

RECALL ELECTIONS

House Bill 5185 (Substitute H-3) First Analysis (2-26-02)

Sponsor: Rep. Charles LaSata
Committee: Redistricting and Elections

THE APPARENT PROBLEM:

Michigan's State Constitution of 1963 provides, in Article II, Section 8, for the recall of elected officials. It says,

"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 officer 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."

Some people believe that the laws that have been enacted to provide for recall make it too easy to launch recall efforts against elected officials. Some even say that some parts of the state suffer from "recall rage", where residents who are angry at decisions of local governmental bodies seek the recall of elected officials even though they acted on matters within their purview and followed proper procedures. Sometimes the threat of recall is used to influence the voting behavior of local bodies. Testimony before the House Committee on Redistricting and Elections indicated that in one county there have been 185 recall attempts over the past 20 years, and that in one city in southwestern Michigan, some 24 recall petitions were initiated in one 12-month period. Critics of the prevalence of recalls say that they are used to intimidate local officials and have a dramatic, negative impact on good public policy.

Under the Michigan Election Law, petitions seeking the recall of an elected official are required to "state clearly each reason for the recall" and the act requires that the reason be based on the official's conduct during his or her term of office. While the law requires the reasons to be clearly stated, it does not require that they be truthful. It does not require that they involve malfeasance or misfeasance. It does not restrict recalls to those decisions of elected government boards that can be overturned by subsequent action or to matters that cannot be addressed politically in any other way. Critics of

recalls would welcome legislation to make such changes, but some people believe that such reforms raise constitutional issues.

An elected official can be recalled by the majority vote at a special recall election with a very small turnout. This means an individual who received thousands of votes when first elected can be turned out of office by a few hundred votes. Critics of recalls have recommended that to recall an elected official should require at least one more vote at an election than the number of votes that official received when first elected. This, they say, would prevent an ardent minority, angry or aggrieved by a specific decision by local government, from overturning the election results at which many voters in the community participated.

THE CONTENT OF THE BILL:

Currently under the Michigan Election Law, the recall of an elected official requires a majority vote in favor of the recall at the recall election. The bill would amend the act to also require that the majority vote in favor of recall total at least one vote more than the votes cast for the official at the election at which he or she was elected for that term. The bill would apply to elected officials at the county, city, village, township, and school district level.

MCL 168.968

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or on local units of government. (HFA fiscal note dated 2-13-02)

ARGUMENTS:

For:

The bill would impose a reasonable additional restriction on the ability of citizens to recall elected officials. It simply says that to remove someone

from office will require at least one more vote than cast to put that person in office. This will prevent recalls at elections with a small, but angry, turnout from overturning the will of the entire community as expressed in a regular election. It will enhance the integrity of the vote of the electorate in the original election. It will have a sobering effect on those who use recalls to intimidate or to take revenge on elected officials who do not share their views or positions on local issues. Elected officials are sometimes called on to make difficult decisions and should not face a recall election no matter which way they vote because a small contingent of citizens disagrees. While it would be preferable to also require that the reasons given on recall petitions be truthful and be limited to decisions made that can not be overturned or addressed by other political means, this bill provides a measure of protection for elected officials from abuses from recall advocates. An excessive number of recalls squanders tax dollars, paralyzes communities, and discourages citizens from running for office.

Against:

The bill will make it very difficult to exercise the right of recall granted by the state constitution. It is not easy now to recall an elected official. It requires the collection of a significant number of signatures just to force a recall election, not to mention all the work that goes into a successful election campaign. Advocates of recall say that the blame for the number of recall efforts in the state should not fall on ordinary citizens trying to safeguard their rights against elected boards engaging in outrageous actions of dubious legality but on the elected officials who turn a deaf ear to the people they represent and treat them with scorn, indifference, and rudeness. The bill would impose an extraordinary requirement. It would not judge an election on its own merits, with the largest votegetters winning, but would establish a quorum-like hurdle. A vote to recall would have to exceed the original vote to elect to succeed. This is quite a burden, especially considering that township officials, for example, are elected at the presidential election, when there is the largest possible turnout, and on a partisan basis, and so in the past may have benefited from straight party voting (recently abolished). Making the legitimacy of an election contingent on voter turnout is unusual in a system of majority rule.

Furthermore, it should be noted that the bill in its current form does not address so-called frivolous recalls or recalls based on false charges. Instead, it applies a new barrier to all recalls, including legitimate cases of misconduct in office.

POSITIONS:

The Michigan Townships Association supports the bill. (2-21-02)

The Michigan Association of Counties supports the bill. (2-25-02)

The Michigan Association of School Boards has indicated support for the bill. (2-21-02)

The Oakland Schools indicated support of the bill to the House Committee on Redistricting and Elections. (2-21-02)

The Michigan Association of County Clerks supports the concept of the bill. (2-25-02)

Representatives of Ethical Good Government (a citizens organization) testified against the bill before the House Committee on Redistricting and Elections.

The Michigan Education Association is opposed to the substitute because it does not address the original intent of the bill and deals only with manipulating the mechanics of an election. (2-25-02)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.