

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 337 (Delegate Frush, *et al.*)  
Environmental Matters

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Election Law - Recall Elections - Felony Indictment or Conviction

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This proposed constitutional amendment requires the General Assembly to pass laws necessary to establish standards and procedures for recall elections for the Governor, Lieutenant Governor, Attorney General, Comptroller, and an elected or appointed member of the General Assembly if such an official is under indictment for or convicted of a felony.

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Fiscal Summary

**State Effect:** If the proposed constitutional amendment is approved by the voters, State finances are expected to be largely unaffected, as the occurrence of recall elections is expected to be infrequent. State expenditures will increase significantly (by at least \$600,000) to conduct a statewide recall election, if ever required.

**Local Effect:** If the proposed constitutional amendment is approved by the voters, local government finances are expected to also be largely unaffected, as the occurrence of recall elections is expected to be infrequent. Similar to the impact on State finances, local government expenditures will increase if a recall election is ever required. Local boards of elections should not incur additional costs associated with submitting this proposed constitutional amendment to the voters at the 2012 general election.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under Article XV, § 2 of the Maryland Constitution, any elected official of the State, or of a county or municipality, who during his or her term of office is convicted of or enters a plea of *nolo contendere* to any crime which is a felony, or a

specified misdemeanor related to the official's public duties and responsibilities, is suspended by operation of law from the office without pay or benefits. The office is then temporarily filled by the governing body and/or official authorized by law to fill a vacancy in the office, or if automatic succession is provided for by law, the person entitled to automatically succeed to the office does so temporarily. If the conviction becomes final, after judicial review or otherwise, the official is removed from the office by operation of law and the office is deemed vacant. If the conviction is reversed or overturned, the elected official is reinstated to the office for the remainder, if any, of the term of office, and all pay and benefits are restored.

Other provisions of the constitution addressing removal of public officials from office include Article II, §§ 6 and 7 (Governor and Lieutenant Governor – removal due to physical or mental disability; impeachment); Article III, § 19 (punishment and expulsion of members by the Senate and House of Delegates); Article III, § 26 (Senate and House of Delegates roles in impeachment); Article III, § 50 (officials convicted of demanding or receiving bribes disqualified from holding office); Article V, § 1 (removal of Attorney General); and Article VI, § 6 (removal of Treasurer and Comptroller).

## **Background:**

### *Recall Processes in Other States*

According to the National Conference of State Legislatures (NCSL), 18 states allow for recall of state officials by recall election (shown in **Exhibit 1**), with only 8 of those states requiring specific grounds for a recall.

NCSL indicates that the state recall processes are similar to initiative processes (in which laws are enacted or submitted to the legislature by popular vote) in that citizen petitions are required to cause a recall election to be held. The signature requirements for recall petitions, however, are significantly higher than for qualifying an initiative to be placed on a ballot. Signature requirements vary among the states, but are generally based on a percentage of the vote in the last election for the office or a percentage of voters eligible to vote for the office in the last election. According to NCSL, in nine states, the requirement is 25%, which appears to be roughly the middle ground of the percentage requirements among the states.

The states generally follow one of three processes for recall elections: (1) the recall election is held simultaneously with an election for the successor; (2) the recall election, if successful, is followed by a separate special election for the successor; or (3) the recall election, if successful, is followed by the appointment of a successor. The method of holding a recall election simultaneously with an election of a successor is accomplished in one of two ways: (1) including separate questions on the ballot of whether the official

should be recalled and who the successor should be; or (2) treating the recall election essentially as a special election with a list of nominees on the ballot, which may include the official who is the subject of the recall.

NCSL indicates that recall attempts at the state level have been largely unsuccessful, with only two recalls of governors succeeding, in North Dakota in 1921 and California in 2003, and recall efforts against state legislators being slightly more common, but still unusual. According to NCSL, recall elections have been used most frequently at the local level, where they are permitted in local jurisdictions in over half the states.

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**Exhibit 1**  
**States Allowing for Recall Elections**

<b><u>Recall Election Held Simultaneously with Election for Successor</u></b>	<b><u>Recall Election Followed by Separate Special Election for Successor</u></b>	<b><u>Recall Election; Successor is Appointed</u></b>
Arizona	Georgia	Alaska
California	Louisiana	Idaho
Colorado	Michigan	Kansas
Nevada	Minnesota	Washington
North Dakota	Montana	
Wisconsin	New Jersey	
	Oregon	
	Rhode Island	

Source: National Conference of State Legislatures

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*Past Elected Officials Facing Criminal Charges*

Over the past few decades, a small number of elected officials in Maryland within the group of officials affected by this proposed constitutional amendment have faced criminal charges, with some remaining in office until being suspended upon sentencing and others leaving office before being charged/indicted.

**State Fiscal Effect:** If the proposed constitutional amendment is approved by the voters, State finances are expected to be largely unaffected by the establishment of a recall process, as the occurrence of recall elections is expected to be infrequent, especially at the statewide level.

State expenditures, however, would increase significantly to conduct a statewide recall election. The State share of costs for transportation, testing, field support, and ballot programming voting system services (pursuant to Chapter 564 of 2001, the counties pay one-half of the State's cost of acquiring and operating the voting system) for a single recall election, expected to be a significant portion of the State's costs, are estimated at approximately \$600,000 (based on costs of conducting an election with the State's current voting system). Costs for a recall election involving a General Assembly member would be considerably less. Assuming the approximate cost of \$600,000 would be reduced proportionally to conduct an election in 1 of the 47 legislative districts, the State's share of the cost for those voting system services would be approximately \$13,000.

**Local Fiscal Effect:** Similar to the effect on State finances, if the proposed constitutional amendment is approved by the voters, local government finances are expected to be largely unaffected by the establishment of a recall process, as the occurrence of recall elections is expected to be infrequent.

Local government expenditures, however, would increase to conduct a recall election. Frederick and Somerset counties, for example, estimate that the cost of a single, countywide recall election would be approximately \$275,000 and \$80,000, respectively. Costs would be reduced for a county for a recall election involving a General Assembly member, to the extent a county's boundaries encompass more than one legislative district or subdistrict, requiring less than a countywide election.

The Maryland Constitution requires that proposed amendments to the constitution be publicized either (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2012 general election in newspapers or on specimen ballots.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Board of Elections; State Ethics Commission; Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; National Conference of State Legislatures; Department of Legislative Services

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