

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 40

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO MUNICIPALITIES; PROVIDING GROUNDS FOR THE RECALL
ELECTION OF ELECTIVE OFFICERS IN COMMISSION-MANAGER
MUNICIPALITIES; REQUIRING A DETERMINATION BY THE DISTRICT COURT
THAT PROBABLE CAUSE EXISTS FOR THE GROUNDS FOR RECALL; MAKING
TECHNICAL AND CONFORMING CHANGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 3-14-16 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-13-16) is amended to read:

"3-14-16. COMMISSION-MANAGER--RECALL--ELECTION--BALLOT--
EFFECT--FILLING VACANCIES.--

A. In any commission-manager municipality, any
elective officer is subject to a recall election [~~Upon petition
seeking the recall of an elective officer~~] for malfeasance or
misfeasance in office or a violation of the oath of office

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underscored material = new
[bracketed material] = delete

1 based upon acts or failures to act occurring during the current
2 term of the official sought to be recalled.

3 B. The factual allegations that support the grounds
4 for recall shall be presented in a complaint to the district
5 court for the county in which the recall is proposed to be
6 conducted. The district court shall hold a hearing to
7 determine if probable cause exists for the grounds for recall.
8 The proponents of the recall effort and the officer sought to
9 be recalled shall be given an opportunity to present evidence
10 at the hearing. In making its determination, the district
11 court shall only consider evidence of acts or failures to act
12 occurring during the current term of the official sought to be
13 recalled.

14 C. If the district court determines that probable
15 cause for the recall exists, the recall petition may be
16 circulated. The recall petition shall cite the grounds of
17 malfeasance or misfeasance in office or violation of the oath
18 of office by the official concerned. The cited grounds shall
19 be based upon acts or failures to act occurring during the
20 current term of the official sought to be recalled. The
21 grounds for recall in the petition shall be as found by the
22 district court in its finding of probable cause. The recall
23 petition shall be signed by the qualified electors in a number
24 more than twenty percent of the average number of voters who
25 voted at the previous four regular municipal elections or more

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1 than twenty percent of the number of voters who voted at the
2 previous regular municipal election, whichever is the greater.

3 D. Upon verification by the municipal clerk of the
4 signatures on the petition, the commission shall call a special
5 election unless the regular municipal election occurs within
6 sixty days, in which case the qualified electors shall vote on
7 the recall at the regular election. [~~B.~~] In either case, there
8 shall be a special ballot containing the name of the officer,
9 the title of the office [~~he holds~~] and the dates of the
10 beginning and termination of [~~his~~] the officer's official term.
11 Below the name of the officer shall be two phrases, "For the
12 recall" and "Against the recall", one below the other with a
13 space after each for placing a cross where desired. If a
14 majority of the votes cast favor recall and the number of votes
15 cast favoring a recall are equal to or more than the number the
16 officer received when [~~he~~] the officer was a candidate for
17 office, the officer who is the subject of recall is recalled
18 from the office and the office in question is declared vacant.

19 [~~G.~~] E. If an officer is recalled, [~~he~~] the officer
20 shall not be eligible for reelection until the term for which
21 [~~he~~] the officer was originally elected has expired.

22 [~~D.~~] F. If the recall election results in a failure
23 to secure the votes necessary to recall, the officer in
24 question shall not be subject again to recall until six months
25 have elapsed from the date the previous recall election was

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