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**State Government Operations &  
Accountability Committee**

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**HB 1389**

**Brief Description:** Expanding grounds for recall.

**Sponsors:** Representatives Upthegrove and Schual-Berke.

**Brief Summary of Bill**

- Allows for recall of an elected official who has violated campaign finance laws in a manner that probably affected the outcome of the election.

**Hearing Date:** 2/8/05

**Staff:** Marsha Reilly (786-7135).

**Background:**

The State Constitution provides that every elective public officer of the state, except judges of courts of record, is subject to recall and discharge by the legal voters of the state. Any legal voter of the state, or political subdivision, may petition the recall and discharge of an elected public officer for acts of "malfeasance" or "misfeasance" while in office, or for violation of the oath of office.

The Complaint and Ballot Synopsis:

A complaint must be filed with the same elections officer who received the declaration of candidacy: either the Secretary of State or the county auditor. The complaint must allege that the elected official violated his or her oath of office, or committed an act of "malfeasance" or "misfeasance" while in office, and must include a detailed description of the act alleged, including the date, location and nature of the act. The complaint must be signed under oath that the facts alleged are true.

Violation of the oath of office means the failure or wilful neglect by an elected official to faithfully perform a duty. Malfeasance or misfeasance in office means any wrongful conduct (whether legal or illegal) that affects, interrupts or interferes with the performance of an official duty. Additionally, misfeasance in office can mean the performance of a duty in an improper manner, and malfeasance in office can mean the commission of an unlawful act. When an official is charged with violating the law, the person filing the complaint must demonstrate not only that the official intended to commit the act, but also that he or she intended to violate the

law. Officials may not be recalled for discretionary acts unless there is a manifest abuse of discretion.

The elections officer who receives the recall complaint provides copies to the elected official and the office that will prepare the ballot synopsis. The Attorney General prepares the ballot synopsis if the recall complaint is against an elected official whose jurisdiction encompasses more than one county, and the county prosecuting attorney prepares the ballot synopsis if the complaint is against an official whose jurisdiction lies within only one county. The ballot synopsis must be provided to the person who filed the complaint, to the elected official, and to superior court.

#### Superior Court:

Within 15 days, a superior court judge must hold a hearing and decide whether the complaint meets the criteria for recall petitions, and whether the ballot synopsis is adequate. The court does not consider whether the charges are actually true, but only their sufficiency (whether there is a factual basis for them and whether, if true, they constitute a violation of the oath of office or an act of malfeasance or misfeasance while in office). An appeal of a sufficiency decision must be filed in the Supreme Court and must be heard and decided within 30 days. The court then certifies the ballot synopsis to the appropriate elections officer: either the Secretary of State or the county auditor.

#### Signature Gathering:

The party initiating the recall complaint has 270 days to gather signatures against a statewide elected official, and 180 days to gather signatures against any other elected official. If the recall petition is against a state officer, an officer of a first class city, a member of a school board in a first class city, or a county officer in a county with over 40,000 people, enough signatures must be gathered to equal 25 percent of the total votes cast for that office at the last election. For all other recall petitions, including those for state senator or representative, the signature requirement is 35 percent of the total votes cast for that office at the last election.

#### The Election:

Once the county auditor or Secretary of State verifies and canvasses the signatures, he or she certifies the petition and fixes a date for a special election. The special election must be held between 45 and 60 days after the certification, preferably on an established special election date, but not anytime between the primary and the general election. If a recall election is scheduled, the elected official may file a 250-word response to the ballot synopsis, which appears on the ballot along with the ballot synopsis. If a majority of the votes cast at the recall election are *for* the recall of the elected official, he or she shall be recalled and discharged from office. The office then becomes vacant.

#### **Summary of Bill:**

A recall election may be conducted against an elected official who has violated campaign finance laws in a manner that probably affected the outcome of the election. The existing criteria that may form the basis for a recall complaint, violation of the oath of office or malfeasance or misfeasance while in office, are expanded to include violation of campaign finance laws in a manner that probably affected the outcome of the election.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect on January 1, 2006, if HJR 4203 is approved by voters in the November 2005 general election.