

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0379	Date: March 20, 2014
Prime Sponsor(s): Sen. Steadman; Jones Rep. Hullinghorst	Bill Status: Senate SVMA
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SHORT TITLE: RECALL ELECTIONS HOW CONDUCTED & ALIGN ARTICLE XXI

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures	Potential workload increase.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

The bill eliminates certain conflicts between the state and federal constitutions and state statute concerning recall elections and makes other changes in the conduct of recall elections. For state offices, these changes allow recall elections to be conducted as mail ballot elections in a similar manner as general and coordinated elections under current law. Specifically, the bill makes changes in the following areas.

Concerning **recall dates and deadlines**, the bill:

- defines "date for holding the election" as the first day when recall ballots are made available to voters at voter service and polling centers and may be accepted by the designated election official;
- requires successor candidate petitions to be filed no later than the 15th day prior to the date for holding the election;
- clarifies that certain deadlines and dates concerning recall petitions and elections occur after the time for protest has passed and any protests have been duly adjudicated; and
- requires the Governor to set recall elections between 30 and 60 days after the recall petition is verified as sufficient (rather than between 45 to 75 days as under current law).

Concerning **recall petitions**, the bill:

- conforms recall petition requirements with the requirements for initiative and referendum petitions;
- specifies that recall petitions can only be amended one time, within 15 days, to collect additional signatures if found to be insufficient;
- requires certification of a sufficient recall petition to be submitted to the Governor by the Secretary of State within 24 hours of being approved as sufficient;
- outlines procedures for the Secretary of State to notify the designated election officials of an upcoming recall election conducted as a coordinated election.

Concerning the ***conduct of recall elections***, the bill:

- prohibits designated election officials from conducting a recall election under the state election code in a manner other than as a mail ballot election;
- requires mail ballot plans by designated elections officials to be submitted to the Secretary of State and approved or disapproved within 24 hours, based on current statutory requirements for evaluating mail ballot plans;
- specifies the required number of voter service and polling centers for recall elections and the length of time they must be open when not conducted as part of a coordinated or general election;
- requires recall mail ballots to be mailed to covered voters not later than the 15th day before the last day that ballots may be received by the designated election official; and
- requires all votes for successor candidates to be counted, not just those of persons voting "Yes" on the recall question.

Concerning **recall election protests**, the bill:

- allows a registered voter in the recall election jurisdiction to file a protest in district court within 72 hours alleging that the successor candidate with the most votes is not qualified to take office;
- requires such protests to be heard by the courts in an expedited manner, taking precedence over all other nonemergency civil matters;
- prohibits a candidate from taking office if he or she is found to be ineligible at such a protest; and
- specifies that the office is deemed vacant, if the successor candidate is found to be ineligible and must be filled by a vacancy election.

Background

The 2013 legislative recall elections conducted in Pueblo and El Paso counties highlighted several long-standing conflicts between the state and federal constitutions and state statute on recall elections. For instance, certain dates in statute differed from those in the constitution and candidate petitions deadlines in the constitution were too short to allow mail ballot recall elections as required in statute. In addition, the state constitution and state statute require that only votes for successor candidates at a recall election be counted if the elector also voted "Yes" on the recall question. This provision was found to violate the equal protection provisions of the federal constitution by the state Supreme Court and, as a result, was not enforced during the 2013 recall elections.

State Expenditures

The bill increases workload in the Department of State in the event of a recall election. First, the Department of State will have additional work to review and approve mail ballot plans from local election officials. Second, the bill shortens timelimes for the Department of State to conduct certain activities such as submitting certification of a sufficient recall petition to the Governor. Overall, these workload impacts are assumed to be minimal and occur infrequently. Therefore, no change in appropriations is required at this time.

The bill also creates a new cause of action for filing a protest in district court concerning recall candidate qualifications and requires such protest to be heard in an expedited manner. This may increase workload in the courts by a minimal amount or require changes in the court docket if such a protest is filed. Such workload will be minimal and recall elections and any subsequent protest are assumed to occur infrequently.

Local Government Impact

While recall elections are supposed to be conducted as mail ballots under current law, various legal conflicts prevented this from occurring in the 2013 recall elections. By eliminating certain conflicts in law and allowing recall elections to be conducted as mail ballot elections, the bill will likely reduce workload and costs for county clerks in the event of a recall election.

If the qualifications of a successor candidate to office are successfully challenged in court following a recall election and the office deemed vacant, counties will have costs to conduct a special vacancy election, unless the election falls within 90 days of a general or coordinated election, in which case it would be conducted as part of that election. Costs of a separate vacancy election vary depending on the size and population of the district for the office involved

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to any recall petition approved for circulation and any recall election held on or after this date.

Departmental Difference

The Department of State estimates that the bill will increase litigation costs in the department by up to \$400,000 if provisions of the bill are challenged in court. The Department of State bases these costs on the costs of similar litigation challenging election-related provisions enacted by the General Assembly. The fiscal note does not include these costs because, per fiscal note common policies, potential litigation costs are not typically included in the costs of bills. First, any bill enacted by the General Assembly can potentially be challenged in court, this bill being no exception. Second, the timing of litigation and the ability of a state agency to absorb litigation costs in its legal services budget at some point in the future cannot be known in advance. For these reasons, the litigation costs estimated by the Department of State are not included in the fiscal note, and should they occur, are better addressed through the annual budget process.

State and Local Government Contacts

State
Municipalities

Judicial
County Clerks

Counties
Special Districts