

Introduced: 3/6/85
Referred: Community & Regional
Affairs and Judiciary

1 IN THE HOUSE

BY LARSON

2

HOUSE BILL NO. 270

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to municipal recalls, referendums,
7 initiatives, and elections."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 29.13.100(8) is amended to read:

10 (8) AS 29.28.010, 29.28.022, 29.28.030 [29.28.020(b) -
11 29.28.030] (municipal elections)

12 * Sec. 2. AS 29.28.020(b) is amended to read:

13 (b) The assembly or council may call a special election at any
14 time [UPON AT LEAST 20 DAYS NOTICE].

15 * Sec. 3. AS 29.28 is amended by adding a new section to read:

16 Sec. 29.28.022. NOTICE OF ELECTIONS. (a) Unless provided
17 otherwise by law, a municipality shall give at least 30 days notice of
18 an election.

19 (b) This section applies to home rule and general law municipal-
20 ities.

21 * Sec. 4. AS 29.28.030 is amended to read:

22 Sec. 29.28.030. VOTER QUALIFICATION. (a) A person may vote in
23 a municipal election only if the person

24 (1) is a United States citizen who is qualified to vote in
25 state elections; [AND]

26 (2) has been a resident of the municipality for 30 days
27 immediately preceding the election; [AND WHO]

28 (3) is registered to vote in state elections; and

29 (4) is not disqualified under art. V of the state

1 constitution.

2 (b) Voter registration by the municipality may not be required.
3 However, a municipality may by ordinance require that a person be
4 registered to vote in state elections in the precinct in which that
5 person seeks to vote in municipal elections.

6 (c) This section applies to home rule and general law municipal-
7 ities.

8 * Sec. 5. AS 29.28.040 is repealed and reenacted to read:

9 Sec. 29.28.040. RUNOFF ELECTIONS. (a) Unless otherwise pro-
10 vided by ordinance, a runoff election shall be held if no candidate
11 receives over 40 percent of the votes cast for the office of

12 (1) mayor; or

13 (2) member of the assembly, council, or school board if
14 candidates run for a designated seat.

15 (b) Unless otherwise provided by ordinance, if candidates for
16 the assembly, council, or school board run at large, a runoff election
17 for a seat shall be held if no candidate receives a number of votes
18 greater than 40 percent of the total votes cast for all candidates
19 divided by the number of seats to be filled.

20 (c) Unless otherwise provided by ordinance, a runoff election
21 shall be held within three weeks after the date of certification of
22 the election for which a runoff is required, and notice of the runoff
23 election shall be published at least five days before the election
24 date. The runoff election shall be between the two candidates receiv-
25 ing the greatest number of votes for the seat. The ballot may not
26 contain space for a voter to write in the name of another candidate.

27 * Sec. 6. AS 29.28 is amended by adding new sections to read:

28 Sec. 29.28.061. APPLICATION FOR PETITION. (a) An initiative or
29 referendum is proposed by filing an application with the municipal

1 clerk containing the ordinance or resolution to be initiated or the
2 ordinance or resolution to be referred and the address to which all
3 correspondence relating to the petition may be sent. An application
4 shall be signed by at least 10 voters who will sponsor the petition.
5 An additional sponsor may be added at any time before the petition is
6 filed by submitting the name of the sponsor to the clerk. Within two
7 weeks the clerk shall certify the application if the clerk finds that
8 it is in proper form and, for an initiative petition, that the matter

- 9 (1) is not restricted by AS 29.28.060;
10 (2) includes only a single subject;
11 (3) relates to a legislative rather than to an administra-
12 tive matter; and
13 (4) would be enforceable as a matter of law.

14 (b) A decision by the clerk on an application for petition is
15 subject to judicial review.

16 Sec. 29.28.063. CONTENTS OF PETITION. (a) Within two weeks
17 after certification of an application for an initiative or referendum
18 petition, a petition shall be prepared by the municipal clerk. Each
19 copy of the petition shall contain

- 20 (1) a summary of the ordinance or resolution to be initi-
21 ated or the ordinance or resolution to be referred;
22 (2) the complete ordinance or resolution sought to be ini-
23 tiated or referred as submitted by the sponsors;
24 (3) the date on which the petition is issued by the clerk;
25 (4) notice that signatures must be secured within 60 days
26 after the date the petition is issued;
27 (5) spaces for each signature, the printed name of each
28 signer, the date each signature is affixed, and the residence and
29 mailing addresses of each signer;

1 (6) a statement, with space for the sponsor's sworn signa-
2 ture and date of signing, that the sponsor personally circulated the
3 petition, that all signatures were affixed in the presence of the
4 sponsor, and that the sponsor believes the signatures to be those of
5 the persons whose names they purport to be; and

6 (7) space for indicating the total number of signatures on
7 the petition.

8 (b) If a petition consists of more than one page, each page
9 shall contain the summary of the ordinance or resolution to be initi-
10 ated or the ordinance or resolution to be referred.

11 (c) Copies of the petition shall be provided to each sponsor by
12 the clerk.

13 * Sec. 7. AS 29.28.070 is amended to read:

14 Sec. 29.28.070. SIGNATURE REQUIREMENTS [REQUIRED SIGNATURES].

15 (a) The [NECESSARY] signatures on an initiative or referendum [A]
16 petition shall be secured within 60 [90] days after the clerk issues
17 [FROM THE DATE OF THE FIRST CIRCULATION OF] the petition. The state-
18 ment provided under AS 29.28.063(a)(6) shall be signed and dated by
19 the sponsor. The petition shall be signed in ink or indelible pencil.

20 (b) Every petition for either the initiative or referendum in
21 the government of a municipality shall be signed by a number of
22 [QUALIFIED] voters residing within the territorial limits of the
23 municipality, or, if the act sought to be initiated or referred per-
24 tains exclusively to the area outside cities or to a service area, by
25 a number of [QUALIFIED] voters residing within the area outside cities
26 or within the service area. The clerk shall determine the number of
27 signatures required on a petition and inform each sponsor. A petition
28 shall be signed by a number of voters based on the number of votes
29 cast at the last regular election held before the date the petition

1 was issued equal to 25 percent of the votes cast in the area concerned
2 [, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING PER CENT OF THE TOTAL
3 NUMBER OF VOTES CAST AT THE LAST GENERAL ELECTION IN THE CITY OR
4 BOROUGH OR BOROUGH AREA CONCERNED, OR SPECIAL ELECTION CALLED FOR THE
5 PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:

6 (1) 25 PER CENT, WHEN A CITY OR BOROUGH HAS FEWER THAN
7 7,500 PERSONS, OR

8 (2) 15 PER CENT, WHEN A CITY OR BOROUGH HAS 7,500 PERSONS
9 OR MORE].

10 (c) When signing a petition each voter shall write or print
11 after the signature the date of signing the petition and the voter's
12 resident address.

13 (d) Illegible signatures shall be rejected by the clerk unless
14 accompanied by a legible printed name. Signatures not accompanied by
15 a legible residence address shall be rejected [MAY BE REJECTED BY THE
16 MUNICIPAL CLERK].

17 (e) A petition signer may withdraw the signer's signature upon
18 written application to the clerk before certification of the petition
19 [WITHIN SEVEN DAYS AFTER THE PETITION HAS BEEN FILED WITH THE CLERK].

20 * Sec. 8. AS 29.28.073 is repealed and reenacted to read:

21 Sec. 29.28.073. SUFFICIENCY OF PETITION. (a) All copies of an
22 initiative or referendum petition shall be assembled and filed as a
23 single instrument. Within 10 days after the date the petition is
24 filed, the municipal clerk shall

25 (1) certify on the petition whether it is sufficient; and

26 (2) if the petition is insufficient, identify the insuffi-
27 ciency and notify the sponsors at the address provided under AS 29.-
28 28.061(a) by certified mail.

29 (b) A petition that is insufficient may be supplemented with

1 additional signatures obtained and filed within 10 days after the date
2 on which the petition is rejected.

3 (c) A petition that is insufficient shall be rejected and filed
4 as a public record unless it is supplemented under (b) of this sec-
5 tion. Within 10 days after a supplementary filing the clerk shall
6 recertify the petition. If it is still insufficient, the petition is
7 rejected and filed as a public record.

8 * Sec. 9. AS 29.28.075 is amended to read:

9 Sec. 29.28.075. PROTEST. If the municipal clerk certifies an
10 initiative or referendum application or [THE] petition is insuffi-
11 cient, a sponsor or signer of the application or petition may file a
12 written protest with the clerk [MUNICIPAL EXECUTIVE] within seven days
13 after the certification. The clerk [AND THE MUNICIPAL EXECUTIVE]
14 shall present the protest at the next regular meeting of [TO] the
15 assembly or council which shall hear and decide the protest.

16 * Sec. 10. AS 29.28.077 is amended to read:

17 Sec. 29.28.077. NEW PETITION. Failure to secure sufficient
18 signatures does not preclude the filing of a new application for an
19 initiative or referendum petition. However, a new application for a
20 petition on substantially the same matter may not be filed sooner than
21 180 days [SIX MONTHS] after the date a petition is rejected as
22 insufficient.

23 * Sec. 11. AS 29.28.080 is repealed and reenacted to read:

24 Sec. 29.28.080. INITIATIVE ELECTION. (a) Unless substantially
25 the same measure is adopted, when a petition seeks an initiative vote
26 the clerk shall submit the matter to the voters at the next regular
27 election occurring no sooner than 45 days after certification of the
28 petition. If no regular election occurs within 75 days after the
29 certification of a petition, the assembly or council shall hold a

1 special election within 75 days, but not sooner than 45 days after
2 certification.

3 (b) If the assembly or council adopts substantially the same
4 measure, the petition is void and the matter initiated may not be
5 placed before the voters.

6 (c) The ordinance or resolution initiated shall be published in
7 full in the notice of the election, but may be summarized on the
8 ballot to indicate clearly the proposal submitted.

9 (d) If a majority vote favors the ordinance or resolution, it
10 becomes effective upon certification of the election, unless a diff-
11 erent effective date is provided in the ordinance or resolution.

12 * Sec. 12. AS 29.28.090 is repealed and reenacted to read:

13 Sec. 29.28.090. REFERENDUM ELECTION. (a) Unless the ordinance
14 or resolution is repealed, when a petition seeks a referendum vote the
15 clerk shall submit the matter to the voters at the next election
16 occurring no sooner than 45 days after certification of the petition.
17 If no election occurs within 75 days of certification of a petition,
18 the assembly or council shall hold a special election within 75 days,
19 but not sooner than 45 days after certification.

20 (b) If a petition is certified before the effective date of the
21 matter referred, the ordinance or resolution against which the peti-
22 tion is filed shall be suspended pending the referendum vote. During
23 the period of suspension, the assembly or council may not enact an
24 ordinance or resolution substantially similar to the suspended
25 measure.

26 (c) If the assembly or council repeals the ordinance or resolu-
27 tion before the referendum election, the petition is void and the
28 matter referred shall not be placed before the voters.

29 (d) If a majority vote favors the repeal of the matter referred,

1 it is repealed. Otherwise, the matter referred remains in effect or,
2 if it has been suspended, becomes effective on certification of the
3 election.

4 * Sec. 13. AS 29.28.110 is repealed and reenacted to read:

5 Sec. 29.28.110. EFFECT. (a) An ordinance or resolution may not
6 be repealed or amended within one year after its effective date if
7 adopted in an initiative election or if adopted after a petition that
8 contains substantially the same measure has been filed.

9 (b) If an ordinance or resolution is repealed in a referendum
10 election or by the assembly or council after a petition that contains
11 substantially the same measure has been filed, substantially similar
12 legislation may not be enacted for a period of one year.

13 (c) If an initiative or referendum measure fails to receive
14 voter approval, a new petition application for substantially the same
15 measure may not be filed sooner than 180 days after the election
16 results are certified.

17 * Sec. 14. AS 29.28.130 is amended to read:

18 Sec. 29.28.130. RECALL. An [ELECTED] official who is elected
19 or appointed to an elective municipal office [OF A HOME RULE OR
20 GENERAL LAW MUNICIPALITY] may be recalled by the voters after the
21 official has served the first 120 days of the term for which elected
22 or appointed [SIX MONTHS IN OFFICE].

23 * Sec. 15. AS 29.28.140 is amended to read:

24 Sec. 29.28.140. GROUNDS. Grounds for recall are misconduct in
25 office, incompetence, or failure to perform prescribed duties during
26 the term of office the official is presently serving. An official may
27 not be recalled for performance of or failure to perform a
28 discretionary act.

29 * Sec. 16. AS 29.28.140 is amended by adding a new subsection to read:

1 (b) For purposes of this section
2 (1) "failure to perform prescribed duties" means the wilful
3 neglect or failure to perform faithfully a duty imposed by statute;
4 (2) "incompetence" means mental or physical incapacity to
5 perform the duties of office for a continuous period of at least 60
6 days; and
7 (3) "misconduct in office" means an unlawful act committed
8 wilfully.
9 * Sec. 17. AS 29.28 is amended by adding new sections to read:
10 Sec. 29.28.144. APPLICATION FOR RECALL PETITION. (a) An appli-
11 cation for a recall petition shall be filed with the municipal clerk
12 and shall contain
13 (1) the signatures and residence addresses of at least 10
14 municipal voters who will sponsor the petition;
15 (2) the address to which all correspondence relating to the
16 petition may be sent;
17 (3) a statement in 200 words or less of the grounds for
18 recall stated with particularity.
19 (b) An additional sponsor may be added at any time before the
20 petition is filed by submitting the name of the sponsor to the clerk.
21 (c) Each sponsor shall certify that the sponsor believes the
22 grounds for recall stated in the application are true. Knowingly
23 making a false statement on an application is a class A misdemeanor.
24 (d) The clerk shall review an application for a recall petition
25 and accept only those grounds that meet the requirements of AS 29.28.-
26 140. The clerk shall immediately notify the sponsors by certified
27 mail at the address provided under (a)(2) of this section of any
28 grounds for recall in the application that are rejected and the
29 reasons for the rejection.

1 Sec. 29.28.146. REBUTTAL STATEMENTS. Upon receipt of an appli-
2 cation for recall petition that meets the requirements of AS 29.28.-
3 144, the clerk shall send by certified mail a copy of the application
4 to the official sought to be recalled with a notice that the official
5 may submit to the clerk a rebuttal statement of 200 words or less
6 within 10 days after receipt of the application.

7 * Sec. 18. AS 29.28.150 is repealed and reenacted to read:

8 Sec. 29.28.150. RECALL PETITION. (a) After the period during
9 which a rebuttal statement may be submitted has elapsed, the clerk
10 shall prepare a recall petition. All copies of the petition shall
11 contain

12 (1) the name of the official sought to be recalled;

13 (2) the statement of the grounds for recall as set out in
14 the application for the petition;

15 (3) a rebuttal statement if one has been submitted under
16 AS 29.28.146;

17 (4) the date the petition is issued by the clerk;

18 (5) notice that signatures must be secured within 60 days
19 after the date the petition is issued;

20 (6) spaces for each signature, the printed name of each
21 signer, the date of each signature, and the residence and mailing
22 addresses of each signer;

23 (7) a statement, with space for the sponsor's sworn signa-
24 ture and date of signing, that the sponsor personally circulated the
25 petition, that all signatures were affixed in the presence of the
26 sponsor, and that the sponsor believes the signatures to be those of
27 the persons whose names they purport to be; and

28 (8) space for indicating the number of signatures on the
29 petition.

1 (b) Copies of the petition shall be provided to each sponsor by
2 the clerk.

3 * Sec. 19. AS 29.28 is amended by adding a new section to read:

4 Sec. 29.28.155. SIGNATURE REQUIREMENTS. (a) The signatures on
5 a recall petition shall be secured within 60 days after the date the
6 clerk issues the petition. The statement provided under AS 29.28.-
7 150(a)(7) shall be completed and signed by the sponsor. Signatures
8 shall be in ink or indelible pencil.

9 (b) The clerk shall determine the number of signatures required
10 on a petition and inform each sponsor. If a petition seeks to recall
11 an official who represents the municipality at large, the petition
12 shall be signed by a number of voters equal to 25 percent of the
13 number of votes cast at the last regular election held before the date
14 the petition was issued. If a petition seeks to recall an official
15 who represents a district, the petition shall be signed by a number of
16 the voters residing in the district equal to 25 percent of the number
17 of votes cast in the district at the last regular election held before
18 the date the petition was issued.

19 (c) Illegible signatures shall be rejected by the clerk unless
20 accompanied by a legible printed name. Signatures not accompanied by
21 a legible residence address shall be rejected.

22 (d) A petition signer may withdraw the signer's signature upon
23 written application to the clerk before certification of the petition.

24 * Sec. 20. AS 29.28.160 is repealed and reenacted to read:

25 Sec. 29.28.160. SUFFICIENCY OF PETITION. (a) The copies of a
26 recall petition shall be assembled and filed as a single instrument.
27 A petition may not be filed within 180 days before the end of the term
28 of office of the official sought to be recalled. Within 10 days after
29 the date a petition is filed, the municipal clerk shall

1 (1) certify on the petition whether it is sufficient; and
2 (2) if the petition is insufficient, identify the insuffi-
3 ciency and notify the sponsors at the address provided under AS 29.-
4 28.144(a)(2) by certified mail.

5 (b) A petition that is insufficient may be supplemented with
6 additional signatures obtained and filed within 10 days after the date
7 on which the petition is rejected if the supplementary petition is
8 filed more than 180 days before the end of the term of office of the
9 official sought to be recalled.

10 (c) A petition that is insufficient shall be rejected and filed
11 as a public record unless it is supplemented under (b) of this sec-
12 tion. Within 10 days after the supplementary filing the clerk shall
13 recertify the petition. If it is still insufficient, the petition is
14 rejected and filed as a public record.

15 * Sec. 21. AS 29.28.180 is repealed and reenacted to read:

16 Sec. 29.28.180. NEW RECALL PETITION APPLICATION. A new applica-
17 tion for a petition to recall the same official may not be filed
18 sooner than 180 days after a petition is rejected as insufficient.

19 * Sec. 22. AS 29.28.190 is amended to read:

20 Sec. 29.28.190. SUBMISSION. If a recall petition is sufficient,
21 the clerk shall [IMMEDIATELY] submit it to the assembly or council at
22 the next regular meeting.

23 * Sec. 23. AS 29.28.200 is amended to read:

24 Sec. 29.28.200. ELECTION. (a) If a regular election occurs
25 within 75 but not sooner than 45 days after [OF THE] submission of the
26 petition to the assembly or council, the assembly or council shall
27 submit the recall at that election.

28 (b) If no regular election occurs [WILL OCCUR] within 75 days,
29 the assembly or council shall hold a special election on the recall

1 question within 75 days but not sooner than 45 days after a petition
2 is submitted to the assembly or council [OF SUBMISSION].

3 (c) If a vacancy occurs in the office after a sufficient recall
4 petition is filed with the clerk, the recall question [PETITION] shall
5 not be submitted to the voters. An official who resigns after a suffi-
6 cient recall petition is filed naming that official may not be ap-
7 pointed to the same office.

8 * Sec. 24. AS 29.28.210 is amended to read:

9 Sec. 29.28.210. FORM OF RECALL BALLOTS. A recall ballot shall
10 contain [CONTAINS:]

11 (1) the grounds as stated in the recall petition;

12 (2) a [THE OFFICER'S] statement by the official named on
13 the recall petition of 200 words or less, if the statement is filed
14 with the clerk in accordance with AS 29.28.146 [FOR PUBLICATION AND
15 PUBLIC INSPECTION WITHIN 20 DAYS BEFORE THE ELECTION];

16 (3) the following question: "Shall (name of person) be
17 recalled from the office of (name of office)? Yes [] No []".

18 * Sec. 25. AS 29.28.240 is repealed and reenacted to read:

19 Sec. 29.28.240. EFFECT. (a) If a majority vote favors recall,
20 the office becomes vacant upon certification of the recall election.

21 (b) If an official is not recalled at the election, an applica-
22 tion for a petition to recall the same official may not be filed
23 sooner than 180 days after the election.

24 * Sec. 26. AS 29.28 is amended by adding new sections to read:

25 Sec. 29.28.242. SUCCESSORS. (a) If an official is recalled
26 from the assembly or council, the office of that official is filled in
27 accordance with AS 29.23.080 or 29.23.280. If all members of the
28 assembly or council are recalled, the governor shall appoint qualified
29 voters to fill the vacancies until the next regular election.

1 (b) If a member of the school board is recalled, the office of
2 that member is filled in accordance with AS 14.12.070. If all members
3 are recalled from a school board, the assembly or council shall ap-
4 point qualified voters to fill the vacancies until the next regular
5 election.

6 (c) A person appointed under (a) or (b) of this section serves
7 until a successor is elected and takes office.

8 (d) If an official other than a member of the assembly or coun-
9 cil or school board is recalled, a successor shall be elected to fill
10 the unexpired portion of the term. The election shall be held not
11 more than 60 days after the date the recall election is certified,
12 except that if a regular election occurs within 75 days after certi-
13 fication the successor shall be chosen at that election.

14 (e) Nominations for a successor may be filed until seven days
15 before the last date on which a first notice of the election must be
16 given. Nominations may not be filed before the certification of the
17 recall election.

18 Sec. 29.28.246. APPEAL. (a) A person aggrieved by the filing
19 of a recall petition or an application for a petition or by the fail-
20 ure of an elected official to perform duties involving a recall may
21 file an action in the superior court. The court may

22 (1) consider the statutory sufficiency or specificity of
23 the grounds for recall;

24 (2) issue an injunction to compel or prevent the perfor-
25 mance of an act relating to the recall;

26 (3) determine whether the stated grounds for recall are
27 true; the person challenging the truthfulness of the grounds is re-
28 quired to prove their falsity by a preponderance of the evidence.

29 (b) An action seeking relief under (a)(1) or (3) of this section

1 must be commenced within 15 days after the date the official sought to
2 be recalled received a copy of the application for a recall petition
3 from the clerk. An action seeking relief under (a)(3) of this section
4 must be commenced within 15 days after the act or failure to act
5 occurs.

6 * Sec. 27. AS 29.28.250 is repealed and reenacted to read:

7 Sec. 29.28.250. APPLICATION. AS 29.28.130 - 29.28.250 apply to
8 home rule and general law municipalities.

9 * Sec. 28. AS 29.78.010(19) is amended to read:

10 (19) "voter" means a United States citizen who is qualified
11 to vote in state elections, [AND] has been a resident of the munici-
12 pality for 30 days immediately preceding the election, [AND WHO] is
13 registered to vote in state elections and, if required by ordinance,
14 is registered in the precinct in which the person seeks to vote in
15 municipal elections, and is not disqualified under art. V of the state
16 constitution.

17 * Sec. 29. AS 29.78.010 is amended by adding a new paragraph to read:

18 (20) "residence address" means a physical location such as a
19 street name and number, subdivision name, highway name and mile
20 marker, or public road name, but does not include a post office box
21 number or rural route number.

22 * Sec. 30. AS 29.28.062, 29.28.065, 29.28.220, and 29.28.230 are re-
23 pealed.