

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 2040

4  
5 By: Representative Simon

## For An Act To Be Entitled

9 "AN ACT TO ESTABLISH A PROCEDURE FOR THE RECALL OF ELECTED  
10 STATE, DISTRICT, COUNTY, TOWNSHIP, MUNICIPAL, AND SCHOOL  
11 DISTRICT OFFICIALS AND OTHER ELECTED OFFICIALS IN THE  
12 STATE; AND FOR OTHER PURPOSES."

## Subtitle

15 "AN ACT TO ESTABLISH A PROCEDURE FOR THE  
16 RECALL OF ELECTED OFFICIALS."

17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19  
20 SECTION 1. For the purpose of this act the term "recall" means the  
21 voting by the citizens of the State of Arkansas to ascertain whether or not it  
22 is the desire of the majority of the electors therein to allow an elected  
23 state, district, county, township, or municipal official or any other elected  
24 public official to remain in that capacity for the duration of his or her  
25 elected term and the term "elected official" or "officeholder" means any  
26 person elected to any state, district, county, township, municipal, school  
27 district, or other public office.

28  
29 SECTION 2. The qualified electors of the state or of any district,  
30 county, township, municipality or school district in which any public official  
31 or officials are elected by the electors thereof, may petition for the recall  
32 of any elected official after the first six (6) months and prior to the last  
33 year of the term for which he or she was elected by filing a petition in the  
34 form and manner hereafter provided demanding the recall of the officeholder.  
35 The petition for the recall of any officeholder elected by a vote of the  
36 electors of the entire state shall be signed by qualified electors of the

1 State equal to thirty-five percent (35%) of the votes cast for governor at the  
 2 last general election at which a governor was elected, and such petition shall  
 3 include signatures of qualified electors from each of fifteen counties in the  
 4 State equal in number to at least seven and one-half percent (7 1/2%) of the  
 5 number of votes cast for governor in each such county at such election. The  
 6 petition for the recall of any State Senator or State Representative shall be  
 7 signed by qualified electors of the district in which the legislator is  
 8 serving equal to at least twenty-five percent (25%) of the registered voters  
 9 in the district. The petition for the recall of any other officeholder shall  
 10 be signed by qualified electors of the county, district, township,  
 11 municipality, or school district in which the officeholder is serving equal to  
 12 at least twenty-five percent (25%) of the registered voters in such district,  
 13 county, township, municipality, or school district. If the petition is for  
 14 the recall of an officeholder elected within a district which contains more  
 15 than one (1) county, at least one-half (1/2) of the required number of  
 16 signatures must be obtained proportionately from each county or part of a  
 17 county within the district.

18

19 SECTION 3. (a) The recall of an elected official shall be instituted by  
 20 filing a notice of intent to file a recall petition requesting such recall as  
 21 follows:

22 (1) A notice of intent to circulate a petition seeking the recall of  
 23 any state or district officer shall be filed with the Secretary of State.

24 (2) A notice of intent to circulate a petition seeking the recall of  
 25 any county, township, municipal, or school district officer shall be filed  
 26 with the county board of election commissioners of the appropriate county.

27 (b) The notice of intent to circulate recall petitions shall state the  
 28 reason the elected official should be recalled.

29 (c) Recall petitions shall be filed within sixty (60) days after the  
 30 filing of the notice prescribed in subsection (a) and shall be filed with the  
 31 same office as the notice prescribed in subsection (a).

32 (d) No action to recall an elected official shall be initiated during  
 33 the last year of the term of office of the elected official.

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35 SECTION 4. The petition for recall of an elected official under the  
 36 provisions of this Act shall be in substantially the following form:

"PETITION FOR RECALL

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TO \_\_\_\_\_

(Secretary of State) (County Board of Election Commissioners)

of the \_\_\_\_\_

(County) (State of Arkansas)

We, the undersigned legal voters of \_\_\_\_\_

(State), (District), (County), (Township), (Municipality), (Other)

respectfully order that \_\_\_\_\_

(Name of Officeholder)

be referred to the people of said \_\_\_\_\_

(State), (District), (County), (Township), (Municipality), (Other)

to the end that such person or persons may be approved or rejected by the

vote of the legal voters of \_\_\_\_\_

(State), (District), (County), (Township), (Municipality), (Other)

at an election to be held for this purpose; and each of us for himself or

herself says: I am a qualified elector of \_\_\_\_\_

(State), (District), (County), (Township), (Municipality), (Other)

Arkansas, and my residence, post office address and voting precinct are

correctly written after my name.

Name \_\_\_\_\_ Residence \_\_\_\_\_ Postoffice \_\_\_\_\_ Voting Precinct \_\_\_\_\_ "

Each and every sheet of every such petition containing the signatures shall be verified in substantially the following form by the person who circulated said sheet of said petition by his or her affidavit thereon as a part thereof.

STATE OF ARKANSAS \_\_\_\_\_ )

COUNTY \_\_\_\_\_ )

I, \_\_\_\_\_ being first duly sworn, state the above listed person signed this sheet of the foregoing petition, and each of them signed his or her name thereunto in my presence. I believe that each has stated his or her name, residence, postoffice address and voting precinct correctly, and that each signer is a legal voter of \_\_\_\_\_

(State), (District), (County), (Township), (Municipality), (Other)

Signature \_\_\_\_\_

P. O. \_\_\_\_\_

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

Signature \_\_\_\_\_

1 (Clerk, Notary, Judge or J.P.)

2 P. O. \_\_\_\_\_

3 These forms are not mandatory, and if substantially followed in any  
4 petition it shall be sufficient, disregarding clerical and technical errors.

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6 SECTION 5. Within fifteen (15) calendar days after the petition is  
7 filed with the appropriate official, the official shall determine by careful  
8 examination whether the petition is sufficient and so state in a certificate  
9 attached to the petition. If the petition is found to be insufficient, the  
10 certificate shall state the particulars creating the insufficiency. The  
11 petition may be amended to correct any insufficiency within thirty (30) days  
12 following the filing of the original certificate. Within two (2) calendar  
13 days (excluding Saturdays, Sundays, and holidays) after filing the amended  
14 petition, it shall again be carefully examined to determine sufficiency and a  
15 certificate stating the findings shall be attached. Immediately upon finding  
16 an original or amended petition sufficient, the appropriate official shall  
17 call a special election within forty-five (45) days, for the purpose of  
18 submitting the proposal to the electors. If a general, school, or other  
19 regularly scheduled election, other than a political party election, is to be  
20 held within ninety (90) days, the recall proposal shall be held and submitted  
21 at such election.

22  
23 SECTION 6. At the special election the recall issue shall be printed on  
24 the ballot in substantially the following form:

25 "For Permitting \_\_\_\_\_ to

26 Name Office  
27 continue to serve the term of office for which elected ..... /\_/"

28 Against Permitting \_\_\_\_\_ to

29 Name Office  
30 continue to serve the term of office for which elected ..... /\_/"

31 If at such election a majority of the qualified electors voting on the  
32 issue vote against permitting the official to serve the term of office to  
33 which elected, an immediate vacancy shall exist in the office, and such  
34 vacancy shall be filled in the manner prescribed by law.

35 If at such election a majority of the qualified electors voting on the  
36 issue vote for permitting the official to serve the term of office for which

1 electd, such official shall continue to serve the term for which elected.

2

3 SECTION 7. After one (1) recall petition and special election, no  
 4 further recall petition shall be filed against the same official during the  
 5 same term of office.

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7 SECTION 8. All expenses of special elections for the recall of elected  
 8 state, district, county, township, municipal, or school district officials, or  
 9 other elected officials shall be paid by the county. If the election is on  
 10 the question of recalling a municipal, school district or other local district  
 11 electd official, the municipality or school district or other local district  
 12 shall reimburse the county for the expenses of the election.

13

14 SECTION 9. Any recall issue shall be considered a "ballot question"  
 15 pursuant and subject to the provisions of Acts 261 and 634 of 1989, as  
 16 amended, the same being Subchapter 4 of Chapter 9 of Title 7 of the Arkansas  
 17 Code. An electd official, any person or entity acting on behalf of such  
 18 official, or any other person or entity who receives contributions or makes  
 19 expenditures for the purpose of attempting to influence the qualification,  
 20 passage or defeat of a recall petition or issue shall be considered a "ballot  
 21 question committee" and shall comply with the provisions of Acts 261 and 634  
 22 of 1989, as amended, the same being Subchapter 4 of Chapter 9 of Title 7 of  
 23 the Arkansas Code.

24

25 SECTION 10. The provisions of this act shall not apply to:  
 26 (a) Any judicial office; and  
 27 (b) Any officeholder, other than a member of the General Assembly, with  
 28 a two (2) year term of office.

29

30 SECTION 11. Arkansas Code Annotated §14-48-114 and §14-61-119 are  
 31 repealed.

32 ~~14-48-114. Removal of mayor or directors.~~

33 ~~(a) Any person holding the office of mayor and any person holding the~~  
 34 ~~office of member of the board of directors of any city organized under the~~  
 35 ~~provisions of this chapter shall be subject to removal from the office by the~~  
 36 ~~electors qualified to vote for a successor of the incumbent.~~

1 ~~\_\_\_\_\_ (b) The procedure to effect the removal of a person holding the office~~  
2 ~~shall be as follows:~~

3 ~~\_\_\_\_\_ (1) When petitions requesting the removal of any such officer, signed~~  
4 ~~by qualified electors equal in number to thirty-five percent (35%) of the~~  
5 ~~total number of votes cast for all candidates for that office at the preceding~~  
6 ~~general municipal election at which the office was on the ballot, are filed~~  
7 ~~with the city clerk, the clerk shall determine the sufficiency of the~~  
8 ~~petitions within ten (10) days from the date of the filing.~~

9 ~~\_\_\_\_\_ (2) If the petitions are deemed sufficient, the clerk shall certify~~  
10 ~~them to the county board of election commissioners.~~

11 ~~\_\_\_\_\_ (3) The county board of election commissioners shall call a special~~  
12 ~~election on the question and shall fix a date for holding it not less than~~  
13 ~~thirty (30) days nor more than forty (40) days from the date of the~~  
14 ~~certification of the petitions by the clerk.~~

15 ~~\_\_\_\_\_ (4) At the election, the question shall be submitted to the electors in~~  
16 ~~substantially the following form:~~

17 ~~"FOR the removal of \_\_\_\_\_ from the office of~~  
18 ~~\_\_\_\_\_ (name of officer)~~  
19 ~~\_\_\_\_\_ [ ]~~

20 ~~\_\_\_\_\_ (Mayor) \_\_\_\_\_ (Director)~~

21 ~~AGAINST the removal of \_\_\_\_\_ from the~~  
22 ~~\_\_\_\_\_ (name of officer)~~  
23 ~~\_\_\_\_\_ office of \_\_\_\_\_ [ ]"~~

24 ~~\_\_\_\_\_ (Mayor) \_\_\_\_\_ (Director)~~

25 ~~\_\_\_\_\_ (5)(A) If a majority of the qualified electors voting on the question~~  
26 ~~at the election shall vote for the removal of the officer, a vacancy shall~~  
27 ~~exist in the office.~~

28 ~~\_\_\_\_\_ (B) If a majority of the qualified electors voting on the question at~~  
29 ~~the election shall vote against the removal of the officer, the officer shall~~  
30 ~~continue to serve during the term for which elected.~~

31 ~~\_\_\_\_\_ (c) No recall petition shall be filed against any officer until he~~  
32 ~~shall have held his office for at least six (6) months.~~

33 ~~\_\_\_\_\_ 14-61-119. Removal of director.~~

34 ~~\_\_\_\_\_ (a) The holder of office of city director or the mayor is subject to~~  
35 ~~removal by the electors qualified to vote for a successor of the incumbent.~~

36 ~~\_\_\_\_\_ (b) The procedure to effect the removal of the incumbent of this~~

1 ~~elective office shall be as follows:~~

2 ~~—— (1) A petition shall be filed with the city clerk. This petition shall~~  
3 ~~be signed by electors entitled to vote for a successor to the incumbent sought~~  
4 ~~to be removed, equal in number to at least thirty-five percent (35%) of the~~  
5 ~~number of ballots cast for all candidates for the position held by the~~  
6 ~~incumbent sought to be removed at the preceding election for that position.~~

7 ~~—— (2) The petition shall contain a statement of the grounds and reasons~~  
8 ~~on account of which the removal is sought.~~

9 ~~—— (3) The signatures to the petition need not all be appended to one (1)~~  
10 ~~paper, but each signer shall add to his signature his place of residence,~~  
11 ~~giving street and number, if any.~~

12 ~~—— (4) One of the signers of each of the papers shall make an oath before~~  
13 ~~an officer competent to administer oaths that the statements therein made are~~  
14 ~~true as he believes and that each signature to the paper appended is a genuine~~  
15 ~~signature of the person whose name it purports to be.~~

16 ~~—— (c) Within ten (10) days of the date of filing the petition, the city~~  
17 ~~clerk shall ascertain and determine whether or not the petition is signed by~~  
18 ~~the requisite number of qualified electors. If necessary, the board of~~  
19 ~~directors shall allow the city clerk extra help for that purpose.~~

20 ~~—— (d) The city clerk shall attach to the petition his certificate showing~~  
21 ~~the result of his examination.~~

22 ~~—— (e) If by the clerk's certificate the petition is shown to be~~  
23 ~~insufficient, it may be amended within ten (10) days.~~

24 ~~—— (f) Within ten (10) days after an amendment, the clerk shall make like~~  
25 ~~examination of the amended petition.~~

26 ~~—— (1) If his certificate shall show the amended petition to be~~  
27 ~~insufficient, it shall be returned to the person filing it, without prejudice,~~  
28 ~~however, to the filing of a new petition to the same effect.~~

29 ~~—— (2) If the petition shall be deemed sufficient, the clerk shall submit~~  
30 ~~it to the board without delay.~~

31 ~~—— (g) If the board shall find the petition thus submitted to it contains~~  
32 ~~the requisite number of electors signed thereto and is otherwise found to be~~  
33 ~~sufficient, it shall order and fix a date for holding an election. This date~~  
34 ~~shall be not less than thirty (30) days nor more that forty (40) days from the~~  
35 ~~date of the clerk's certificate to the board that a sufficient petition is~~  
36 ~~filed.~~

1 ~~\_\_\_\_\_ (h) The board shall make, or cause to be made, publication of notice~~  
2 ~~and all arrangements for holding the election.~~

3 ~~\_\_\_\_\_ (i) The election shall be conducted and returned, and the result~~  
4 ~~thereof declared in all respects as are other such elections under the general~~  
5 ~~election laws of the city.~~

6 ~~\_\_\_\_\_ (j) At the election, the proposition submitted to the electors shall~~  
7 ~~be:~~

8 ~~\_\_\_\_\_ FOR the removal of (name of officer) from the Office of~~  
9 ~~(Director)(Mayor) .....[]~~

10 ~~\_\_\_\_\_ AGAINST the removal of (name of officer) from the Office of~~  
11 ~~(Director)(Mayor) .....[]~~

12 ~~\_\_\_\_\_ (k) If the majority of votes cast on the issue shall be in favor of the~~  
13 ~~removal of the officer, the officer shall be deemed removed and his office~~  
14 ~~vacated, and it shall be filled in the manner provided for filling vacancies.~~

15 ~~\_\_\_\_\_ (l) If the majority of the votes cast on that issue shall be against~~  
16 ~~the removal of the officer, the officer shall continue to serve.~~

17 ~~\_\_\_\_\_ (m) No recall petition shall be filed against any officer until he~~  
18 ~~shall have held his office for at least six (6) months, nor shall any officer~~  
19 ~~be subject to more than one (1) recall proceeding between biennial elections.~~

20

21 SECTION 12. All provisions of this act of a general and permanent  
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
23 Code Revision Commission shall incorporate the same in the Code.

24

25 SECTION 13. If any provision of this act or the application thereof to  
26 any person or circumstance is held invalid, such invalidity shall not affect  
27 other provisions or applications of the act which can be given effect without  
28 the invalid provision or application, and to this end the provisions of this  
29 act are declared to be severable.

30

31 SECTION 14. All laws and parts of laws in conflict with this act are  
32 hereby repealed.

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