

By Senator Klein

28-1253-98

See HB

1 A bill to be entitled
 2 An act relating to local government recall;
 3 amending s. 100.361, F.S., relating to
 4 municipal and charter county government recall;
 5 authorizing and providing procedures for the
 6 recall of any member of the governing body of a
 7 noncharter county by the electors of the
 8 county; providing penalties; providing an
 9 effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Section 100.361, Florida Statutes, is
 14 amended to read:

15

100.361 Local government ~~Municipal~~ recall.--

16

(1) RECALL PETITION.--Any member of the governing body
 17 of a municipality, ~~or~~ charter county, or noncharter county,
 18 hereinafter referred to ~~in this section~~ as "local government
 19 ~~municipality,~~" may be removed from office by the electors of
 20 the local government ~~municipality~~. When the official
 21 represents a district and is elected only by electors residing
 22 in that district, only electors from that district are
 23 eligible to sign the petition to recall that official and are
 24 entitled to vote in the recall election. When the official
 25 represents a district and is elected at-large by the electors
 26 of the local government ~~municipality~~, all electors of the
 27 local government ~~municipality~~ are eligible to sign the
 28 petition to recall that official and are entitled to vote in
 29 the recall election. Where used in this section, the term
 30 "district" shall be construed to mean the area or region of a
 31 local government ~~municipality~~ from which a member of the

1 governing body is elected by the electors from such area or
2 region. Members may be removed from office by the following
3 procedure:

4 (a) A petition shall be prepared naming the person
5 sought to be recalled and containing a statement of grounds
6 for recall in not more than 200 words limited solely to the
7 grounds specified in paragraph (b). If more than one member of
8 the governing body is sought to be recalled, whether such
9 member is elected by the electors of a district or by the
10 electors of the local government ~~municipality~~ at-large, a
11 separate recall petition shall be prepared for each member
12 sought to be recalled.

13 1. In a local government ~~municipality~~ or district of
14 fewer than 500 electors, the petition shall be signed by at
15 least 50 electors or by 10 percent of the total number of
16 registered electors of the local government ~~municipality~~ or
17 district as of the preceding local government ~~municipal~~
18 election, whichever is greater.

19 2. In a local government ~~municipality~~ or district of
20 500 or more but fewer than 2,000 registered electors, the
21 petition shall be signed by at least 100 electors or by 10
22 percent of the total number of registered electors of the
23 local government ~~municipality~~ or district as of the preceding
24 local government ~~municipal~~ election, whichever is greater.

25 3. In a local government ~~municipality~~ or district of
26 2,000 or more but fewer than 5,000 registered electors, the
27 petition shall be signed by at least 250 electors or by 10
28 percent of the total number of registered electors of the
29 local government ~~municipality~~ or district as of the preceding
30 local government ~~municipal~~ election, whichever is greater.

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1 4. In a local government ~~municipality~~ or district of
2 5,000 or more but fewer than 10,000 registered electors, the
3 petition shall be signed by at least 500 electors or by 10
4 percent of the total number of registered electors of the
5 local government ~~municipality~~ or district as of the preceding
6 local government ~~municipal~~ election, whichever is greater.

7 5. In a local government ~~municipality~~ or district of
8 10,000 or more but fewer than 25,000 registered electors, the
9 petition shall be signed by at least 1,000 electors or by 10
10 percent of the total number of registered electors of the
11 local government ~~municipality~~ or district as of the preceding
12 local government ~~municipal~~ election, whichever is greater.

13 6. In a local government ~~municipality~~ or district of
14 25,000 or more registered electors, the petition shall be
15 signed by at least 1,000 electors or by 5 percent of the total
16 number of registered electors of the local government
17 ~~municipality~~ or district as of the preceding local government
18 ~~municipal~~ election, whichever is greater.

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20 Electors of the local government ~~municipality~~ or district
21 making charges contained in the statement of grounds for
22 recall and those signing the recall petition shall be
23 designated as the "committee." A specific person shall be
24 designated in the petition as chair of the committee to act
25 for the committee. Electors of the local government
26 ~~municipality~~ or district are eligible to sign the petition.
27 Signatures and oaths of circulators shall be executed as
28 provided in paragraph (c). All signatures shall be obtained
29 within a period of 30 days, and the petition shall be filed
30 within 30 days after the date the first signature is obtained
31 on the petition.

1 (b) The grounds for removal of elected local
2 government ~~municipal~~ officials shall, for the purposes of this
3 section ~~act~~, be limited to the following and must be contained
4 in the petition:

- 5 1. Malfeasance;
- 6 2. Misfeasance;
- 7 3. Neglect of duty;
- 8 4. Drunkenness;
- 9 5. Incompetence;
- 10 6. Permanent inability to perform official duties; and
- 11 7. Conviction of a felony involving moral turpitude.

12 (c) Each elector of the local government ~~municipality~~
13 signing a petition shall sign his or her name in ink or
14 indelible pencil as registered in the office of the supervisor
15 of elections and shall state on the petition his or her place
16 of residence and voting precinct. Each petition shall contain
17 appropriate lines for signatures and addresses of electors and
18 an oath, to be executed by the circulator thereof, verifying
19 the fact that the circulator saw each person sign the
20 counterpart of the petition, that each signature appearing
21 thereon is the genuine signature of the person it purports to
22 be, and that the petition was signed in the presence of the
23 circulator on the date indicated.

24 (d) The petition shall be filed with the auditor or
25 clerk of the local government ~~municipality or charter county~~,
26 or his or her equivalent, hereinafter referred to as "clerk,"
27 by the person designated as chair of the committee, and, when
28 a facially valid petition meeting the requirements of
29 paragraph (b) is filed, the clerk shall submit such petition
30 to the county supervisor of elections who shall, within a
31 period of not more than 30 days after the petition is filed

1 with the supervisor, determine whether the petition contains
2 the required valid signatures. If it is determined by the
3 clerk that the petition does not meet the requirements of
4 paragraph (b) and therefore is not facially valid, the clerk
5 shall so notify the governing body of the local government
6 ~~municipality or charter county~~ and take no further action. The
7 petition cannot be amended after it is filed with the clerk.
8 The supervisor shall be paid by the persons or committee
9 seeking verification the sum of 10 cents for each name
10 checked.

11 (e) If it is determined that the petition does not
12 contain the required signatures, the clerk shall so certify to
13 the governing body of the local government ~~municipality or~~
14 ~~charter county~~ and file the petition without taking further
15 action, and the matter shall be at an end. No additional names
16 may be added to the petition, and the petition shall not be
17 used in any other proceeding.

18 (f) If it is determined that the petition has the
19 required signatures, then the clerk shall at once serve upon
20 the person sought to be recalled a certified copy of the
21 petition. Within 5 days after service, the person sought to be
22 recalled may file with the clerk a defensive statement of not
23 more than 200 words. The clerk shall, within 5 days, prepare a
24 sufficient number of typewritten, printed, or mimeographed
25 copies of the recall petition and defensive statement, as well
26 as the names, addresses, and oaths on the original petition,
27 and deliver them to the person who has been designated as
28 chair of the committee and take his or her receipt therefor.
29 Such prepared copies shall be entitled "Recall Petition and
30 Defense" and shall contain lines and spaces for signatures of
31 registered electors, place of residence, election precinct

1 number, and date of signing, together with oaths to be
2 executed by the circulators which conform to the provisions of
3 paragraph (c). The clerk shall deliver forms sufficient to
4 carry the signatures of 30 percent of the registered electors.

5 (g) Upon receipt of the "Recall Petition and Defense,"
6 the committee may circulate them to obtain the signatures of
7 15 percent of the electors. Any elector who signs a recall
8 petition shall have the right to demand in writing that his or
9 her name be stricken from the petition. A written demand
10 signed by the elector shall be filed with the clerk and upon
11 receipt of the demand the clerk shall strike the name of the
12 elector from the petition and place his or her initials to the
13 side of the signature stricken. However, no signature may be
14 stricken after the clerk has delivered the "Recall Petition
15 and Defense" to the supervisor of elections for verification.

16 (h) Within 60 days after delivery of the "Recall
17 Petition and Defense" to the chair, the chair shall file with
18 the clerk the "Recall Petition and Defense" which bears the
19 signatures of electors. The clerk shall assemble all signed
20 petitions, check to see that each petition is properly
21 verified by the oath of the circulator, and submit such
22 petitions to the county supervisor of elections, who shall
23 determine the number of valid signatures, purge the names
24 withdrawn, certify within 30 days whether 15 percent of the
25 qualified electors of the local government ~~municipality~~ have
26 signed the petitions, and report his or her findings to the
27 governing body. The supervisor shall be paid by the persons or
28 committee seeking verification the sum of 10 cents for each
29 name checked.

30 (i) If the petitions do not contain the required
31 signatures, the clerk shall report such fact to the governing

1 body and file the petitions, the proceedings shall be
2 terminated, and the petitions shall not again be used. If the
3 signatures do amount to at least 15 percent of the qualified
4 electors, the clerk shall serve notice of that fact upon the
5 person sought to be recalled and deliver to the governing body
6 a certificate as to the percentage of qualified voters who
7 signed.

8 (2) RECALL ELECTION.--If the person designated in the
9 petition files with the clerk, within 5 days after the
10 last-mentioned notice, his or her written resignation, the
11 clerk shall at once notify the governing body of that fact,
12 and the resignation shall be irrevocable. The governing body
13 shall then proceed to fill the vacancy according to the
14 provisions of the appropriate law. In the absence of a
15 resignation, the chief judge of the judicial circuit in which
16 the local government ~~municipality~~ is located shall fix a day
17 for holding a recall election for the removal of those not
18 resigning. Any such election shall be held not less than 30
19 days or more than 60 days after the expiration of the 5-day
20 period last-mentioned and at the same time as any other
21 general or special election held within the period; but if no
22 such election is to be held within that period, the judge
23 shall call a special recall election to be held within the
24 period aforesaid.

25 (3) BALLOTS.--The ballots at the recall election shall
26 conform to the following: With respect to each person whose
27 removal is sought, the question shall be submitted: "Shall
28 be removed from the office of by recall?"
29 Immediately following each question there shall be printed on
30 the ballots the two propositions in the order here set forth:
31 "... (name of person) ... should be removed from office."

1 "... (name of person)... should not be removed from
2 office."

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4 Immediately to the right of each of the propositions shall be
5 placed a square on which the electors, by making a crossmark
6 (X), may vote either of the propositions. Voting machines or
7 electronic or electromechanical equipment may be used.

8 (4) FILLING OF VACANCIES; SPECIAL ELECTIONS.--

9 (a) If an election is held for the recall of members
10 elected only at-large, candidates to succeed them for the
11 unexpired terms shall be voted upon at the same election and
12 shall be elected in the same manner as provided by the
13 appropriate law for the election of candidates at general
14 elections. Candidates shall not be elected to succeed any
15 particular member. If only one member is removed, the
16 candidate receiving the highest number of votes shall be
17 declared elected to fill the vacancy. If more than one member
18 is removed, candidates equal in number to the number of
19 members removed shall be declared elected to fill the
20 vacancies; and, among the successful candidates, those
21 receiving the greatest number of votes shall be declared
22 elected for the longest terms. Cases of ties, and all other
23 matters not herein specially provided for, shall be determined
24 by the rules governing elections generally.

25 (b) If an election is held for the recall of members
26 elected only from districts, candidates to succeed them for
27 the unexpired terms shall be voted upon at a special election
28 called by the chief judge of the judicial circuit in which the
29 districts are located not less than 30 days or more than 60
30 days after the expiration of the recall election. The
31 qualifying period, for purposes of this section, shall be

1 established by the chief judge of the judicial circuit after
2 consultation with the clerk. Any candidate seeking election to
3 fill the unexpired term of a recalled district local
4 government ~~municipal~~ official shall reside in the district
5 represented by the recalled official and qualify for office in
6 the manner required by law. Each candidate receiving the
7 highest number of votes for each office in the special
8 district recall election shall be declared elected to fill the
9 unexpired term of the recalled official. Candidates seeking
10 election to fill a vacancy created by the removal of a local
11 government ~~municipal~~ official shall be subject to the
12 provisions of chapter 106.

13 (c) When an election is held for the recall of members
14 of the governing body composed of both members elected
15 at-large and from districts, candidates to succeed them for
16 the unexpired terms shall be voted upon at a special election
17 as provided in paragraph (b).

18 (d) However, in any recall election held pursuant to
19 paragraph (b) or paragraph (c), if only one member is voted to
20 be removed from office, the vacancy created by the recall
21 shall be filled by the governing body according to the
22 provisions of the appropriate law for filling vacancies.

23 (5) EFFECT OF RESIGNATIONS.--If the member of the
24 governing body being recalled resigns from office prior to the
25 recall election, the remaining members shall fill the vacancy
26 created according to the appropriate law for filling
27 vacancies. If all of the members of the governing body are
28 sought to be recalled and all of the members resign prior to
29 the recall election, the recall election shall be canceled,
30 and a special election shall be called to fill the unexpired
31 terms of the resigning members. If all of the members of the

1 governing body are sought to be recalled and any of the
2 members resign prior to the recall election, the proceedings
3 for the recall of members not resigning and the election of
4 successors to fill the unexpired terms shall continue and have
5 the same effect as though there had been no resignation.

6 (6) WHEN PETITION MAY BE FILED.--No petition to recall
7 any member of the governing body of a local government
8 ~~municipality~~ shall be filed until the member has served
9 one-fourth of his or her term of office. No person removed by
10 a recall, or resigning after a petition has been filed against
11 him or her, shall be eligible to be appointed to the governing
12 body within a period of 2 years after the date of such recall
13 or resignation. The clerk shall preserve in his or her office
14 all papers comprising or connected with a petition for recall
15 for a period of 2 years after they were filed. This method of
16 removing members of the governing body of a local government
17 ~~municipality~~ is in addition to such other methods now or
18 hereafter provided by the general laws of this state.

19 (7) OFFENSES RELATING TO PETITIONS.--No person shall
20 impersonate another, purposely write his or her name or
21 residence falsely in the signing of any petition for recall or
22 forge any name thereto, or sign any paper with knowledge that
23 he or she is not a qualified elector of the local government
24 ~~municipality~~. No expenditures for campaigning for or against
25 an officer being recalled shall be made until the date on
26 which the recall election is to be held is publicly announced.
27 The committee and the officer being recalled shall be subject
28 to chapter 106. No person shall employ or pay another to
29 accept employment or payment for circulating a recall
30 petition. Any person violating any of the provisions of this
31 section shall be deemed guilty of a misdemeanor of the second

1 degree and shall, upon conviction, be punished as provided by
2 law.

3 (8) INTENT.--It is the intent of the Legislature that
4 the recall procedures provided in this section ~~act~~ shall be
5 uniform statewide. Therefore, all municipal charter and
6 special law provisions which are contrary to the provisions of
7 this section ~~act~~ are hereby repealed to the extent of this
8 conflict.

9 (9) PROVISIONS APPLICABLE.--The provisions of this
10 section ~~act~~ shall apply to cities, and charter counties, and
11 noncharter counties, whether or not they have adopted recall
12 provisions.

13 Section 2. This act shall take effect January 1 of the
14 year after the year in which enacted.

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17 HOUSE SUMMARY

18 Expands provisions that authorize and provide procedures
19 for municipal and charter county government recall to
20 authorize and provide the same procedures for the recall
21 of any member of the governing body of a noncharter
22 county. See bill for details.
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