



# Ohio Legislative Service Commission

## Resolution Analysis

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### H.J.R. 10

130th General Assembly  
(As Introduced)

**Reps.** Becker and R. Hagan

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## RESOLUTION SUMMARY

- Proposes an amendment to the Ohio Constitution to permit the electors to recall any state or local elected official.
- Supersedes the Revised Code's current procedure to recall an elected municipal official, which applies only in certain jurisdictions.

### Officers subject to recall

- Allows the qualified electors of a jurisdiction to recall any elected officer who was elected from that jurisdiction.
- Permits the electors to recall the Governor and Lieutenant Governor only as joint officers.
- Provides generally that a signature on a recall petition is not valid if it was signed before the officer sought to be recalled had served at least  $\frac{1}{4}$  of the officer's term.
- Prohibits the electors from putting an officer to a second recall vote during the officer's current term of office, if the first recall attempt was not successful.

### Recall petition

- Requires a recall petition to contain a general statement of the grounds upon which the petitioners seek to recall the officer.
- Specifies the required number of signatures on a recall petition, based on the size and type of the jurisdiction.
- Provides procedures for filing and verifying a recall petition.

- Specifies that if an officer who is subject to a recall petition does not resign within five days after the petition is determined to be sufficient, the question of the officer's recall must appear on the ballot at the next regular or general election occurring not less than 90 days after the date the petition was filed.

### **Candidates to succeed a recalled officer**

- Requires a candidate who wishes to succeed an officer whose recall is sought to file a statement of candidacy and a nominating petition not less than 85 days before the day of the recall election.
- Specifies numbers of required signatures for such a nominating petition based on the size and type of the jurisdiction.

### **Ballot language**

- Prescribes the ballot language for a recall question.
- Requires the name of each person who has filed a valid declaration of candidacy and nominating petition to appear on the ballot as a candidate to succeed the officer who is subject to the recall.
- Prohibits the officer whose recall is sought from appearing on the ballot as a candidate to succeed the officer's self.
- Provides that if the office a candidate seeks is one for which candidates normally are nominated at a partisan primary, the candidate's name must be accompanied by the name of the political party with which the candidate is affiliated, if any.

### **Outcome of recall vote**

- Specifies that if a majority of the electors vote to recall the officer in question, the officer must be removed from office upon the announcement of the official canvass of the election, and the candidate who received the plurality of the votes cast for candidates to succeed that officer must be declared elected to hold the office for the recalled officer's unexpired term.
- Specifies that if a majority of the electors vote not to recall the officer in question, the officer is not removed and may not be put to a second recall vote during the officer's current term of office.
- Specifies that, if the officer is not recalled, the relevant government entity must repay the officer the officer's actual and legitimate campaign expenses for the recall

election, provided that the amount of the repayment must not exceed the total amount the officer expended while seeking election to the officer's current term.

### **Date proposal to appear on the ballot**

- May 6, 2014.

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## **CONTENT AND OPERATION**

### **Recall of public officials**

The resolution proposes an amendment to the Ohio Constitution to permit the electors to recall any state or local elected official. Currently, the Ohio Constitution allows an elected official to be removed from office (1) by impeachment or (2) by a statutory removal process involving a complaint and a hearing for misconduct involving moral turpitude or for other cause provided by law. Because a recall election does not involve a complaint and a hearing and is not a form of impeachment, the Constitution presently does not permit the electors to recall an official.<sup>1</sup>

The Revised Code currently provides for the recall of elected municipal officials. However, the Ohio Supreme Court has ruled that this law applies only in chartered municipalities with charter provisions that allow for the recall.<sup>2</sup> The proposed constitutional amendment would supersede the Revised Code's current procedure to recall a municipal official, to the extent that the statute does not match the proposal's requirements.

### **Officers subject to recall**

Under the proposal, the qualified electors of a jurisdiction may recall any elected officer who was elected from that jurisdiction. The electors may recall the Governor and Lieutenant Governor only as joint officers, using a single petition.<sup>3</sup>

The proposal specifies that a signature on a recall petition is not valid if it was signed before the officer sought to be recalled had served at least  $\frac{1}{4}$  of the officer's term. In the case of a petition to recall the Governor and Lieutenant Governor, such a

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<sup>1</sup> Ohio Const. Art. II, Sec. 38.

<sup>2</sup> R.C. 705.92; *State ex rel. Lockhart v. Boberek*, 45 Ohio St.2d 292 (1976); and *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203 (1948).

<sup>3</sup> Proposed Ohio Const. Art. XVII, Sec. 3(A).



signature is not valid if it was signed before the Governor had served at least ¼ of the Governor's term.<sup>4</sup>

Finally, under the proposal, if an officer is subjected to a recall vote and is not recalled, the electors may not put the officer to a second recall vote during the officer's current term of office.<sup>5</sup>

The Revised Code's current municipal recall procedure, which does not apply in all jurisdictions, allows the electors to recall any elective municipal officer who has served at least one year of the officer's current term, regardless of any previous recall attempt.<sup>6</sup>

## **Recall petition**

To begin the procedure to recall an elected official, the electors of the jurisdiction from which the official was elected must circulate a recall petition that contains a general statement in not more than 200 words of the grounds upon which the petitioners seek to recall the officer. The petition must be signed by qualified electors equal in number to at least 15% of the total votes cast in the relevant jurisdiction for the office of Governor or presidential electors at the most recent statewide general election.

The petitioners must file the petition with the Secretary of State or with the appropriate local election official, as provided by law. If the petition is sufficient, and if the officer whom the petitioners seek to recall does not resign within five days after the petition's sufficiency is determined, the question of the officer's recall must appear on the ballot at the next regular or general election occurring not less than 90 days after the date the petition was filed.<sup>7</sup>

The current municipal recall statute requires a recall petition to be signed by electors equal in number to at least 15% of the total votes cast at the most recent regular municipal election. The petitioners must file the petition with the county board of elections under the Revised Code's general petition verification procedure. If the board finds the petition to be sufficient, and the officer in question does not resign within five days after the board has made that determination, the legislative authority of the municipality must fix a day for holding a recall election. The election must be held not

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<sup>4</sup> Proposed Ohio Const. Art. XVII, Sec. 3(A)(2)(a) and (B).

<sup>5</sup> Proposed Ohio Const. Art. XVII, Sec. 3(G)(2).

<sup>6</sup> R.C. 705.92(D) (not in the resolution).

<sup>7</sup> Proposed Ohio Const. Art. XVII, Sec. 3(B) and (C).



less than 30 nor more than 40 days from the time the board certifies the petition as sufficient.<sup>8</sup>

### **Candidates to succeed a recalled officer**

Under the proposal, a candidate who wishes to succeed an officer whose recall is sought must file a statement of candidacy and a nominating petition with the appropriate election official, as provided by law, not less than 85 days before the day of the election at which the question of the officer's recall is to appear on the ballot. The nominating petition must be signed by the following applicable number of qualified electors of the jurisdiction:<sup>9</sup>

- For a statewide candidacy, not less than 5,000 qualified electors. The petition must not be accepted for filing if it purports to contain more than 15,000 signatures.
- For a candidacy to be voted on in a district, political subdivision, or part thereof in which less than 5,000 electors voted for the office of Governor at the most recent election for that office, not less than 25 qualified electors of the jurisdiction or a number of qualified signatures equal to at least 5% of that vote, if that number is less than 25.
- For a candidacy to be voted on in a district, political subdivision, or part thereof in which 5,000 or more electors voted for the office of Governor at the most recent election for that office, signatures equal to at least 1% of those electors.

Existing law requires a candidate to succeed a municipal officer who is subject to a recall vote to submit a petition signed by electors equal in number to 10% of the total votes cast at the most recent regular municipal election for the head of the ticket. The petition must be filed at least 20 days prior to the recall election.<sup>10</sup>

### **Ballot language**

The proposal generally requires the question of an officer's recall to appear on the ballot in the following form:

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<sup>8</sup> R.C. 705.92(A) and (B) (not in the resolution).

<sup>9</sup> Proposed Ohio Const. Art. XVII, Sec. 3(D).

<sup>10</sup> R.C. 705.92(C) (not in the resolution).



Shall (name of person) be recalled from the office of (name of office)?

..... For the recall of (name of person).

..... Against the recall of (name of person).

The question of whether to recall the Governor and Lieutenant Governor must appear on the ballot in the following form:

Shall (name of Governor) and (name of Lieutenant Governor) be recalled from the offices of Governor and Lieutenant Governor, respectively?

..... For the recall of (name of Governor) and (name of Lieutenant Governor).

..... Against the recall of (name of Governor) and (name of Lieutenant Governor).

After the applicable question, the name of each candidate who has filed a valid declaration of candidacy and nominating petition must appear on the ballot. The officer whose recall is sought must not appear on the ballot as a candidate to succeed the officer's self. If the office a candidate seeks is one for which candidates normally are nominated at a partisan primary, the candidate's name must be accompanied by the name of the political party with which the candidate is affiliated, if any.<sup>11</sup>

The current municipal recall statute prescribes the same ballot language and requirements as the proposal, except that the names of the candidates to succeed the officer sought to be recalled are not accompanied by a political party designation.<sup>12</sup>

### **Outcome of recall vote**

If a majority of the electors vote to recall the officer in question, the officer must be removed from office upon the announcement of the official canvass of the election. The candidate who received the plurality of the votes cast for candidates to succeed that officer must be declared elected to hold the office for the remainder of the current term.

If a majority of the electors vote not to recall the officer in question, the officer is not removed and may not be put to a second recall vote during the officer's current

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<sup>11</sup> Proposed Ohio Const. Art. XVII, Sec. 3(E).

<sup>12</sup> R.C. 705.92(D) (not in the resolution).



term of office. The officer also must be repaid the officer's actual and legitimate campaign expenses for the recall election. However, the amount of the repayment must not exceed the total amount the officer expended while seeking election to the officer's current term. A state or district officeholder must be repaid from the state treasury, while an officer of a political subdivision or a portion of a political subdivision must be repaid from the political subdivision's treasury.<sup>13</sup>

The Revised Code's municipal recall procedure includes similar provisions concerning the outcome of a recall vote, but the statute does not limit the number of times an officer may be put to a recall vote during a term. Further, if the officer is not recalled, the statute requires the municipality to repay the officer the officer's actual and legitimate expenses for the election, except that the sum must not exceed 50% of the sum that the incumbent is permitted by law to expend as a candidate at any regular municipal election.<sup>14</sup> (Ohio does not limit candidate expenditures, and the U.S. Supreme Court has ruled such laws unconstitutional.)<sup>15</sup>

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## HISTORY

| ACTION     | DATE    |
|------------|---------|
| Introduced | 1-15-14 |

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<sup>13</sup> Proposed Ohio Const. Art. XVII, Sec. 3(F) and (G).

<sup>14</sup> R.C. 705.92(D) (not in the resolution).

<sup>15</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

