

# The Recall Process in Michigan

## Legislative History and Current Status

By Janice Selberg

**T**he following is a sketch of the legislative and constitutional history of the recall of local officials in Michigan. Recall—the removal of a public official by popular vote—didn’t exist in its current form until the mid-twentieth century. In the Michigan Constitution of 1835 (pre-statehood), the provision for removal from local office stated, “The legislature shall provide by law for the removal of justices of the peace, and other county and township officers, in such manner and for such cause as to them shall seem just and proper.”<sup>1</sup> The legislature of 1837–1838 did so by granting this power to the governor.<sup>2</sup> By 1846, the process of removal of local officers was well established, with the county prosecutor charged with the task of investigation and local judges presiding over the taking of testimony, which would then be transmitted to the governor for a determination.<sup>3</sup>

The 1850 Constitution made almost no change from 1835 except to remove justices of the peace and add school district officers.<sup>4</sup> The 1879 statute amending the removal process required “sufficient evidence” that the local officer is incompetent on the basis of “official misconduct, or of willful neglect of duty, or of extortion, or of habitual drunkenness...or been convicted of a felony after his election.”<sup>5</sup>

Between 1889 and 1897, there were at least four constitutional challenges to the existing statute by local officials removed from office. In *Clay v Stuart*, a prosecutor removed by Governor Luce after an inquiry and hearing before a probate judge in Kent County challenged the “authority of the Legislature” in How. Stat. sec 653 (1883) “to depute to the governor the power of removal without a conviction first had in a court of competent jurisdiction....”<sup>6</sup> The Michigan Supreme Court held that Article 12, Sec-

tion 7 conferred authority on the legislature to vest the determination in any other department than the judicial.

As a practical matter, in the late nineteenth century the process of removal must have often begun with petitions by local citizens to the county prosecutor to conduct an inquiry. In *McLaughlin v Burroughs*,<sup>7</sup> the Court declined to review the decision of a prosecutor not to pursue an inquiry into the actions of a Detroit city alderman.<sup>8</sup>

Further movement toward direct recall came as a result of the 1908 Constitution.<sup>9</sup> The text of Section 8 reads: “Any officer elected by a county, city, village, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law.” A 1913 Michigan law was one of the first in the nation to adopt removal by vote of the people.<sup>10</sup> This act “to provide for the recall of certain elective officers and for the election to fill the vacancy created thereby”<sup>11</sup> was the result of a failure by the legislature earlier in the 1913 legislative session to amend the constitution (adding a Section 10 to Article 12) to allow recall. Public Act 235 detailed the procedure for the first time:

- All elected officials except judges of courts of record are subject to recall.
- Elected county, township, or village officials must file petitions with the probate judge of the relevant county, and

petitions for the recall of a city official must be filed with the mayor.

- Petitions must be signed by at least 25 percent of the number of electors voting in the preceding gubernatorial election.
- No petitions may be circulated against an officeholder unless he or she has been in office for three months (45 days for a legislative office).
- Special recall elections will be held within 25 days.
- Ballot language must identify the reasons for demanding a recall and contain no more than 200 words. The officer’s justification for conduct in office must be described in no more than 200 words.
- If recalled, an officer may run in the vacancy election, to be held in 30 days.
- An officer who was not successfully recalled may not be subject to recall in the same term unless the petitioners pay the public treasury all expenses incurred in the process.

Unlike later amendments to the recall provisions, the 1913 act was not part of a package of election reform; it was stand-alone legislation. The amendment of 1917 made a few slight changes to recall ballot language but left most of the provisions of 1913 unchanged, including the ability of the recalled officer to run in the vacancy election.<sup>12</sup> The 1931 amendment added for the

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first time a statutory form for petition language as well as detailed qualifications for petitioners and signatories. In addition, the 1931 act states, “No recalled officer shall be a candidate to fill the vacancy created by his recall. . . .”<sup>13</sup>

The Michigan Supreme Court clarified the nature and sufficiency of petition language in 1949 and 1952 in two mandamus cases. In *Amberg v Welsh*,<sup>14</sup> the Court held that the 1913 act did not require each statement in the petition to be sufficient in itself to constitute misconduct, but that all statements taken as a whole are sufficient. In *Eaton v Baker*,<sup>15</sup> the Court distinguished petitions for recall from proceedings for removal, stating that the petition does not have to allege time, person, and occasion involved because “it clearly states the charge so the officer may identify the incident and prepare his justification,” as technical detailed statements impose too great a burden on laymen.<sup>16</sup>

The 1954 recall act<sup>17</sup> marks the maturation of the issue of recall in Michigan law. The 1963 Constitution established the power:

Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.<sup>18</sup>

The current form of the 1954 act is a result of 16 amendments, including a major 2012 amendment. The secretary of state has issued recent clarification and procedural statements in aid of state and local elections officials.<sup>19</sup> ■

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## ENDNOTES

1. Const 1835, art 8, § 4.
2. Of Resignations, Vacancies, Impeachments and Removals, Rev Stat Mich 1838, ch 4, § 7.
3. Of Resignations, Vacancies, Impeachments and Removals, Rev Stat Mich 1846, ch 15, § 10.
4. Const 1850, art 12, § 7.
5. 1879 PA 243, § 6.
6. *Clay v Stuart*, 74 Mich 411; 41 NW 1091 (1889).
7. *McLaughlin v Burroughs*, 90 Mich 311; 51 NW 283 (1892).
8. *Id.*
9. Const 1908, art 9, § 8.
10. Fino, *The Michigan State Constitution* (New York: Oxford University Press, 2011), p 66.
11. 1913 PA 235.
12. 1917 PA 44.
13. 1931 PA 114.
14. *Amberg v Welsh*, 325 Mich 285; 38 NW2d 304 (1949).
15. *Eaton v Baker*, 334 Mich 521; 55 NW2d 77 (1952).
16. *Id.* at 525–526.
17. 1954 PA 116, as amended by MCL 168.951 *et seq.*
18. Const 1963, art 2, § 8.
19. See Michigan Department of State Bureau of Elections, *Election Officials' Accreditation Study Guide*, January 2013, available at <[http://www.michigan.gov/documents/sos/June\\_2011\\_Clerk\\_Accredi\\_Manual\\_Complete\\_362766\\_7.pdf](http://www.michigan.gov/documents/sos/June_2011_Clerk_Accredi_Manual_Complete_362766_7.pdf)>; Michigan Department of State Bureau of Elections, *Changes in Laws Governing Recalls: Public Acts 417 and 418 of 2012*, June 2013, available at <[http://www.michigan.gov/documents/sos/Recall\\_-\\_Role\\_of\\_BSC\\_423659\\_7.pdf](http://www.michigan.gov/documents/sos/Recall_-_Role_of_BSC_423659_7.pdf)>; Michigan Department of State Bureau of Elections, *Recall of Local Election Officers—Summary of Key Points and Timeframes*, July 2013, available at <[http://www.michigan.gov/documents/sos/Recal\\_Summary\\_for\\_Counties\\_426253\\_7.pdf](http://www.michigan.gov/documents/sos/Recal_Summary_for_Counties_426253_7.pdf)>. All websites cited in this article were accessed December 16, 2013.