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## CLARIFY RECALL LANGUAGE

House Bill 4187 with committee  
amendments  
First Analysis (2-24-93)

Sponsor: Rep. Robert Brackenridge  
Committee: Local Government

### *THE APPARENT PROBLEM:*

The State Constitution of 1963 contains the following provision concerning recall elections (Article 2, Section 8):

"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 of 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."

In addition, the Michigan Election Law requires that petitions for the recall of an elected official "shall state clearly the reason or reasons for the recall." A recall petition must be submitted to the board of county election commissioners for the county in which the officer whose recall is sought resides. The board must then determine whether the reasons for the recall stated on the petitions are sufficiently clear before the petition is circulated. This procedure allows the official whose recall is being sought to see the charges against him or her before the petitions are circulated, and thus enables the preparation of a defense against the charges, and the ensuing public debate makes the public more aware of the recall issues while the petitions are being circulated. The procedure also allows the opposing sides to present arguments on the clarity of the proposed reasons, and to appeal a determination of the clarity to circuit court before the petitions are circulated, making it impossible for a recall election to be held unless the reasons offered by recall proponents are sufficiently clear.

The provisions for evaluating the clarity of the reasons for a recall petition were created in response to the alarming increase of attempts to recall members of school and township boards in the early 1980s, when, in many cases, the petitions

circulated were said to be vague, frivolous, unsubstantiated, or plainly false. Without the "clarity" provisions, officials were often unable to discover the reasons stated on petitions being circulated in their community calling for their removal from office until the petitions were filed with the local clerk. In recent years, however, court opinions on these "clarity" provisions have created debate as to whether it was the intent of the legislature that all the reasons contained in a petition be of sufficient clarity, or only some of them. The court opinions have also raised doubts as to whether the legislature intended that the reason for the recall would have to be based on the official's conduct during his or her current term of office. Legislation is needed to clarify the intent of the legislature in these matters.

### *THE CONTENT OF THE BILL:*

The bill would amend a section of the Michigan Election Law that deals with petitions for the recall of an elected official. It would add new language specifying that each reason for the recall must be based on the official's conduct during his or her current term of office. The bill also would employ the singular term "each reason" in the place of the plural term "the reasons" in setting out petition requirements. For example, currently the law requires the petitions to "state clearly the reason or reasons for the recall," and charges the board of county election commissioners with determining whether "the reasons for the recall stated in the petition are or are not of sufficient clarity . . ." The bill would, instead, say that the petition must state clearly "each reason" for the recall and that the election commissioners must determine whether "each reason" is of sufficient clarity to enable the official whose recall is sought and the voters to identify the course of conduct that is the basis for the recall. If a petition were sufficiently clear, it would remain valid for only 180 days, although a

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recall petition could be resubmitted for a determination of sufficient clarity. In addition, the bill would prohibit the filing of a recall petition against an official during the last six months of his or her term of office.

MCL 168.952

### ***FISCAL IMPLICATIONS:***

According to an analysis by the Department of State, the bill has no fiscal implications for the state. (2-23-94)

### ***ARGUMENTS:***

#### ***For:***

Voters can easily become confused when confronted by vaguely-worded recall petitions. It is therefore vital that all the reasons stated on a petition be clearly worded and factually accurate. However, the Michigan Court of Appeals has issued opinions on reasons and clarity that have apparently clouded this issue. In Mastin v. Oakland County Election Commission (128 Mich. App. 789; 341 NW2d 797, 1983), the court issued a ruling which has been interpreted to mean that if, for example, eight different reasons were given on a recall petition, and only two are of sufficient clarity, then the petition meets the requisite standard. The bill provides clarification on the legislative intent with regard to the clarity of the reasons for recall of an elected official.

The Michigan Court of Appeals also ruled, in Bonkowski v. Macomb County Election Commission (185 Mich. App. 288; 460 NW2d 308, 1990), that recall petitions based in part on conduct of officials occurring prior to their entering upon elected terms of office were invalid. In response, the bill would add new language to the Michigan Election Law to clarify that a recall petition would have to be based upon the official's conduct during his or her current term of office.

#### ***For:***

While no one would dispute the public's right to attempt to recall public officials, it is important to assure that the right be tempered with fairness. Excessive numbers of recalls squanders tax dollars, paralyzes communities, and discourages citizens from running for office. A petition filed during the last six months of the officer's term, for example, is a waste of the taxpayers' money, since the term is

about to end. In addition, it sometimes happens that a recall petition is used as a "club" over the head of an incumbent official. The bill would circumvent this problem by requiring that a petition be filed within 180 days after a board of county election commissioners has decided that the reasons are clear. The bill would require those who believe they have sufficient reason to move forward with a petition to do so, and if not, to drop the matter.

#### ***Against:***

Some people would argue that the bill is unnecessary. The state constitution says that "the sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question," and this has been interpreted to mean that the suitability of reasons for a recall should be evaluated by the voters at the polls. Further, to succeed in producing a recall election, sponsors must obtain a significant number of signatures. To place a time limit on the signature-gathering period would only make the process more difficult. Surely, this bill represents a step in the opposite direction from the apparent demand of the voters for more accountability from elected officials, as evidenced by the success of the term limitation proposal in 1992.

### ***POSITIONS:***

A representative of the Elections Bureau in the Department of State testified in support of the bill. (2-23-94)

The Michigan Townships Association supports the bill. (2-23-93)