**South Carolina General Assembly**

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**S. 181**

**STATUS INFORMATION**

Joint Resolution

Sponsors: Senators Rose and Leventis

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Summary: Constitutional amendment proposed

**HISTORY OF LEGISLATIVE ACTIONS**

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12/1/2010 Senate Referred to Committee on **Judiciary**

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1/9/2012 Senate Referred to Subcommittee: S.Martin (ch), Hutto, Bright, Rose, Scott

**VERSIONS OF THIS BILL**

[12/1/2010](file:///p:\pprever\2011-12\181_20101201.docx)

**A** **JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO ARTICLE XV OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO IMPEACHMENT OF CERTAIN EXECUTIVE AND JUDICIAL OFFICERS OF THIS STATE, BY ADDING SECTION 4 TO PROVIDE PROCEDURES FOR RECALLING AND REMOVING FROM PUBLIC OFFICE PERSONS HOLDING PUBLIC OFFICES OF THE STATE OR ITS POLITICAL SUBDIVISIONS IN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF STATE OR LOCAL GOVERNMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. It is proposed that Article XV of the Constitution of this State be amended by adding:

“Section 4. Persons holding public office in the executive or legislative branch of state or local governments may be recalled by the people as follows:

(1) As used in this section:

(a) ‘Public office’ means a position of duty, trust, or authority in the executive or legislative branch of government created by the Constitution, the General Assembly, or a political subdivision through authority conferred by the Constitution or the General Assembly that is filled by a vote of qualified electors for a definite term of office fixed by law.

(b) ‘Political subdivision’ means a local government unit, including, but not limited to, a county, municipal corporation, school district, or special purpose district.

(c) ‘State‑district’ means a House of Representatives or Senatorial District.

(2)(a) Every person holding a public office of the State or any of its political subdivisions in the executive or legislative branch of state or local government, filled by a vote of qualified electors, is subject to recall from the office.

(b) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor.

(c) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in the current statutory laws of South Carolina are the only bases for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.

(3) The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

(4)(a) Every person who is a qualified elector of this State may sign a petition for recall of a state officer.

(b) Every person who is a qualified elector of a district of the State from which a state‑district officer is elected may sign a petition for recall of a state‑district officer of that district.

(c) Every person who is a qualified elector of a political subdivision of this State may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district and the signature requirements of item (6) apply only to persons registered in the appropriate election district.

(5)(a) A recall petition may not name more than one officer to be recalled.

(b) No recall petition against an officer may be approved for circulation, as required in item (9)(c) of this section, until he has held office for three months.

(c) No recall petition may be filed against an officer for whom a recall election has been held for a period of two years during his term of office unless the State or political subdivision financing the recall election first is reimbursed for all expenses of the preceding recall election.

(6) Recall petitions for state officers must contain the signatures of qualified electors equaling at least fifteen percent of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state‑district officer must contain the signatures of qualified electors equaling at least twenty‑five percent of the number of persons registered to vote in the last preceding election in that district. Recall petitions for county officers must contain the signatures of qualified electors equaling at least twenty‑five percent of the number of persons registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of municipalities, special purpose districts, or school districts must contain the signatures of qualified electors equaling at least twenty‑five percent of the number of persons registered to vote at the preceding election for offices of the municipality, special purpose district, or school district.

(7)(a) Recall petitions must be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for the office.

(b) If the appropriate filing official refuses to accept and file a petition for recall with the proper number of signatures of qualified electors, an elector within ten days after the refusal may apply to the circuit court for a writ of mandamus. If it is determined that the petition is sufficient, the circuit court shall order the petition to be filed with a certified copy of the writ attached as of the date when it was offered for filing originally. Upon a showing that a filed petition is not sufficient, the court may enjoin certification, printing, or the recall election.

(c) All suits or appeals must be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(d) An aggrieved party may file an appeal within ten days after an adverse order or decision as provided by law.

(8)(a) The form of the recall petition is substantially as follows:

‘RECALL PETITION

To the Honorable \_\_\_\_\_\_\_ (name and office of filing officer): We, the undersigned qualified electors of the State of South Carolina (or name of appropriate state‑district or political subdivision and appropriate election district) respectfully petition that an election be held as provided by law on the question of whether \_\_\_\_\_\_\_\_, holding the office of \_\_\_\_\_\_\_, should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than two hundred words). By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the State of South Carolina and (name of appropriate political subdivision and appropriate election district), and my residence and post office address are written correctly after my name to the best of my knowledge and belief.’

(b) Numbered lines must follow the above heading. Each numbered line must contain spaces for the signature, post office address, and printed last name of the signer. Each separate sheet of the petition must contain the heading and reasons for the proposed recall as prescribed above.

(9)(a) The signatures on each petition must be placed on sheets of paper known as circulation sheets. Each circulation sheet must be substantially 8 1/2 x 14 inches or a continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a horizontal line 1 1/2 inches from the top. The space above the line must remain blank and must be for the purpose of binding.

(b) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than twenty‑five circulation sheets.

(c) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it must be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons, within one week of receiving the sheet.

(d) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement must be sworn to, by at least one of the petitioners, before a person authorized to administer oaths.

(e) The filing officer shall number serially all approved petitions continuously from year to year.

(10)(a) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within three months of the date the form of the petition was approved under item (9).

(b) An affidavit, in substantially the following form, must be attached to each circulation sheet or section submitted to the county officer:

‘\_\_\_\_\_\_\_\_\_\_ (Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing it.

\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature)

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_ (Person authorized to take oaths)

\_\_\_\_\_\_\_\_\_\_\_\_ (Title or notarial information) Seal’.

(11)(a) The county election commission in each county in which a petition is signed shall verify and compare the signatures of each person who has signed the petition to assure that he is an elector in that county and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

‘To the Honorable \_\_\_\_\_\_\_ (Name and title of filing officer):

I, \_\_\_\_\_\_, \_\_\_\_\_ (Title) of \_\_\_\_\_\_\_ County certify that I have compared the signatures on \_\_\_\_ sheets (Specifying number of sheets) of the petition for Recall Number \_\_\_\_\_ attached, in the manner prescribed by law, and I believe \_\_\_\_\_ (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post office address is completed for each valid signature.

\_\_\_\_\_\_\_\_\_\_ (Date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Title)’.

(b) The certificate is prima facie evidence of the facts stated in it, and the officer receiving the recall petition may consider and count only the signatures as are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine, and those signatures must be considered and counted if they are attested to in the manner and form as provided contested ballots in general elections.

(c) The county election commission may not retain any portion of a petition for more than thirty days following the receipt of that portion. At the expiration of the thirty‑day period, the commission clerk shall certify the valid signatures on that portion of the petition and deliver it to the person with whom the petition is required to be filed.

(12) Upon filing the petition or a portion of the petition containing the number of valid signatures required under item (5), the official with whom it is filed shall give written notice immediately to the officer named in the petition. The notice must state that a recall petition has been filed, must set forth the reasons contained in it, and must notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than two hundred words giving reasons why he should not be recalled. No statement of justification may be printed on the ballot unless it is delivered to the filing official within ten days of the date notice is given.

(13)(a) If the officer named in the petition for recall submits his resignation in writing, it must be accepted and become effective the day it is offered. The vacancy created by the resignation must be filled as provided by law, provided that the officer named in the petition for recall may not be appointed to fill the vacancy. If the officer named in the petition for recall refuses to resign or does not resign within five days after the petition is filed, a special election must be called unless the filing is within ninety days of a general election, in which case the question must be placed on a separate ballot at the same time as the general election.

(b) The call of a special election must be made by the Governor in the case of a state or state‑district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the State.

(14) The notice of a recall election must be in substantially the following form:

‘NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on \_\_\_\_\_\_ (date) for the purpose of voting upon the recall of \_\_\_\_\_\_\_\_ who holds the office of \_\_\_\_\_\_\_\_\_\_\_, dated at \_\_\_\_\_\_\_, \_\_\_\_\_\_\_ (date).’

(15) A special election for recall must be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition, except as otherwise provided in this section. The powers and duties conferred or imposed by law upon election commissioners, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for breach.

(16)(a) The ballot at a recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of the officer and the officer’s statement of reasons why he should not be recalled. The question of whether the officer should be recalled must be placed on the ballot in a form similar to the following:

‘Should \_\_\_\_\_\_\_\_\_\_ who holds the office of \_\_\_\_\_\_\_\_\_ be recalled?

Yes 

No ’

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word ‘Yes’ and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word ‘No’.’

(b) The form of the ballot must be approved as provided in the election laws of this State.

(17) Expenses of a recall election must be paid in the same manner as the expenses for any other election. The expenditure of the funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of a recall election through emergency funding procedures. If a recall election is held for a state or state‑district officer, the General Assembly shall appropriate funds to reimburse the counties involved for costs incurred in conducting the election.

(18) The officer named in the recall petition continues in office until he resigns or the results of the recall election officially are declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy must be filled as provided by law, provided that the officer recalled may not be appointed to fill the vacancy.”

SECTION 2. The proposed amendment must be submitted to the qualified electors at the next general election for representatives. Ballots must be provided at the various voting precincts with the following words printed or written on the ballot:

“Must Article XV of the Constitution of this State be amended to add Section 4 so as to provide that a person holding a public office of the State or any of its political subdivisions who is elected by a vote of the qualified electors for a definite term fixed by law must be recalled and removed from office if at least fifteen percent of the qualified electors of this State in the case of a state‑elected officer or at least twenty‑five percent of the qualified electors of a state‑district office in the case of state‑district officers or twenty‑five percent of the qualified electors of a county, municipal corporation, school district, or special purpose district or twenty‑five percent of an election district thereof in the case of single member districts in the case of an officer of any of those entities, by petition request a special election to determine whether or not the qualified electors of the State or political subdivision desire to recall and remove the official and if a majority of those persons voting in the special election vote in favor of recalling and removing the official?

Yes 

No 

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the word `Yes’, and those voting against the question shall deposit a ballot with a check or cross mark in the square after the word `No’.”

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