

# MAINE STATE LEGISLATURE

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# ACTIVITY SHEET

COMMITTEE: State and Local Government

LD: 1533

TITLE: An Act To Provide for a Method To Remove an Elected Municipal Official

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HEARING DATES: 05/09/2011

WORK SESSION DATES: 05/11/2011

REPORTED OUT DATE: 06/02/2011

COMMITTEE REPORT: OTP-AM

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1533

H.P. 1125

House of Representatives, May 2, 2011

**An Act To Provide for a Method To Remove an Elected Municipal  
Official**

(AFTER DEADLINE)

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative SANDERSON of Chelsea.  
Cosponsored by Senator THOMAS of Somerset and  
Representatives: BLODGETT of Augusta, CLARKE of Bath, COTTA of China, HARVELL  
of Farmington, O'CONNOR of Berwick, SIROCKI of Scarborough.

1           **Emergency preamble.** Whereas, acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** municipalities conduct official business that must be attended to on a  
4 daily basis, mostly by a small group of municipal officials; and

5           **Whereas,** many small municipalities do not have sufficient charters or ordinances to  
6 respond timely to misconduct or malfeasance by their municipal officials; and

7           **Whereas,** misconduct or malfeasance by an official in a small municipality that does  
8 not have the legal means to address the issue can directly affect the ability of the  
9 municipality to conduct its official business, which has a negative effect on the public  
10 interest and is of a direct concern to the State; and

11           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
12 the meaning of the Constitution of Maine and require the following legislation as  
13 immediately necessary for the preservation of the public peace, health and safety; now,  
14 therefore,

15           **Be it enacted by the People of the State of Maine as follows:**

16           **Sec. 1. 30-A MRSA §2505** is enacted to read:

17           **§2505. Recall of municipal officials**

18           Except as otherwise provided by the municipality's ordinances or charter, an elected  
19 official of a municipality may be recalled from office pursuant to this section. For  
20 purposes of this section, "official" has the same meaning as section 2604, subsection 2.

21           **1. Petition for recall.** On the written petition pursuant to subsection 5 of a number  
22 of voters equal to at least 10% of the number of votes cast in the municipality at the last  
23 gubernatorial election, an election must be held to determine the recall of an elected  
24 official of that municipality.

25           **2. Notice of intention.** In order to initiate a recall election under subsection 1, the  
26 initiator of the petition shall file a notice of intention of recall with the municipal clerk of  
27 the municipality. A notice of intention of recall under this subsection must include the  
28 name, address and contact information of the person filing the notice and the name and  
29 position of the official subject to recall under this section. Only a person registered to  
30 vote in the municipality may file a notice of intention of recall under this subsection.

31           **3. Petition forms.** Within 3 business days of receipt of a notice of intention of recall  
32 under subsection 2, the municipal clerk shall prepare petition forms for the collection of  
33 signatures under subsection 4 and send notice to the initiator of the petition under  
34 subsection 2 that the petition forms are available. The municipality may charge the  
35 initiator of the petition a reasonable fee for preparing and providing the petition forms  
36 under this subsection. A petition form under this subsection must include:

1 A. At the top of the form, the name and position of the official subject to recall, the  
2 name and contact information of the initiator of the petition and the date by which the  
3 signatures must be submitted to the municipal clerk under subsection 4;

4 B. Spaces for each voter's signature, actual street address and printed name; and

5 C. Space at the bottom of the form for the name, address and signature of the person  
6 circulating the petition form.

7 **4. Collection and submission of signatures.** A petition form under subsection 3  
8 may be circulated or signed only by a registered voter of the municipality. A circulator of  
9 a petition form shall fill in the information required under subsection 3, paragraph C and  
10 sign the form prior to submission of the form to the municipal clerk. The initiator of the  
11 petition under subsection 2 shall collect the petition forms from all circulators and submit  
12 the signed petition forms to the municipal clerk within 14 days of receipt of notice from  
13 the clerk that the petition forms are available under subsection 3. A municipal clerk may  
14 not accept a petition form submitted more than 14 days after sending notice of availability  
15 to the initiator under subsection 3, and any voter signatures on that form are invalid.

16 **5. Petition certification and notification.** Within 7 business days of receiving  
17 petition forms under subsection 4, the municipal clerk shall determine whether the  
18 petition forms meet the criteria under subsection 4 and certify the validity of any  
19 signatures on the petition forms. If the municipal clerk finds that the number of valid  
20 signatures submitted under subsection 4 meets or exceeds the requirements under  
21 subsection 1, the clerk shall certify the petition and immediately send notification of the  
22 certification to the municipal officers, the initiator of the petition and the official subject  
23 to the recall. If the municipal clerk finds the number of valid signatures submitted under  
24 subsection 4 does not meet the requirements for a petition under subsection 1, the  
25 municipal clerk shall file the petition and the petition forms in the clerk's office and notify  
26 the initiator of the petition.

27 **6. Scheduling recall election.** Within 10 business days of certification of the  
28 petition under subsection 5, the municipal officers shall schedule a recall election to  
29 determine whether the official subject to the recall petition should be recalled. The  
30 election must be held no less than 45 days nor more than 75 days after certification of the  
31 petition under subsection 5 unless a regular municipal election is scheduled to be held  
32 within 90 days of the certification of the petition under subsection 5, in which case the  
33 recall election must be held on the date of the regular municipal election. If the  
34 municipal officers fail to schedule a recall election within 10 days of certification of the  
35 recall petition under subsection 5, the municipal clerk shall schedule the recall election  
36 pursuant to the date requirements of this subsection.

37 **7. Ballots for recall election.** If the official subject to the recall does not resign  
38 from office within 10 business days of certification of the recall petition under subsection  
39 5, the ballots for the recall election under subsection 6 must be printed. A ballot for a  
40 recall election under this section must read:

41 "Do you authorize the recall of (name of official) from the position of (name of  
42 office)?

43 ( ) Yes ( ) No"



STATE OF MAINE  
125TH LEGISLATURE

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LEGISLATIVE NOTICES

JOINT STANDING COMMITTEE ON STATE AND LOCAL GOVERNMENT

Sen. Douglas A. Thomas, Senate Chair  
Rep. H. David Cotta, House Chair

PUBLIC HEARING: Monday, May 09, 2011, 1:00 PM, Rom 214 Cross Building

(L.D. 1533) Bill "An Act To Provide for a Method To Remove an Elected Municipal Official" (HP1125) (EMERGENCY) (Presented by Representative SANDERSON of Chelsea) (Cosponsored by Senator THOMAS of Somerset, Representative BLODGETT of Augusta, Representative CLARKE of Bath, Representative COTTA of China, Representative HARVELL of Farmington, Representative O'CONNOR of Berwick, Representative SIROCKI of Scarborough) Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

CONTACT PERSON:

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Veronica Snow  
100 State House Station  
Augusta, ME 04333-0100  
287-1330

## WORK SESSION AGENDA

### STATE AND LOCAL GOVERNMENT

5/11/2011

1:00 PM

Room 214 Cross Building

- (L.D. 278) Bill "An Act To Amend the Law Governing Municipal Disbursement Warrants" (HP0226) (Presented by Representative WILLETTE of Mapleton) (Cosponsored by Senator SHERMAN of Aroostook, Senator JACKSON of Aroostook)
- (L.D. 769) Bill "An Act To Review the Functions of the State Planning Office" (HP0576) (Presented by Representative MOULTON of York) (Cosponsored by Senator RECTOR of Knox, Representative BOLAND of Sanford, Representative CASAVANT of Biddeford, Representative GRAHAM of North Yarmouth)
- (L.D. 984) Bill "RESOLUTION, Proposing an Amendment to the Constitution of Maine To Require a Two-thirds Vote To Approve the Issuance of a Bond or Security by the Maine Governmental Facilities Authority" (HP0728) (Presented by Representative WATERHOUSE of Bridgton) (Cosponsored by Senator ROSEN of Hancock, Representative CHASE of Wells, Representative CLARK of Easton, Representative SIROCKI of Scarborough, Representative WINSOR of Norway)
- (L.D. 1002) Bill "An Act To Encourage Affordable Housing in Municipal Zoning" (HP0738) (Presented by Representative MOULTON of York) (Cosponsored by Senator RECTOR of Knox, Representative BOLAND of Sanford, Representative BOLDUC of Auburn, Representative FREDETTE of Newport, Representative RUSSELL of Portland)
- (L.D. 1128) Bill "An Act To Modify the Requirements for Municipal Code Enforcement Officer Training" (HP0840) (Presented by Representative MOULTON of York) (Cosponsored by Representative CROCKETT of Bethel)
- (L.D. 1297) Bill "An Act Relating to the Qualifications for the Position of Municipal Officer" (HP0952) (Presented by Representative COTTA of China) (Cosponsored by Senator SHERMAN of Aroostook, Representative FOSSEL of Alna, Representative FOSTER of Augusta, Representative MORISSETTE of Winslow, Representative SANDERSON of Chelsea, Representative TUTTLE, JR. of Sanford)
- (L.D. 1373) Bill "Resolve, To Produce Cost Savings by Requiring the State E-mail System To Be Hosted by Google" (HP1012) (Presented by Representative WILLETTE of Mapleton) (Cosponsored by Senator MASON of Androscoggin, Representative CLARK of Easton, Representative WILLETTE of Presque Isle)
- (L.D. 1416) Bill "An Act To Provide Options to Municipalities Concerning the Maine Uniform Building and Energy Code" (HP1042) (Presented by Representative MCKANE of Newcastle) (Cosponsored by Senator THIBODEAU of Waldo, Senator PLOWMAN of Penobscot, Senator ROSEN of Hancock, Senator THOMAS of Somerset, Representative COTTA of China, Representative CURTIS of Madison, Representative FITTS of Pittsfield, Representative HAMPER of Oxford, Representative HARVELL of Farmington, Representative MALABY of Hancock)
- (L.D. 1442) Bill "An Act To Clarify Enforcement of Maine's Building Codes" (SP0449) (Presented by Senator BARTLETT, II of Cumberland)
- (L.D. 1476) Bill "An Act To Streamline the County Budget Process" (HP1085) (Presented by Representative COTTA of China) (Cosponsored by Senator SULLIVAN of York, Representative CASAVANT of Biddeford, Representative DOW of Waldoboro, Representative GILLWAY of Searsport, Representative HARMON of Palermo)

Representative MOULTON of York, Representative VALENTINO of Saco,  
Representative WEAVER of York)

- (L.D. 1248) Bill "An Act To Require Approval by the Voters of Legislation To Enact or Increase a Tax or Fee" (SP0369) (Presented by Senator THIBODEAU of Waldo) (Cosponsored by Senator THOMAS of Somerset, Representative CURTIS of Madison, Representative CUSHING, III of Hampden, Representative HARMON of Palermo, Representative MCKANE of Newcastle)
- (L.D. 1460) Bill "An Act Concerning the Recording of Plans for Subdivisions" (SP0447) (Presented by Senator THOMAS of Somerset)
- (L.D. 1410) Bill "An Act To Amend the Maine Administrative Procedure Act" (HP1036) (Presented by Representative CAREY of Lewiston) (Cosponsored by Senator COURTNEY of York, Senator RECTOR of Knox, Representative DUCHESNE of Hudson, Representative FITTS of Pittsfield, Representative MCKANE of Newcastle)
- (L.D. 1492) Bill "An Act To Ensure Accountability in State Contracts" (SP0468) (Presented by Senator ALFOND of Cumberland) (Cosponsored by Senator BARTLETT, II of Cumberland, Senator GERZOFKY of Cumberland, Senator JACKSON of Aroostook, Representative FLEMINGS of Bar Harbor, Representative TREAT of Hallowell)
- (L.D. 1499) Bill "An Act Concerning Fees for Users of County Registries of Deeds" (HP1100) (EMERGENCY) (Presented by Representative COTTA of China) (Cosponsored by Senator KATZ of Kennebec, Representative BURNS of Alfred, Representative HANLEY of Gardiner, Representative MALABY of Hancock, Representative MORISSETTE of Winslow, Representative SARTY, JR. of Denmark, Representative WEBSTER of Freeport) Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.
- (L.D. 1518) Bill "An Act To Make Changes to the Laws Regarding Notice and Publication of Unclaimed Property" (HP1118) (Presented by Representative NASS of Acton) Submitted by the Treasurer of State pursuant to Joint Rule 204.
- (L.D. 1533) Bill "An Act To Provide for a Method To Remove an Elected Municipal Official" (HP1125) (EMERGENCY) (Presented by Representative SANDERSON of Chelsea) (Cosponsored by Senator THOMAS of Somerset, Representative BLODGETT of Augusta, Representative CLARKE of Bath, Representative COTTA of China, Representative HARVELL of Farmington, Representative O'CONNOR of Berwick, Representative SIROCKI of Scarborough) Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

CONTACT PERSON:

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# HOUSE OF REPRESENTATIVES

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## **Deborah J. Sanderson**

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## **Testimony for LD 1533, An Act to Provide for a Method to Remove an Elected Municipal Official**

Sponsor~Rep. Deborah J. Sanderson

Senator Thomas, Representative Cotta, members of the State and Local Government Committee; I am Rep. Sanderson and I would like to thank you for the opportunity to present LD 1533, An Act to Provide for a Method to Remove an Elected Municipal Official.

I live in Chelsea and this past winter, my town found itself in a very difficult position. You could even say that Chelsea experienced what can only be called, "A Perfect Storm". Our 3 person board was already down by one person who resigned her position in November. Then, in the beginning of February, the Chair of our board was arrested and charged with some very serious crimes, including theft against the town. Because one of the conditions of her bail was that she could no longer approach the town office or perform her duties as a selectwoman, Chelsea was left with only one selectman. We did not have a quorum to conduct any business except the very basic necessities.

In a case like this where the town people's trust had been violated so egregiously, one would hope that the official who has been arrested for stealing from the town would have the grace to resign her seat so the town could fill it with another. Unfortunately this was not the case in Chelsea. Even after the attorney for our town, at the citizen's request, sent an official letter asking her to step down, she refused and is still a sitting selectwoman.

Because Chelsea doesn't have its own Charter, nor does it address a recall process in our ordinances, we fall under State Statute and, under State Statute there is no provision for which to recall an elected municipal official.

With LD 1533 I hope to add into statute a recall provision for municipalities. By doing so, I certainly don't want to open a "Pandora's Box" and provide a burdensome mechanism which could create more problems for towns than intended and be subject to abuse, so the statute which I am proposing will be one that can only be used in the case of an emergency with very specific language. The amendment below, or some form of it, should be added to the "Limitations of Recall" provision in the Bill.

AMENDMENT:

If neglect of duty, misconduct or malfeasance in office results in a conviction of crimes against the town, then the citizens may engage in a recall process. This mechanism under STATE STATUTE shall only be used without conviction of a crime if, the elected official can no longer perform their duties to the town because of charges of criminal activity against the town and there is no longer a quorum present to conduct town business.

I sincerely believe that each municipality should decide for themselves if they want to enact a recall process which doesn't have the very specific parameters outlined in this bill, however, for the many small towns without charters or ordinance's there should be a safety net for times of crisis. I hope you will support LD 1533 and help provide that net.

Thank you very much.

Representative Deborah J. Sanderson~District 52



# Maine Municipal Association

60 COMMUNITY DRIVE  
AUGUSTA, MAINE 04330-9486  
(207) 623-8428  
www.memun.org

## Testimony of the Maine Municipal Association

In Opposition to  
LD 1533 – *An Act to Provide for a Method to Remove an Elected Municipal Official*

April 11, 2011

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Senator Thomas, Representative Cotta and members of the State and Local Government Committee. My name is Kate Dufour and I am providing testimony in opposition to LD 1533 on behalf of the Maine Municipal Association (MMA) and at the direction of our Legislative Policy Committee (LPC).

As proposed, LD 1533 provides a procedure for the recall of a municipal officer that would apply in every town and city that does not have a specific recall system established by ordinance or charter.

Municipal officials oppose LD 1533 for two reasons.

First, LD 1533 is an affront to the concept of home rule. Home rule empowers the residents of a municipality to develop ordinances that best meet the needs of the community. If the residents of a community believe a recall ordinance is necessary, then they should create the ordinance according to the procedures that are readily available. If the community believes a recall ordinance is unnecessary, then the state should not take it upon itself to enact one for them. Home rule enables residents of a community to decide for themselves what is and is not necessary policy.

Second, in 1993 state law was amended to address this issue. MRSA, Title 30-A, section 2602, subsection 6 was amended to make the process for removing municipal officers easier. Rather than adopting a removal process by charter only, which relatively few municipalities have, the law now enables municipalities to adopt removal procedures by ordinance.

Furthermore, LD 1533 omits from the recall provisions elected school, county and state officials. If a standardized recall process is to be enacted, municipal officials believe it should be uniform for all elected officials.

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 10, 2011

To: State and Local Government Committee

From: Anna Broome, Legislative Analyst

### LD 1533 An Act to Provide for a Method to Remove an Elected Municipal Official

#### SUMMARY:

This bill establishes a procedure to recall an elected municipal official if that municipality's ordinances or charter do not address the issue. It requires a written petition of 10% of the number of votes cast in the municipality at the last gubernatorial election. Petition forms are circulated within 14 days. The municipal clerk validates the signatures and an election is called within 10 business days of certification. The election is held between 45 and 75 days unless a regular election is scheduled within 90 days. If a majority of voters vote to remove the official, the recall takes effect on the day the election results are recorded. An elected official may be the subject of a recall only for neglect of duty, misconduct or malfeasance in office and after being given a written statement of the charges. This bill is drafted as an emergency.

#### TESTIMONY

##### Proponents:

- Sponsor presented amended language to add to the limitation of recall – need to result in conviction.
- Situation in Chelsea involved a selectman charged with theft and a vacancy; meant there was no quorum to conduct business and no way of getting rid of the person who was arrested.
- The town has no charter and no recall in ordinance; this bill would put something in state statute.
- Recall could be only used with a conviction.

##### Opponents:

- Home rule empowers the residents of a municipality to develop ordinances that meet the needs of that community.
- Law was changed in 1993 to allow municipalities to adopt removal procedures by ordinance; formerly required a charter.
- Bill only targets municipal officials; does not include elected school, county or state officials.

#### ADDITIONAL INFORMATION:

- Amended language requires a conviction before citizens can begin a recall process. Can be a significant period of time between being charged and convicted. Additional language related to charges of criminal activity require a lack of quorum in order for a recall to be conducted.
- Official has the same meaning as 30-A §2604, sub-§2:

**2. Official.** "Official" means any elected or appointed member of a municipal or county government or of a quasi-municipal corporation.

This is a fairly broad definition of official if the intention is a selectperson (given quorum language).

#### FISCAL IMPACT:

Not yet available.



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L.D. 1533

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**STATE AND LOCAL GOVERNMENT**

4

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**STATE OF MAINE**

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**HOUSE OF REPRESENTATIVES**

7

**125TH LEGISLATURE**

8

**FIRST REGULAR SESSION**

9

COMMITTEE AMENDMENT " " to H.P. 1125, L.D. 1533, Bill, "An Act To  
Provide for a Method To Remove an Elected Municipal Official"

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11

Amend the bill in section 1 in §2505 by striking out all of subsection 9 (page 3, lines  
6 to 8 in L.D.) and inserting the following:

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13

9. Limitation of recall. An elected official may be the subject of a recall petition  
under this section only if the official is convicted of a crime, the conduct of which  
occurred during the official's term of office and the victim of which is the municipality.'

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15

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**SUMMARY**

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This amendment narrows the circumstances under which an elected municipal  
official can be recalled. It requires the elected municipal official to have been convicted  
of a crime in which the criminal conduct occurred during the official's term of office and  
in which the victim of the crime is the municipality.

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## COMMITTEE VOTING TALLY SHEET

LD # or Confirmation: LD 1533

Committee: State and Local Government

Date: 05/11/2011

Motion: Ought To Pass As Amended

Motion by: Rep. Harvell

Seconded by: Rep. Turner

Those Voting in Favor of the Motion	Recommendation of those opposed to the Motion					Absent	Abstain

### Senators

Sen. Thomas	X							
Sen. Collins	X							
Sen. Sullivan	X							

### Representatives

Rep. Cotta	X							
Rep. Boland	X							
Rep. Bolduc	X							
Rep. Casavant	X							
Rep. Celli	X							
Rep. Graham	X							
Rep. Harvell	X							
Rep. Kaenrath	X							
Rep. Moulton	X							
Rep. Turner	X							
	13							

