

HOUSE BILL REPORT

HJR 4211

As Reported by House Committee On:

State Government

Brief Description: Amending the Constitution to permit recall for campaign finance violations.

Sponsors: Representatives Schual-Berke and Upthegrove.

Brief History:

Committee Activity:

State Government: 3/3/03, 3/4/03 [DP].

Brief Summary of Bill

- Amends the State Constitution to allow an elected official who has violated campaign finance laws in a manner that probably affected the outcome of the election to be recalled through the recall election process.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass. Signed by 6 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Hunt, McDermott, Tom and Wallace.

Minority Report: Do not pass. Signed by 3 members: Representatives Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; and Nixon.

Staff: Katie Blinn (786-7114).

Background:

The Washington Constitution, Article I, section 33, and RCW 29.82 provide the authority for recall elections. The process for a recall election is analogous to the initiative process.

The Complaint and Ballot Synopsis:

All elected officials except superior court judges are subject to recall. A complaint must be filed with the same elections officer who received the declaration of candidacy: either the Secretary of State (Secretary) or the county auditor (auditor). The complaint must

allege that the elected official violated his or her oath of office, or committed an act of "malfeasance" or "misfeasance" while in office. The complaint must provide a detailed description of the act alleged, including the date, location and nature of the act, and must be signed under oath that the facts alleged are true.

Violation of the oath of office means the failure or willful neglect by an elected official to faithfully perform a duty. Malfeasance or misfeasance in office means any wrongful conduct (whether legal or illegal) that affects, interrupts or interferes with the performance of an official duty. Additionally, misfeasance in office can mean the performance of a duty in an improper manner, and malfeasance in office can mean the commission of an unlawful act. When an official is charged with violating the law, the person filing the complaint must demonstrate not only that the official intended to commit the act, but also that he or she intended to violate the law. Officials may not be recalled for discretionary acts unless there is a manifest abuse of discretion.

The elections officer who receives the recall complaint provides copies to the elected official and the office that will prepare the ballot synopsis. The Attorney General prepares the ballot synopsis if the recall complaint is against an elected official whose jurisdiction encompasses more than one county, and the county prosecuting attorney prepares the ballot synopsis if the complaint is against an official whose jurisdiction lies within only one county. The ballot synopsis must be provided to the person who filed the complaint, to the elected official, and to superior court.

Superior Court:

Within 15 days, a superior court judge must hold a hearing and decide whether the complaint meets the criteria for recall petitions, and whether the ballot synopsis is adequate. The court does not consider whether the charges are actually true, but only whether there is a factual basis for them and whether, if true, they constitute a violation of the oath of office or an act of malfeasance or misfeasance while in office. The court then certifies the ballot synopsis to the appropriate elections officer: either the Secretary or the auditor.

Signature Gathering:

The party initiating the recall complaint has 270 days to gather signatures against a statewide elected official, and 180 days to gather signatures against any other elected official. If the recall petition is against a state officer, an officer of a first class city, a member of a school board in a first class city, or a county officer in a county over 40,000 people, enough signatures must be gathered to equal 25 percent of the total votes cast for that office at the last election. For all other recall petitions, the signature requirement is 35 percent of the total votes cast for that office at the last election.

The Election:

Once the auditor or Secretary verifies and canvasses the signatures, he or she certifies the petition and fixes a date for a special election. The special election must be held between

45 and 60 days after the certification, preferably on an established special election date, but not anytime between the primary and the general election. If a recall election is scheduled, the elected official may file a 250-word response to the ballot synopsis, which appears on the ballot along with the ballot synopsis. If a majority of the votes cast at the recall election are *for* the recall of the elected official, he or she shall be recalled and discharged from office. The office then becomes vacant.

Amendments to the State Constitution require a two-thirds majority approval in the Legislature and simple majority approval by the people at the following general election.

Summary of Bill:

A recall election may be conducted against an elected official who has violated campaign finance laws in a manner that probably affected the outcome of the election. The existing criteria that may form the basis for a recall complaint, violation of the oath of office or malfeasance or misfeasance while in office, are expanded to include violation of campaign finance laws in a manner that probably affected the outcome of the election.

If the joint resolution is approved by the Legislature, the constitutional amendment will be placed on the November general election ballot for approval by the people.

Appropriation: None.

Fiscal Note: Not Requested.

Testimony For: Under current law, there are certain acts that, if committed as an elected official, can subject the person to a recall election. However, the same acts cannot subject the person to a recall election if they were committed just prior to taking office. This is a common-sense, good government idea that will allow the improper and illegal conduct of elected officials to subject them to a recall election.

Testimony Against: None.

Testified: Representative Schual-Berke, prime sponsor; and Eduardo Pina and Mark Proulx, Des Moines YES Recall Committee.