

State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-NINTH SESSION

**H. F. No. 3545**

03/23/2016 Authored by Bernardy

The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act  
1.2 relating to elections; modifying timeline for when a special election is required to  
1.3 fill a vacancy on a school board; authorizing recall elections for school board  
1.4 members; amending Minnesota Statutes 2014, sections 123B.09, by adding a  
1.5 subdivision; 351.14, by adding a subdivision; 351.15; 351.16, subdivisions 1, 2;  
1.6 351.17; 351.18; 351.19, subdivisions 2, 4; 351.20; 351.21; 351.22, subdivisions  
1.7 1, 2; repealing Minnesota Statutes 2015 Supplement, sections 123B.09,  
1.8 subdivision 5a; 123B.095.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2014, section 123B.09, is amended by adding a  
1.11 subdivision to read:

1.12 Subd. 5b. **Appointments to fill vacancies; special elections.** (a) Except as provided  
1.13 in paragraph (b), any vacancy on the board, other than a vacancy described in subdivision 4,  
1.14 must be filled by board appointment at a regular or special meeting. The appointment shall  
1.15 be evidenced by a resolution entered in the minutes and shall continue until an election is  
1.16 held under this subdivision. All elections to fill vacancies shall be for the unexpired term.  
1.17 If the vacancy occurs 21 days before the first day to file affidavits of candidacy for the next  
1.18 school district general election and more than two years remain in the unexpired term,  
1.19 a special election shall be held in conjunction with the school district general election.  
1.20 The appointed person shall serve until the qualification of the successor elected to fill the  
1.21 unexpired part of the term at that special election. If the vacancy occurs later than 21 days  
1.22 before the first day to file affidavits of candidacy for the school district general election, or  
1.23 when less than two years remain in the unexpired term, there shall be no special election  
1.24 to fill the vacancy and the appointed person shall serve the remainder of the unexpired  
1.25 term and until a successor is elected and qualifies at the school district election.

(b) When a vacancy is created by the removal of a board member pursuant to subdivision 9, the vacancy must be filled in the manner described in paragraph (a) except that a special election must be held to fill the vacancy if more than one year remains on the unexpired term.

Sec. 2. Minnesota Statutes 2014, section 351.14, is amended by adding a subdivision to read:

Subd. 6. **Filing official.** "Filing official" means:

(1) the county auditor for county offices; or

(2) the school board election clerk for school board members.

Sec. 3. Minnesota Statutes 2014, section 351.15, is amended to read:

**351.15 REMOVAL OF ELECTED COUNTY LOCAL OFFICIAL.**

An elected county official or school board member may be removed from office in accordance with the procedures established in sections 351.14 to 351.23.

Sec. 4. Minnesota Statutes 2014, section 351.16, subdivision 1, is amended to read:

Subdivision 1. **Form of petition.** Any registered voter may petition the ~~county auditor~~ filing official requesting a removal election and setting forth facts ~~which~~ that allege with specificity that:

(1) an elected county official committed malfeasance or nonfeasance in the performance of official duties; or

(2) a school board member committed malfeasance or nonfeasance in the performance of official duties, or failed to conform to or uphold the intent and purpose of a school board adopted policy.

The petition must allege acts that occurred during the current or any previous term in the office held by the elected county official or school board member, except that a petition may not be submitted during the 180 days immediately preceding a general election for the office which that is held by the elected county official or school board member named in the petition. The petitioner must attach to the petition documents which contain the signatures of supporters who are registered voters totaling at least 25 percent of the number of persons who voted in the preceding election for the office which is held by the elected county official or school board member named in the petition. Each page on which signatures are included must clearly identify the purpose of the petition. In a removal election involving a countywide office, the registered voters must be residents of the county or, In a removal election involving a county commissioner, the registered

voters must be residents of the commissioner district which elected the named county commissioner. In a removal election involving a school board member, the registered voters must be residents of the school district. The signatures of supporters must be on forms provided by the ~~county auditor~~ filing official.

Sec. 5. Minnesota Statutes 2014, section 351.16, subdivision 2, is amended to read:

Subd. 2. **~~County auditor's~~ Filing official's duties.** The ~~county auditor~~ filing official shall examine the petition to determine whether it contains the requisite number of valid signatures of registered voters. If so, the ~~county auditor~~ filing official shall forward the petition, but not the signatures, to the clerk of appellate courts within 15 days of receipt of the petition. If the ~~county auditor~~ filing official determines that the petition does not include the requisite number of signatures, the ~~county auditor~~ filing official shall deny the petition within 15 days of receipt of the petition.

Sec. 6. Minnesota Statutes 2014, section 351.17, is amended to read:

**351.17 CHIEF JUSTICE REVIEW; ASSIGNMENT TO SPECIAL MASTER.**

The clerk of appellate courts shall submit the petition to the chief justice. The chief justice shall review the petition to determine whether the petition properly alleges facts which, if proven, ~~constitute malfeasance or nonfeasance in the performance of official duties~~ establish grounds for removal under section 351.16, subdivision 1, clause (1) or (2). If the petition properly contains sufficient factual allegations ~~of malfeasance or nonfeasance~~, the chief justice shall assign the case to a special master for a public hearing. The special master must be an active or retired judge. The chief justice may issue an order denying the petition if it appears that the petition does not contain allegations which, if proven, ~~constitute malfeasance or nonfeasance in the performance of official duties~~ establish proper grounds for removal.

Sec. 7. Minnesota Statutes 2014, section 351.18, is amended to read:

**351.18 WAIVER.**

An elected county official or school board member who is the subject of a petition under section 351.16 may waive in writing the right to a public hearing. If the hearing is waived, the case must be certified by order of the chief justice to the ~~county auditor~~ filing official for a removal election to be held within 30 days of the receipt of the order.

Sec. 8. Minnesota Statutes 2014, section 351.19, subdivision 2, is amended to read:

Subd. 2. **Determinations by special master.** The special master shall take evidence at a public hearing under this section and determine:

(1) whether the petitioners have shown by clear and convincing evidence that the factual allegations of ~~malfeasance or nonfeasance~~ establishing grounds for a removal are true; and

(2) if so, whether the facts found to be true constitute ~~malfeasance or nonfeasance~~ sufficient grounds for removal under section 351.16, subdivision 1, clause (1) or (2).

The special master shall dismiss the petition at any time if it appears that this standard has not been met.

Sec. 9. Minnesota Statutes 2014, section 351.19, subdivision 4, is amended to read:

Subd. 4. **Legal counsel.** (a) In a removal election involving an elected county official, the petitioners and the elected county official shall be represented by legal counsel at their own expense, and shall pay their costs associated with the hearing except that the county may assume the legal costs incurred by the elected county official. The county shall pay all other costs of the hearing.

(b) In a removal election involving a school board member, the petitioners and the school board member shall be represented by legal counsel at their own expense and shall pay their costs associated with the hearing, except that the school district may assume the legal costs incurred by the school board member. The school district shall pay all other costs of the hearing.

Sec. 10. Minnesota Statutes 2014, section 351.20, is amended to read:

**351.20 DECISION; CERTIFICATION.**

If the special master determines that the elected county official or school board member committed ~~malfeasance or nonfeasance in the performance of official duties~~ acts that establish grounds for removal, the case must be certified to the ~~county auditor~~ filing official for a removal election on a date to be fixed by the ~~county auditor~~ filing official and held within 30 days of the order of the special master.

Sec. 11. Minnesota Statutes 2014, section 351.21, is amended to read:

**351.21 APPEAL.**

~~An~~ The elected county official or school board member may appeal the decision of a special master under section 351.20 to the Supreme Court within ten days. The removal election is stayed until 20 days after the Supreme Court issues a decision on the appeal. The Supreme Court shall grant an expedited appeal.

5.1 Sec. 12. Minnesota Statutes 2014, section 351.22, subdivision 1, is amended to read:

5.2 Subdivision 1. **Majority vote; form of question.** (a) An elected county official or  
5.3 school board member may be removed pursuant to sections 351.14 to 351.23 by majority  
5.4 vote. ~~The~~ A removal election for an elected county official is a special election conducted  
5.5 under applicable provisions of section 375.20. A removal election for a school board  
5.6 member is a special election conducted under applicable provisions of chapter 205A.

5.7 (b) The question submitted to the voters must be:

5.8 "Should ..... (Name) elected (appointed) to the office of  
5.9 ..... (title) be removed from that office?

5.10 Yes .....

5.11 No ..... "

5.12 Any resulting vacancy must be filled as provided by law.

5.13 Sec. 13. Minnesota Statutes 2014, section 351.22, subdivision 2, is amended to read:

5.14 Subd. 2. **Disqualification.** A removed county official or school board member may  
5.15 not thereafter hold the same office for the remainder of the term to which the official  
5.16 was elected.

5.17 Sec. 14. **REPEALER.**

5.18 Minnesota Statutes 2015 Supplement, sections 123B.09, subdivision 5a; and  
5.19 123B.095, are repealed.

5.20 Sec. 15. **EFFECTIVE DATE.**

5.21 Sections 1 to 14 are effective the day following final enactment and apply to  
5.22 incumbent officials and officials elected or appointed on or after that date.

**123B.09 BOARDS OF INDEPENDENT SCHOOL DISTRICTS.**

Subd. 5a. **Vacancies.** A vacancy other than a vacancy described in subdivision 4 must be filled pursuant to section 123B.095.

**123B.095 VACANCY IN OFFICE OF SCHOOL BOARD MEMBER.**

Subdivision 1. **Option for filling vacancies; special election.** (a) Except as provided in section 123B.09, subdivision 4, a vacancy in the office of school board may be filled as provided in this subdivision and subdivision 2, or as provided in subdivision 3. If the vacancy is to be filled under this subdivision and subdivision 2, it must be filled at a special election. The school board may by resolution call for a special election to be held according to the earliest of the following time schedules:

- (1) not less than 120 days following the date the vacancy is declared, but no later than 12 weeks prior to the date of the next regularly scheduled primary election;
- (2) concurrently with the next regularly scheduled primary election and general election; or
- (3) no sooner than 120 days following the next regularly scheduled general election.

(b) The person elected at the special election shall take office immediately after receipt of the certificate of election and upon filing the bond and taking the oath of office and shall serve the remainder of the unexpired term.

Subd. 2. **When victor seated immediately.** If a vacancy for which a special election is required occurs less than 120 days before the general election preceding the end of the term, the vacancy shall be filled by the person elected at that election for the ensuing term who shall take office immediately after receiving the certificate of election, filing the bond and taking the oath of office.

Subd. 3. **Vacancies of less than one year; appointment option.** Except as provided in section 123B.09, subdivision 4, and as an alternative to the procedure provided in subdivisions 1 and 2, any other vacancy in the office of school board member may be filled by board appointment at a regular or special meeting. The appointment shall be evidenced by a resolution entered in the minutes and shall continue until an election is held under this subdivision. All elections to fill vacancies shall be for the unexpired term. If one year or more remains in the unexpired term, a special election must be held under subdivision 1. If less than one year remains in the unexpired term, the school board may appoint a person to fill the vacancy for the remainder of the unexpired term, unless the vacancy occurs within 90 days of the next school district general election, in which case an appointment shall not be made and the vacancy must be filled at the general election. The person elected to fill a vacancy at the general election takes office immediately in the same manner as for a special election under subdivision 1, and serves the remainder of the unexpired term and the new term for which the election was otherwise held.

Subd. 4. **School board vacancy appointment; public hearing.** Before making an appointment to fill a vacancy under subdivision 3, the school board must hold a public hearing not more than 30 days after the vacancy occurs with public notice given in the same manner as for a special meeting of the school board. At the public hearing, the board must invite public testimony from persons residing in the district in which the vacancy occurs relating to the qualifications of prospective appointees to fill the vacancy. Before making an appointment, the board also must notify public officials in the school district on the appointment, including county commissioners, town supervisors, and city council members, and must enter into the record at the board meeting in which the appointment is made the names and addresses of the public officials notified. If, after the public hearing, the board is unable or decides not to make an appointment under subdivision 3, it must hold a special election under subdivision 1, but the time period in which the election must be held begins to run from the date of the public hearing.