**South Carolina General Assembly**

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**H. 4245**

**STATUS INFORMATION**

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Summary: Recall Elections

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/19/2011 House Introduced and read first time ([House Journal‑page 50](file:///h:\hj%20archive\2011\05-19-11.docx))

5/19/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 50](file:///h:\hj%20archive\2011\05-19-11.docx))

**VERSIONS OF THIS BILL**

[5/19/2011](file:///p:\pprever\2011-12\4245_20110519.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 14 TO TITLE 7 SO AS TO PROVIDE THE PROCEDURES, REQUIREMENTS, CIRCUMSTANCES, AND CONDITIONS FOR THE RECALL OF STATE OR LOCAL POPULARLY ELECTED PUBLIC OFFICIALS, AND TO PROVIDE PENALTIES FOR CERTAIN VIOLATIONS.

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

SECTION 1. Title 7 of the 1976 Code is amended by adding:

“CHAPTER 14

Recall Elections

Section 7‑14‑110. (A) Persons holding elective public office in the executive or legislative branch of state or local governments may be recalled by the people as provided in this chapter:

(B) As used in this section:

(1) ‘Public office’ means a position of duty, trust, or authority in the executive or legislative branch of government created by this 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.

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

(3) ‘State‑district’ means a house of representatives or senatorial district or a judicial circuit.

Section 7‑14‑120. (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 official holding an elective office may be recalled by the qualified electors entitled to vote for his successor.

(C) A recall petition shall not be filed against a public official until the official has actually performed the duties of the office to which elected for a period of six months during the current term of that office. A petition shall not be filed against a public official during the last six months of the official’s term of office.

(D) No recall petition may be filed against an official for a period of two years after a previous recall election has been held regarding that public official during his present term of office.

(E) A public official sought to be recalled shall continue to perform duties of the office until the result of the recall election is certified.

Section 7‑14‑130. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officials.

Section 7‑14‑140. (A) Every person who is a qualified elector of this State may sign a petition for recall of a state official.

(B) The recall petition also must state clearly the reason for the recall which must be based upon the conduct of the official during his current term of office.

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

(D) Every person who is a qualified elector of a political subdivision of this State may sign a petition for recall of an official 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 official elected from that election district and the signature requirements of Section 7‑14‑160 apply only to qualified electors in the appropriate election district.

Section 7‑14‑150. A recall petition may not name more than one official to be recalled.

Section 7‑14‑160. The petitions must be signed by qualified electors equal in number to not less than twenty‑five percent of the number of votes cast for candidates for the office of governor at the last preceding general election in the electoral district or area of the official sought to be recalled.

Section 7‑14‑170. (A) A person circulating a petition must:

(1) be a qualified elector of this State and shall attach to the petition his certificate stating that he is a qualified elector of this State and shall state further the physical address at which he resides and his post office address;

(2) certify that signatures appearing upon the petition were not obtained through fraud, deceit, or misrepresentation and that he has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and

(3) certify that all signatures to the petition were affixed in his presence; and that to the best of his knowledge, information, and belief, the signers of the petition are qualified electors of the election district or area of the official sought to be recalled and the signatures appearing on it are the genuine signatures of the persons of whom they purport to be.

(B) A person who knowingly makes a false statement in the certificate required by this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or imprisoned for a term not exceeding ninety days.

Section 7‑14‑180. (A) Recall petitions must be filed with the officer who as provided by law is authorized to accept the declaration of nomination or petition for nomination for the office.

(B) If the appropriate filing officer refuses to accept and file a petition for recall with the proper number of signatures of qualified electors, an elector may within ten days after the refusal 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 originally offered for filing. 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.

Section 7‑14‑190. (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. The reason for this recall is \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (state reason). 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 physical address at which I reside and post office address are correctly written 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, physical address at which he resides, post office address, and printed last name of the signer. Each separate sheet of the petition must contain the heading for the proposed recall as prescribed above.

Section 7‑14‑200. (A) The signatures on each petition must be placed on sheets of paper known as circulation sheets. Each circulation sheet must be substantially eight and one-half inches wide and fourteen inches in length or a continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a horizontal line one and one-half 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 petition and 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 material.

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

Section 7‑14‑210. (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 Section 7‑14‑200. All signatures must be obtained after the date the form of the petition was approved.

(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\_\_\_\_\_\_\_\_\_\_, 20\_\_\_

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

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

Section 7‑14‑220. (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 a qualified elector in the election district or area required 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 No. \_\_\_\_\_ 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 physical address of residence and 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 qualified electors 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 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.

Section 7‑14‑230. Upon filing the petition or a portion of the petition containing the number of valid signatures required, the officer with whom it is filed immediately shall give written notice to the official named in the petition. The notice must state that a recall petition has been filed.

Section 7‑14‑240. (A) If the official named in the petition for recall submits his resignation in writing, it must be accepted and becomes effective the day it is offered. The vacancy created by the resignation must be filled as provided by law, provided that the official named in the petition for recall may not be appointed to fill the vacancy. If the official named in the petition for recall refuses to resign or does not resign within five days after the petition is filed, a special recall 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 official or by the board or officer empowered by law to call special elections for a political subdivision in the case of an official of a political subdivision of the State.

Section 7‑14‑250. 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)’.

Section 7‑14‑260. 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 chapter. The powers and duties conferred or imposed by law upon election commissioners, registration officers, canvassing boards, and other public officials who conduct elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this chapter.

Section 7‑14‑270. (A) The question of whether the official should be recalled must be placed on the ballot in a form similar to the following:

‘Should \_\_\_\_\_\_\_\_\_\_ who holds the office of \_\_\_\_\_\_\_\_\_ be recalled for the reason for the recall \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (state reason)? State rebuttal to reason for recall if submitted \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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 reason for demanding the recall of the official as set forth in the petition must be printed on the recall ballot used at the election in not more than two‑hundred words. If the statement of reason set forth in the petition shall contain more than two‑hundred words, then the statement must be condensed by the sponsor of the petition for use on the ballot. If the sponsor fails to furnish the condensed statement within forty‑eight hours following receipt of the written demand, then the statement must be condensed by the officer preparing the ballots.

(C) The officer preparing the ballot shall provide in writing the official whose recall is sought the statement of reason which shall appear on the ballot. The official whose recall is sought, in not more than two‑hundred words, may submit a rebuttal to the reason for the recall and a justification of his conduct in office. The rebuttal must be submitted to the officer preparing the ballot within seventy‑two hours after receipt of the notification. If submitted in the prescribed time, the rebuttal must be printed on the ballot.

Section 7‑14‑280. Expenses of a recall election must be paid in the same manner as the expenses for any other such election.

Section 7‑14‑290. The official named in the recall petition continues in office until he resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the official, the office becomes vacant and the vacancy must be filled as provided by law, provided that the official recalled may not be appointed to fill the vacancy.”

SECTION 2. This act takes effect upon ratification of an amendment to Article XV of the Constitution of this State, or another appropriate part of the Constitution, permitting the recall of state and local popularly elected public officials.

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