



Referenda and Recall: Letting the People Decide

The American system of government is based on representative democracy, in which the people elect individuals to make, enforce, and interpret the laws under which we live. A referendum, however, is an example of direct democracy, in which the voters decide a question at the polls. In a referendum, the voters determine whether a law will take effect or express their opinion on an issue. A referendum can be initiated by the filing of petitions signed by electors, or it can be called at the discretion of a legislative body. There are also situations in Wisconsin in which a referendum must be held.

A recall is an election, initiated by the people, to decide whether an elected official will remain in office and, if removed, who will replace the officer for the remainder of the term.

REFERENDA

In Wisconsin, referenda are mandatory in some situations and optional in others. There are two main types of referenda: binding and advisory. In a binding referendum, a measure takes effect if approved by the voters. An advisory referendum is conducted for opinion purposes only—the legislative body is not bound by the results. The state legislature and any local government lawmaking body may choose to hold an advisory referendum on an issue.

Binding referenda are required for the ratification of amendments to the state constitution, certain school district bonding measures, and proposals to exceed the state-imposed school district revenue limits. Electors may also compel, via petition, a referendum vote on recently enacted city or village charter ordinances, changing the location of the county seat, abolishing the office of elected county executive, creating the position of appointed county administrator, incorporating a new city or village, consolidating two or more adjoining counties, changing the size of a county board of supervisors, and annexing adjacent land to a city or village.

DIRECT LEGISLATION

Initiative in cities and villages. The initiative is a procedure that enables citizens to propose and enact a law, ordinance, or resolution through a referendum. Unlike many states, Wisconsin does not provide for a statewide initiative process. However, a form of the initiative is available for residents of Wisconsin cities and villages. Under the procedure, residents may circulate petitions signed by a number of eligible electors equal to at least 15 percent of the votes cast for governor in the last general election in the city or village. If the city or village clerk certifies that there are

a sufficient number of valid signatures, and the petition and proposal are in proper form, then the city council or village board must either adopt the proposed ordinance or resolution within 30 days or submit it to a referendum.

If the council or board does not pass the proposal, the ordinance or resolution will be submitted to the electors to decide in a referendum. The council or board, by a three-fourths vote of the elected membership, may order a special election for the purpose of conducting a referendum on the proposal, but not more than one special election for direct legislation may be ordered in any six-month period.

“Yes” or “no” question; no veto allowed. The ordinance or resolution need not be printed in its entirety on the ballot, but a concise description must be printed together with a question permitting the elector to indicate approval or disapproval by a “yes” or a “no” vote. City ordinances or resolutions adopted by direct legislation are not subject to the veto power of the mayor, and city or village ordinances or resolutions adopted by referendum may not be repealed or amended within two years of adoption, except by a subsequent referendum.

The power to initiate ordinances and resolutions was granted to city residents in 1911. Counties were originally included in the law, but

the provisions for county direct legislation were repealed in 1943. In 1989, the initiative power was extended to village residents.

A notable example of referendum legislation was in April 2004 when residents of the village of Mount Horeb enacted an ordinance to require that any construction project costing over \$1 million and financed in whole or in part by municipal funds first be approved in a referendum. The ordinance was originally proposed via petitions submitted in 2001, but the village board determined that the measure was not a suitable subject for direct legislation and neither adopted the ordinance nor placed it on the referendum ballot. After a group of citizens took the matter to court, the Wisconsin Supreme Court concluded in July 2003 that the ordinance was appropriate, and the village board placed it on the ballot.

RECALL

Recall is the procedure by which electors submit petitions to force an election to decide whether an incumbent elected official will remain in office. A recall petition may be filed after the completion of the first year of office, but only one recall petition may be filed against any official during the same term of office.

Officers subject to recall. A recall may be held for the elective executive branch officers of the state (governor, lieutenant governor, secretary of state, state treasurer, attorney general, superintendent of public instruction); state legislators; district attorneys; members of the U.S. Congress; members of the judiciary; and elective officers of counties, cities, villages, towns, and school districts. The recall of city

officials was authorized by a law passed in 1911; the ability to recall state, congressional, judicial, legislative, and county officials was created by a constitutional amendment ratified in 1926; and the ability to recall officials of villages, towns, and school districts was created by a law enacted in 1978.

Reasons required for recall of local officials. A recall petition for a city, village, town, or school district officer must contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No reason need be provided for other offices. The recall has most often been used against those accused or convicted of official misconduct or serious criminal acts, but recall efforts arising from disagreements over public policy choices have become increasingly common.

Signature requirements and time limits. Recall petitions for state, judicial, or county officials, or members of Congress or the state legislature, or district attorneys must have valid signatures of electors equaling at least 25 percent of the total vote cast for the office of governor in the last preceding election. Recall petitions for city, village, town, or school district officers must be signed by electors equal to at least 25 percent of the vote cast for the office of president at the last election. Petition signatures for the recall of state, judicial, county, congressional, or legislative officials, or district attorneys, must be gathered within a 60-day period. The signature-gathering period is 30 days for recalls in cities, villages, towns, or school districts.

Primary elections. When more than two persons compete for a nonparti-

san office, a recall primary is held. The two persons receiving the highest number of votes in the recall primary appear on the recall ballot, except that if any candidate receives a majority of votes in the primary election, that candidate automatically assumes office for the remainder of the term. For any partisan office, a recall primary is held for each political party that is by law entitled to a separate ballot and from which more than one candidate files for the party's nomination in the recall election. Unless he or she resigns, the incumbent's name automatically appears on the recall ballot. The winner of the recall ballot assumes office for the remainder of the term.

A noteworthy use of the recall was the unseating of seven members of the Milwaukee County Board of Supervisors in 2002 due to controversy resulting from the implementation of costly changes to the pension system for county employees. Two state legislators have been successfully recalled: Senator George Petak, Republican of Racine, in June 1996, and Senator Gary George, Democrat of Milwaukee, in November 2003.

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