

HB 1235-FN – AS INTRODUCED

2014 SESSION

14-2212  
03/04

HOUSE BILL            ***1235-FN***

AN ACT                establishing a procedure to recall selectmen and school board members.

SPONSORS:            Rep. Bickford, Straf 3

COMMITTEE:          Election Law

---

ANALYSIS

This bill establishes a procedure to recall selectmen and school board members.

---

Explanation:          Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT establishing a procedure to recall selectmen and school board members.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Recall Elections. Amend RSA by inserting after chapter 671 the following new  
2 chapter:

3 CHAPTER 671-A

4 RECALL ELECTIONS FOR ELECTED PUBLIC OFFICIALS

5 671-A:1 Cumulative Effect. The method provided under this chapter for the recall of selectmen  
6 and school board members shall not be exclusive but shall be in addition to any other method of  
7 removal provided for directly or indirectly in other law.

8 671-A:2 Grounds for Recall. Selectmen and school board members shall be subject to recall from  
9 such offices. The basis or bases for recall shall be stated in the petition. No selectmen and school  
10 board members may be recalled for performing a mandatory duty of the office or for not performing  
11 any act that, if performed, would subject the officer to prosecution for official misconduct.

12 671-A:3 Qualification to Petition. Every person who is a qualified voter as provided in RSA 654  
13 may sign a petition for recall of a selectman or school board member, but may only sign a petition for  
14 the recall of a selectman or school board member who is elected from the particular electoral district  
15 in which the person resides. Any person knowingly signing any name other than the person's own to  
16 any petition or knowingly signing more than once for the recall or who is not at the time of the  
17 signing a qualified voter shall be guilty of unsworn falsification under RSA 641:3 or tampering with  
18 public records or information under RSA 641:7, as appropriate.

19 671-A:4 Limitations on Recall Petitions.

20 I. A recall petition shall not name and shall not demand the recall of more than one elected  
21 selectman or school board member.

22 II. No recall petition shall be filed against a selectman or school board member until the  
23 person has held office for at least 6 months.

24 III. No recall petition shall be filed against a selectman or school board member for whom a  
25 recall election has been held previously during the current term of office.

26 671-A:5 Number of Voters Required. Recall petitions for selectmen and school board members  
27 shall contain the signatures of qualified voters equaling at least 30 percent of the number of persons  
28 who voted at the election that placed the selectman or school board member in office.

29 671-A:6 Filing of Recall Petitions.

**HB 1235-FN – AS INTRODUCED**  
**- Page 2 -**

1           I. No application for a recall petition shall be filed during the first 180 days or during the  
2 last 180 days of the term of office of any selectman or school board member subject to recall under  
3 this chapter. Recall petitions shall be filed with the town or school district clerk.

4           II. If the clerk with whom a recall petition is filed refuses to accept the petition for recall  
5 with the proper number of signatures of qualified voters, any voter may within 10 days after such  
6 refusal apply to the superior court for a writ of mandamus. If it is determined that the petition is  
7 sufficient, the superior court shall order the petition to be filed with a certified copy of the writ  
8 attached to it, as of the date when it was originally offered for filing. On a showing that any filed  
9 petition is not sufficient, the court may enjoin certification of the petition under RSA 671-A:8,  
10 printing of the ballot under RSA 671-A:13, or holding the recall election.

11           III. Any aggrieved party may file an appeal to the supreme court within 10 days after any  
12 adverse order or decision.

13           671-A:7 Form of Recall Petition.

14           I. The form of the recall petition shall be substantially as follows:

WARNING

15  
16 A person who knowingly signs a name other than the person's own to this petition or who knowingly  
17 signs more than once upon a petition to recall the same selectman or school board member at one  
18 election, or who is not, at the time of signing this petition, a registered and qualified voter of the  
19 town or school district of ..... served by the selectman or school board member who is the  
20 subject of the recall petition and entitled to vote, if the selectman or school board member is recalled,  
21 for the successor of the selectman or school board member to be recalled shall be guilty of unsworn  
22 falsification or tampering with public records or information.

RECALL PETITION

23  
24 To the Honorable....., (Name of clerk) of.....:

25 We, the undersigned qualified voters of .....

26 respectively petition that an election be held as provided by law on the question of  
27 whether....., holding the office of....., should be recalled for the following  
28 reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). By

29 signature, each signer certifies: I have personally signed this petition and I am a qualified voter of  
30 .....

31 and my residence and post office address are correctly written after my name to the best of my  
32 knowledge and belief:

33 Name (Print) Date of Signing Residence Address County of Residence

34 .....

35 (Signature)

36 .....

37 (Printed Name of Signer) (City or Town).

**HB 1235-FN – AS INTRODUCED**  
**- Page 3 -**

1           II. Numbered lines shall follow the headings prescribed in paragraph I. Each numbered line  
2 shall contain spaces for the signature, post office address, county of residence, date of signing, and  
3 printed first and last name of the signer. Each separate sheet of the petition shall contain the  
4 heading and reasons for the proposed recall as prescribed in paragraph I.

5           III. The form prescribed in this section shall not be mandatory, and, if substantially  
6 followed, the petition shall be sufficient, notwithstanding mere clerical or technical errors.

7           671-A:8 Signature Verification. The clerk shall compare the signatures on the petition with the  
8 signatures in the records of the supervisors of the checklist. If signatures equal to at least the  
9 required percentage of the persons qualified to vote in the electoral district as provided in RSA 671-  
10 A:5 are verified as genuine, a special recall election shall be called and shall be held no sooner than  
11 12 days and no later than 3 weeks after the signatures are verified and certified under this section.

12           671-A:9 Call for Recall Election. A recall election shall be called by:

13           I. The city or town clerk, if for a selectman; or

14           II. The school district clerk, in the case of a school board member.

15           671-A:10 Notification of Selectman or School Board Member. When the recall petition is filed  
16 with the clerk, the clerk shall send written notice of such filing by certified mail not more than 2  
17 days after it is filed to the selectman or school board member named in the petition. Such notice  
18 shall be given before the signatures are verified.

19           671-A:11 Resignation. If the selectman or school board member named in the petition for recall  
20 submits his or her resignation in writing, it shall be accepted effective the day it is offered. A  
21 vacancy so created shall be filled as required by law, except that the selectman or school board  
22 member who resigned shall not be appointed to fill the vacancy. A special recall election may be  
23 combined with any other election if approval to do so is granted by the ballot law commission upon  
24 application to it.

25           671-A:12 Conduct of Special Recall Election.

26           I. The provisions of law applicable to the notice required for other special elections shall be  
27 applicable to the notice required for a special recall election. Such notice shall give the date of the  
28 holding of the special recall election and the purpose for it.

29           II. A special recall election for the recall of a selectman or school board member shall be in  
30 all respects, except as provided in this chapter, the same as the regular election for choosing such  
31 official.

32           III. The costs of a special recall election shall be borne by the office of the secretary of state.  
33 The appropriate electoral district which holds the election shall receive such compensation for the  
34 costs of the election as shall be determined and approved by the secretary of state.

35           671-A:13 Form of Ballot. The ballot at a special recall election shall set forth the statement  
36 contained in the recall petition stating the reasons for demanding the recall of the selectman or

**HB 1235-FN – AS INTRODUCED**  
**- Page 4 -**

1 school board member. Then the question of whether such official should be recalled shall be placed  
2 on the ballot in a form similar to the following:

3 FOR recalling.....who holds the office of.....  
4 AGAINST recalling.....who holds the office of.....

5 671-A:14 Results Declared.

6 I. The selectman or school board member named in the recall petition shall continue in office  
7 until the official resigns or the results of the recall election are officially declared.

8 II. If 30 percent or more of those registered and qualified to vote at the special recall election  
9 do vote and if a majority of those voting on the question vote to remove the selectman or school board  
10 member, the office shall become vacant and the vacancy shall be filled as provided by law, provided  
11 that the selectman or school board member recalled shall in no event be appointed to fill the vacancy.  
12 If fewer than 30 percent of those registered and qualified to vote at the special recall election vote,  
13 the elected public official shall not be recalled regardless of the result of such vote and shall remain  
14 in office. If 30 percent or more of those qualified to vote at the special recall election do vote, but a  
15 majority vote not to recall the elected public official, such official shall remain in office.

16 2 Effective Date. This act shall take effect 60 days after its passage.

**HB 1235-FN - FISCAL NOTE**

AN ACT                    establishing a procedure to recall selectmen and school board members.

**FISCAL IMPACT:**

The Judicial Branch, Department of Justice, Department of State, and New Hampshire Municipal Association state this bill, **as introduced**, may increase state and local expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no impact on county expenditures, or state, county, and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill enacts RSA 671-A, establishing a procedure to recall selectmen and school board members. The bill may impose a fiscal impact on the Branch in the following three ways: (1) the bill provides for potential criminal offenses of unsworn falsification under RSA 641:3 and tampering with public records or information under RSA 641:7, both of which are misdemeanors; (2) proposed RSA 671-A:6, II allows for petitions to the superior court for a writ of mandamus and states that the court may enjoin certification of the recall petition; and (3) a party aggrieved by court action under proposed RSA 671-A:6, II may appeal that action to the supreme court within ten days. With respect to (1), the Branch states that it does not have information on which to estimate how many additional prosecutions may result, but does have information on the average cost of processing such cases in the trial court. The Branch projects that the average cost of prosecuting a class A misdemeanor will be \$66.17 in FY 2015 and \$67.64 in FY 2016, and the average cost of processing a class B misdemeanor will be \$46.99 in FY 2015 and \$48.08 in FY 2016. These numbers do not account for any appeals that may be undertaken following trial. With respect to (2), the Branch has no information on how many petitions for writs of mandamus or for injunctions would be filed in the superior court pursuant to proposed RSA 671-A:6, II, but does have information on the cost of such actions in the superior court. Such cases would be classified as complex equity cases, which the Branch projects will cost \$668.25 per case in FY 2015 and \$683.30 per case in FY 2016. Again, these numbers do not account for appeals that may be undertaken following trial. With respect to (3), the Branch does not have figures on the cost to it of supreme court appeals. Such cases are generally complex, and a single appeal has the potential for a fiscal impact in excess of \$10,000.

The Department of Justice states that if a recall election were to occur under the provisions of the bill, there would be some fiscal impact to the Department if an elections complaint were

filed. Such complaints require the time of an investigator and assistant attorney general. Because it is not possible to estimate the number of complaints that may be generated, the Department states the bill's fiscal impact is indeterminable.

The Department of State states that it would bear the cost of any recall election held as a result of the bill. The Department assumes such costs will include poll worker wages, ballot printing costs, programming of electronic ballot counting devices, and the cost of providing a facility to conduct polling. The Department states that because each town is different in terms of population and election requirements, and because it is difficult to predict the number of recalls that might take place in a given year, the bill's fiscal impact is indeterminable.

The New Hampshire Municipal Association states that depending on the size of the municipality, the cost of a special election may range from a few hundred dollars to approximately \$50,000. The Association notes that, although the bill specifies that election costs will be borne by the Department of State, the bill also states that "[t]he appropriate electoral district which holds the election shall receive such compensation for the costs of the election as shall be determined and approved by the secretary of state." The Association states that this language appears to provide for the possibility that a municipality would not receive full compensation for all costs. For this reason, the bill's fiscal impact to municipalities is indeterminable.