

HOUSE BILL 49

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Dennis J. Roch

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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.--

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

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

C. If the district court determines that probable cause for the recall exists, the recall petition may be circulated. The recall petition shall cite the grounds of malfeasance or misfeasance in office or violation of the oath of office by the official concerned. The cited grounds shall be based upon acts or failures to act occurring during the current term of the official sought to be recalled. The grounds for recall in the petition shall be as found by the

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district court in its finding of probable cause. The recall petition shall be signed by the qualified electors in a number more than twenty percent of the average number of voters who voted at the previous four regular municipal elections or more than twenty percent of the number of voters who voted at the previous regular municipal election, whichever is the greater.

~~HLELC→D. Upon verification by the municipal clerk of the signatures on the petition~~←HLELC HLELC→D. The municipal clerk shall verify that the persons who signed the petition are qualified electors in the district and that the petition contains the proper number of signatures. If the municipal clerk has so verified the petition←HLELC, the commission shall call a special election unless the regular municipal election occurs within sixty days, in which case the qualified electors shall vote on the recall at the regular election. [B-] In either case, there shall be a special ballot containing the name of the officer, the title of the office [~~he holds~~] and the dates of the beginning and termination of [~~his~~] the officer's official term. Below the name of the officer shall be two phrases, "For the recall" and "Against the recall", one below the other with a space after each for placing a cross where desired. If a majority of the votes cast favor recall and the number of votes cast favoring a recall are equal to or more than the number the officer received when [~~he~~] the officer was a candidate for office, the officer who is the subject of

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recall is recalled from the office and the office in question is declared vacant.

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

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

[E-] G. A vacancy created by a recall election shall be filled in the same manner as other vacancies on the commission are filled. If all commissioners are recalled at the same election, the municipal clerk or, if there is no municipal clerk, the district court shall, within three days, call an election as provided in Section [~~14-13-8 New Mexico Statutes Annotated, 1953 Compilation~~] 3-14-8 NMSA 1978 for the election of five commissioners."