursed for all expenses of the preceding recall election.

8-45-106.

Recall petitions for non-constitutional public officers must contain the signatures of qualified electors equaling at least twenty percent (20%) of the number of persons registered to vote at the preceding general election in the district for which the non-constitutional public officer was elected.

8-45-107.

(a) Recall petitions for non-constitutional public officers of this state must be filed with each county election commission and the secretary of state. Recall petitions for non-constitutional public officers of a political subdivision must be filed with the county election commission that serves the district in which the non-constitutional public officer serves and the secretary of state.

(b) If the county election commission or secretary of state refuses to accept and file a petition for recall with the proper number of signatures of qualified electors, an elector may, within ten (10) days after such refusal, apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification of the recall election.

(c) All such suits or appeals therefrom must be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(d) An aggrieved party may file an appeal within ten (10) days after an adverse order or decision as provided by law.

8-45-108.

(a) The form of the recall petition must be substantially as follows:

WARNING

A person who knowingly signs a name other than the person's own to this petition, who signs the person's name more than once upon a petition to recall the same officer at one (1) election, or who is not at the time of signing this petition qualified to sign this petition under law, is guilty of a Class C misdemeanor.

RECALL PETITION

To the Honorable, Secretary of State of the State of Tennessee, and the county election commission for County: We, the undersigned qualified electors of the State of Tennessee in the (name of appropriate district) respectfully petition that an election be held as provided by law on the question of whether, holding the office of, should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than two hundred (200) words). Each signer certifies: I have personally signed this petition; I am a qualified elector of the State of Tennessee and of the (name of appropriate district); and my residential and post office address are correctly written after my name to the best of my knowledge and belief.

(b) Numbered lines must follow the language in subsection (a). Each numbered line must contain spaces for the signature, residential address, post office address, and

printed last name of the signer. Each separate sheet of the petition must contain the heading and reasons for the proposed recall as prescribed in subsection (a).

8-45-109.

(a) The signatures on each petition must be placed on sheets of paper known as circulation sheets. Each circulation sheet must be substantially eight and one-half by fourteen inches (8 1/2" x 14") or a continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a horizontal line one and one-half inches (1 1/2") from the top of the sheet. The space above the line must remain blank and must be for the purpose of binding.

(b) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than twenty-five (25) circulation sheets.

(c) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the appropriate county election commission and the secretary of state in the form in which it will be circulated. The commission and the secretary of state shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, within one (1) week of receiving the sheet.

(d) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement must be sworn to by at least one (1) of the petitioners before a person authorized to administer oaths.

(e) The county election commission and the secretary of state shall serially number all approved petitions continuously from year to year.

8-45-110.

The forms prescribed in this part are not mandatory, and if substantially followed, the petition is sufficient, notwithstanding clerical and merely technical errors.

8-45-111.

(a) Signed circulation sheets or sections of a petition for recall must be submitted to the county election commission in the county in which the signatures were obtained and to the secretary of state within three (3) months of the date the form of the petition was approved under § 8-45-109(c).

(b) An affidavit, in substantially the following form, must be attached to each circulation sheet or section submitted under subsection (a):

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe that the signatures on the petition are genuine and are the signatures of the persons whose names they purport to be and that the signers knew the contents of the petition before signing the petition.

..... (Signature)

Subscribed and sworn before me this day of, 20...

..... (Person authorized to take oaths)

Seal (Title or notarial information)

8-45-112.

(a) The county election commission in each county in which a recall petition is signed shall verify and compare the signatures of each person who has signed the petition to ensure that the person is an elector in that county and, if satisfied that the signatures are genuine, shall certify that fact to the secretary of state, in substantially the following form:

To the Honorable, Secretary of State of the State of Tennessee:

I,, (title) of County, certify that I have compared the signatures on sheets (specifying number of sheets) of the petition for recall

No. (assigned serial number of petition) attached, in the manner prescribed by law, and I believe (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the residential and post office address is completed for each valid signature.

Signed: (Signature) (Date)

Seal.....(Title)

(b) The certificate is prima facie evidence of the facts stated in the certificate, and the secretary of state or county election commission receiving the recall petition may consider and count only the signatures that are certified.

8-45-113.

Upon certification of a petition under this chapter, the secretary of state shall immediately give written notice to the non-constitutional public officer named in the petition. The notice must state that a recall petition has been filed and certified, must set forth the reasons contained in the petition, and must notify the non-constitutional public officer that the officer has the right to prepare and have printed on the ballot a statement containing not more than two hundred (200) words giving reasons why the officer should not be recalled. A statement of justification must not be printed on the ballot unless it is delivered to the secretary of state within ten (10) days of the date notice is given.

8-45-114.

(a) If the non-constitutional public officer named in the petition for recall submits a resignation in writing, it must be accepted and become effective seventy-two (72) hours after it is offered. The vacancy created by the resignation must be filled as provided by law. However, the non-constitutional public officer named in the petition for recall must not be appointed to fill the vacancy.

(b) If the non-constitutional public officer named in the petition for recall refuses to resign or does not resign within five (5) days after receiving notice of the certified petition, an election must be held. If the recall petition was certified more than sixty (60) days before a general or primary election, the recall election must be held at the same time as the general or primary election. If the recall petition was certified less than sixty (60) days before a general or primary election, the recall election must be held at the next succeeding general election.

8-45-115. The public notice of a recall election, to be filed in accordance with § 2-14-105, must be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on
..... (Date) for the purpose of voting upon the recall of who holds the
office of

DATED at, (Date)

8-45-116.

(a) The ballot at a recall election must set forth the statement contained in the recall petition stating the reasons for demanding the recall of the non-constitutional public officer and the non-constitutional public officer's statement of reasons why the officer should not be recalled. The question of whether the officer should be recalled must be placed on the ballot in a form similar to the following:

- FOR recalling who holds the office of
- AGAINST recalling who holds the office of

(b) The form of the ballot must be approved as provided in the election laws of this state.

8-45-117.

Expenses of a recall election must be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and this state or a political subdivision affected may fund the costs of such an election through emergency funding procedures.

8-45-118.

The non-constitutional public officer named in the recall petition continues in office until the officer resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy must be filled as provided by law. However, the non-constitutional public officer recalled must not be appointed to fill the vacancy.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.