

FIFTY-THIRD LEGISLATURE  
FIRST SESSION, 2017

HB 174/a

March 11, 2017

Mr. President:

Your **RULES COMMITTEE**, to whom has been referred

**HOUSE LOCAL GOVERNMENT, ELECTIONS, LAND GRANTS  
AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 174, as amended**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike Items 8, 10, 11 and 12 of House Floor Amendment number 1.

2. On page 1, line 19, before "MAKING", insert "PROVIDING FOR RECALL ELECTION FOR COMMISSIONER-MANAGER MUNICIPALITIES;".

3. On page 39, between lines 12 and 13, insert a new section to read:

**"SECTION 36.** A new section of the Local Election Act is enacted to read:

**"[NEW MATERIAL] APPLICATION TO MUNICIPALITIES OPTING OUT OF CERTAIN PROVISIONS OF THE LOCAL ELECTION ACT--OPT-OUT PROVISIONS--STANDARD ELECTION DATE--PROCEDURES--EXCEPTIONS.--**

A. In accordance with the provisions of Subsection B of this section, a municipality, including a home rule municipality governed pursuant to Article 10, Section 6 of the constitution of New Mexico or a municipality operating pursuant to a territorial charter or a special charter, may opt out of the provisions of Subsection A of Section 1-22-3 NMSA 1978, Sections 1-22-16 and 1-22-18 NMSA 1978 and Section 35 of this 2017 act.

B. A municipality may by ordinance opt out of the provisions of the Local Election Act listed in Subsection A of this section if the municipality passes the ordinance and files the

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ordinance with the secretary of state at least one hundred eighty days before the next regular local election. A municipality that has passed an ordinance pursuant to this subsection may at any time rescind the ordinance opting out of the provisions of the Local Election Act listed in Subsection A of this section upon filing the rescission with the secretary of state at least one hundred eighty days before the next regular local election.

C. All other provisions of the Local Election Act, as supplemented by the Election Code, shall apply to the conduct of elections for municipalities that have passed an ordinance pursuant to Subsection B of this section, except for election procedures that operate in lieu of or in addition to the provisions of the Local Election Act and Election Code contained in the charter of a home rule municipality or other chartered municipality.

D. Elections held pursuant to this section shall be held on the first Tuesday in March of each even-numbered year, except as provided in the charter of a municipality; provided that the election date in the charter does not conflict with the provisions of Section 1-12-71 NMSA 1978.

E. Except for home rule municipalities that have a run-off election, the term of office for municipalities holding elections pursuant to this section shall begin the first day of the month following the election. For home rule municipalities that hold a run-off election, the term of office for municipalities holding elections pursuant to this section shall begin the first day of the month following the run-off election. Terms of office for municipal offices are four years unless the municipality's charter provides for shorter terms.

F. A municipality holding elections pursuant to this section may place ballot questions on the ballot of an election held pursuant to this section and as provided in the Local Election Act.

G. The municipal clerk shall fulfill the duties of the

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county clerk in the conduct of elections held pursuant to this section. The county clerk shall maintain accurate voter registration information for each municipality located in the county. The county clerk shall provide to the municipal clerk, in advance of a election held pursuant to this section, the names of only those voters entitled to vote in the municipal election. The municipality shall bear the reasonable cost of preparation of the voter lists, signature rosters and voter registration in electronic format.

H. The governing body of the municipality shall fulfill the duties of passing the resolution calling for an election pursuant to this section."".

4. On page 74, between lines 23 and 24, insert the following section to read:

"SECTION 57. 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.--

A. In any municipality whose charter provides for recall elections and 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

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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 a 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 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.

D. Upon verification by the municipal clerk of the signatures on the petition, 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~~] favours 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 recall is recalled from the office and the office in question is declared vacant.

[G.] E. If an officer is recalled, [~~he~~] the officer shall

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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.""

5. On page 275, line 3, strike "160" and insert in lieu thereof "171".

6. On page 278, line 9, after "1 through", strike the line up to "of" and insert in lieu thereof "136, 165 through 170, 172 and 173".

7. On page 278, line 11, strike "134 through 152" and insert in lieu thereof "137 through 164".

8. On page 278, line 12, strike "160 and 163" and insert in lieu thereof "171 and 174".

9. Renumber sections to correspond with these amendments.,  
and thence referred to the **JUDICIARY COMMITTEE.**

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Respectfully submitted,

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LINDA M. LOPEZ, CHAIRMAN

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Baca, Ingle, Moores, Pirtle, Sanchez

Absent: None

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