



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Removal of Elected Officials: Recall, Impeachment, Expulsion, and Removal

Wisconsin law allows for the involuntary removal of an elected official from office before the end of the official's term. The particular method used for removing an elected official depends upon the type of official. Removal is generally initiated by an elected body or official, such as the Legislature or the Governor. Recall is the exception and may be initiated by the voting public to remove any elected official.

This memorandum describes the following removal methods for elected officials: recall, impeachment, expulsion, removal by contesting the right to sit, removal by address, removal for cause or disability, removal by the Governor, and removal by local bodies or courts.¹

RECALL

Removal of: Any Elected Official

Initiated by: Members of the Public

Recall is a procedure that allows voters to reconsider their choice of elected official before the end of the official's term. A recall requires an elected official to run for his or her office a second time. If the official is defeated in the recall election, he or she is removed from office and replaced by the winning candidate.

The recall process involves registration of intent to recall, circulation of a recall petition to collect signatures from eligible voters, filing of a completed petition, and scheduling of a recall election. An elected official cannot be subject to recall until he or she has been in office for at least one year, and only one recall petition may be filed against an elected official per term. [Wis. Const. art, XIII, s. 12, and s. 9.10, Stats.]

¹ An elected official may also leave office through resignation or through automatic vacancy of the official's office under s. 17.03, Stats. These procedures are not addressed in the Information Memorandum because they are not removals initiated by others. Instead, resignation involves voluntary removal initiated by the official himself or herself, and a vacancy under s. 17.03, Stats., is automatically triggered by an event. For example, a vacancy is automatically triggered under s. 17.03, Stats., if the elected official is placed under guardianship or convicted of a felony. Additionally, removal of appointive officers is not addressed in this memorandum.

An elected official serving in Congress, statewide office, judicial office, or county office may be recalled for any reason. However, a local elected official may only be recalled for a reason related to his or her official responsibilities.²

IMPEACHMENT

Removal of: Civil Officers of the State (“civil officers” is not defined)

Initiated by: The Legislature

Impeachment is a procedure that allows the Legislature to remove any civil officer of the state for specific reasons. Removing an official through impeachment is a two-step process: (1) the State Assembly votes to impeach; and (2) the State Senate tries the impeachment.

The Assembly may impeach an elected official by a majority vote based on specific reasons: corrupt conduct in office or for the commission of a crime or misdemeanor. [Wis. Const. art. VII, s. 1, and s. 17.06 (1), Stats.] If a majority of the Assembly votes to impeach, the impeachment moves to the Senate.

The Senate may then conduct a trial of the impeachment. The Senators act as a court and try the elected official according to the evidence. If 2/3rds of the Senators present vote to convict the elected official, the official is convicted (which is typically referred to as “being impeached”).

Impeachment removes an elected official from office. It does not impose a criminal sentence or other criminal penalty. This is because impeachment is strictly a legislative proceeding and not a criminal proceeding.

EXPULSION

Removal of: State Legislators

Initiated by: The Legislature

Expulsion is a procedure that allows the Legislature to remove one of its members by voting to expel the member. Each house of the Legislature has the power to expel members of its own body. The Assembly may expel a Representative if 2/3rds of the members vote to concur with expulsion, and the Senate may expel a Senator if 2/3rds of the members vote to concur with expulsion. [Wis. Const. art. IV, s. 8.]

The Assembly and the Senate may each create its own rules governing the expulsion process, though only the Assembly has adopted such rules to date. The Assembly Rules require that a special committee be formed to consider any resolution to expel a member, to hold one or more public hearings, and to make recommendations to the full Assembly regarding expulsion. [2013 Assembly Rules 21 (1) and 43 (3).]

² Recall of congressional, judicial, legislative, and county officials is a right provided by the Wisconsin Constitution, while recall of local elected officials is a right provided by the Wisconsin Statutes. Unlike a recall petition for other officials, a recall petition filed against a local elected official must include a statement of a reason related to the “official responsibilities” of the elected official. [s. 9.10 (2) (d), Stats.].

REMOVAL BY CONTESTING RIGHT TO SIT

Removal of: State Legislators

Initiated by: The Legislature

Removal by contesting the right to sit allows either house of the Legislature to refuse to seat one of its own members. This means that the individual has run for and claims election to the Assembly or Senate, but the chamber does not recognize the member's election and prevents the member from participating in the Legislature, or, the chamber vacates the member's seat after discovering that the member is not qualified.³

The Wisconsin Constitution empowers the Assembly to judge the qualifications and election of Representatives and empowers the Senate to judge the qualifications and elections of Senators. [Wis. Const. art. IV, s. 7.] A majority of members in the Assembly or Senate may evaluate and determine whether a member meets the qualifications to serve in the Legislature, and may also resolve a contested election for one of its seats. [s. 13.235, Stats.]

REMOVAL BY ADDRESS

Removal of: Justices and Judges

Initiated by: The Legislature

Removal by address is a procedure that allows the Legislature to remove justices and judges from office based on a supermajority vote in each house. Before removing a justice or judge, the Legislature must serve the individual with a copy of the charges forming the grounds for address and provide an opportunity for the justice or judge to be heard and to present a defense. The Legislature may then vote on removing the justice or judge by a 2/3rds vote of all the elected members of the Assembly, as well as a 2/3rds vote by all elected members of the Senate. [Wis. Const. art. VII, s. 13, and s. 17.06, Stats.]

The Wisconsin statutes specify grounds for removal by address, though the Wisconsin Constitution does not. Under the statutes, charges against a justice or judge must allege either misconduct, or that the judge is not physically or mentally qualified to exercise the judicial functions of the office. [s. 17.06 (2), Stats.]

REMOVAL FOR CAUSE OR DISABILITY

Removal of: Justices and Judges

Initiated by: The Supreme Court

Removal for cause or disability is a procedure that allows the Wisconsin Supreme Court to remove a justice or judge after an investigation and hearing. [Wis. Const. art. VII, s. 11.] The Wisconsin statutes provide grounds for removal and specify proceedings. A judge or justice may be removed based on "misconduct," which includes violations of the judicial ethics code, failure to perform job duties, drug or alcohol abuse that interferes with job performance, or felony conviction. Alternatively, a judge or justice may be removed based on "permanent disability,"

³ Candidates contesting an election to the Senate or Assembly have access to the chamber during proceedings to settle the contested election, but cannot participate as voting members. [Assembly Rule 25 (5), Senate Rule 12.]

which is mental or physical incapacity impairing the judge's or justice's ability to perform judicial duties.⁴ [s. 757.81 (4) and (6), Stats.]

Removal for cause or disability begins with an investigation of the alleged misconduct or disability by the Wisconsin Judicial Commission. The Commission allows the justice or judge to respond to the allegations. If the Judicial Commission finds probable cause of misconduct or permanent disability, the matter is heard by a jury or by a panel of judges. The jury's or panel's findings and recommendations for discipline are then filed with the Supreme Court. The Supreme Court reviews the items and determines whether to remove the judge or impose other forms of discipline. [ss. 757.83 to 757.95, Stats.]

REMOVAL BY GOVERNOR

Removal of: Certain Elected County Officers

Initiated by: The Governor

Removal by the Governor is a procedure that applies to county elected officials. The reasons for which a particular official may be removed depend upon the office.

The Governor may remove certain county officials based on constitutional authority and may remove others based on statutory authority. The Wisconsin Constitution provides that the Governor may remove "any county elected official mentioned in" Wis. Const., art. VI, s. 4, except for county clerks, treasurers, and surveyors. The county officials who can be removed under this constitutional authority include district attorneys, sheriffs, registers of deeds, and chief executive officers. The removal procedure requires that the Governor provide a copy of the charges and give the officer an "opportunity of being heard." [Wis. Const. art. VI, s. 4 (4).]

The statutes also provide the Governor with authority to remove particular county officials for specific reasons. The Governor has statutory authority to remove the district attorney, sheriff, coroner, or register of deeds "for cause." This means that the official may be removed for inefficiency, neglect of duty, official misconduct, or malfeasance in office. [ss. 17.001, 17.06 (3), and 17.09 (5), Stats.]

REMOVAL BY LOCAL GOVERNMENTAL BODIES OR COURTS

Removal of: Certain Elected County & Municipal Officers

Initiated by: Local Elected Body or County Circuit Court

Removal by local governmental bodies or courts encompasses a number of different procedures for removing elective county and municipal officers. County clerks, treasurers, surveyors, and county board supervisors may be removed "for cause" by a 2/3rds vote of the county board. Alternatively, county board supervisors may be removed by the county circuit court for intentionally conducting valuations or equalizations of property below actual value or for

⁴ Specifically, s. 757.81 (4), Stats., defines "misconduct" to include: (a) willful violation of a rule of the code of judicial ethics; (b) willful or persistent failure to perform official duties; (c) habitual intemperance, due to consumption of intoxicating beverages or use of dangerous drugs, which interferes with the proper performance of judicial duties; or (d) conviction of a felony. In addition, s. 757.81 (6), Stats., defines "permanent disability" as a physical or mental incapacity which impairs the ability of a judge or circuit or supplemental court commissioner to substantially perform the duties of his or her judicial office and which is or is likely to be of permanent or continuing nature.

otherwise violating the law in valuation or equalization of property.⁵ County clerks of circuit court may be removed “for cause” by a majority of the circuit court judges. Removals “for cause” must be for inefficiency, neglect of duty, official misconduct, or malfeasance in office. [ss. 17.001, 17.09 (1) and (2), and 17.14 (2), Stats.]

City elected officials may be removed “for cause” by a 3/4ths vote of the Common Council. Village elected officials may be removed for continued physical inability to perform the duties of office or for gross neglect of duty by a majority vote of the village board. Additionally, any municipal officer (including city and village officials), elected sanitary district officer, school district officer, or technical college district officer may be removed “for cause” by the county circuit court. [ss. 17.12 (1) (a), 17.13 (2) and (3), Stats.] Removals “for cause” must be for inefficiency, neglect of duty, official misconduct, or malfeasance in office. [ss. 17.001, 17.09 (1) and (2), and 17.14 (2), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff. The memorandum was prepared by Katie Bender-Olson, Staff Attorney, on September 19, 2014.

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⁵ Specifically, s. 17.14 (2), Stats., provides that County Board Supervisors may be removed for: (a) willful or intentional valuation or equalization of property of persons or towns, cities, or villages at other than the true cash value thereof, with the intent to subject the property of persons or of towns, cities, or villages to more or less than their lawful share of taxes; (b) aiding, abetting, or assisting in any understanding, combination, or conspiracy to value or equalize the property in towns, cities or villages in a county at other than the true cash value, with intent to subject the property in one or more towns, cities or villages to more or less than its lawful share of taxes for state or county purposes or both; or (c) any violation of law in the valuation or equalization of property in towns, cities or villages, or in the discharge of official duties.