

HOUSE BILL NO. 419

INTRODUCED BY C. EDMUNDS

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC OFFICIAL RECALL LAWS; INCLUDING A
 PRECINCT COMMITTEE REPRESENTATIVE AS A PUBLIC OFFICIAL FOR THE PURPOSES OF RECALL
 LAWS; PROVIDING THAT FAILURE OF CERTAIN OFFICIALS TO ATTEND A MINIMUM NUMBER OF
 MEETINGS IS GROUNDS FOR RECALL; AMENDING SECTIONS 2-16-602 AND 2-16-603, MCA; AND
 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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Section 1. Section 2-16-602, MCA, is amended to read:

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"2-16-602. Definitions. As used in this part, the following definitions apply:

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(1) "Political subdivision" means a local government unit including but not limited to a county, city, or
 town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school
 district.

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(2) "Public office" means:

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(a) a position of duty, trust, or authority created by the constitution or by the legislature or by a political
 subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

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~~(a)~~(i) the position must possess a delegation of a portion of the sovereign power of government to be
 exercised for the benefit of the public;

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~~(b)~~(ii) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the
 constitution, the legislature, or by a political subdivision through legislative authority;

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~~(c)~~(iii) the duties must be performed independently and without control of a superior power other than the
 law, unless the legislature has created the position and placed it under the general control of a superior office or
 body; and

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~~(d)~~(iv) the position must have some permanency and continuity and not be only temporary or occasional;
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(b) a position on a county or city central committee, as provided in Title 13, chapter 38.

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(3) "State-district" means a public service commission district, a legislative representative or senatorial

1 district, or a judicial district."

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3 **Section 2.** Section 2-16-603, MCA, is amended to read:

4 **"2-16-603. Officers subject to recall -- grounds for recall.** (1) Any person holding a public office of
5 the state or any of its political subdivisions, either by election or appointment, is subject to recall from office.

6 (2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for
7 the elective officer's successor. A public officer holding an appointive office may be recalled by the qualified
8 electors entitled to vote for the successor or successors of the elective officer or officers who have the authority
9 to appoint a person to that position.

10 (3) The only grounds for recall are:

11 (a) ~~Physical~~ physical or mental lack of fitness;

12 (b) incompetence;

13 (c) violation of the oath of office;

14 (d) official misconduct, including the failure to perform a mandatory duty as provided in 45-7-401; or

15 (e) conviction of a felony offense enumerated in Title 45, ~~are the only grounds for recall.~~

16 (4) A person may not be recalled for performing a mandatory duty of the office that the person holds or
17 for not performing any act that, if performed, would subject the person to prosecution for official misconduct.

18 (5) For the purposes of this section, if a person is elected or appointed to a governing body, including
19 a county or city central committee as provided in Title 13, chapter 38, the term "mandatory duty" includes but is
20 not limited to attending a minimum of 85% of the official meetings of the body to which the person has been
21 elected or appointed.

22 (6) If an elected or appointed precinct committee representative fails to perform the mandatory duties
23 of the position, the presiding officer of the central committee to which the representative belongs shall notify the
24 election administrator that the representative's name must appear on the next general election ballot for the
25 purposes of recall."

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27 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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