

**2019 HOUSE POLITICAL SUBDIVISIONS COMMITTEE**

**HB 1201**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Prairie Room, State Capitol

1/25/2019

HB 1201

Job # 31524

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Carmen Hickle
--------------------------------

### Explanation or reason for introduction of bill/resolution:

Relating to recalling elected officials

Minutes:

1,2,3,4
---------

**Chairman J. Dockter:** Opens the hearing on HB 1201.

**Rep. Klemin:** Introduces the bill. This bill comes because of an Attorney General's opinion in 2017 which said this statute is ambiguous. This bill is intended to clarify that. North Dakota League of Cities will be presenting details regarding the bill.

**Stephanie Dassinger:** Deputy Director and Attorney ND League of Cities; (Handout 1,2). Read her testimony.

**(6:38) Jim Silrum:** Deputy Secretary of State: (Handout 3). Since 2010 our office approved nearly 80 recall petitions. This asks you as a committee to make the statutes consistent between constitutional officers and those of political subdivisions.

**(8:27) Casey Buchmann:** (Handout 4). Read his testimony against HB 1201.

**(11:48) Rep. Ertelt:** Are you a member of a community where this situation took place?

**Mr. Buchmann:** It happened in Washburn and in Mercer. When you put a restriction on one year that hampers the people. Not one individual as an elected official that year should not be implied. Every person elected should be accountable. It goes against the Constitution.

**Chairman J. Dockter:** Closed the hearing on HB 1201.

**Chairman J. Dockter:** Reopened for committee work.

**Rep. Adams:** Made a do pass motion.

**Rep. Longmuir:** Second the motion.

**Rep. Magrum:** I understand the intent so if someone gets in trouble within a year they don't want to have cities and counties spend money on a reelection. But what if you have some one that really needs to be removed you are limiting the people to take charge of the problem? I don't think we need to take that right away from the people.

**Rep. Hatlestad:** Does the governor have the authority to remove an elected official?

**Rep. Longmuir:** We had this discussion in another committee, school board members were not included but other elected officials were. The governor does have the authority to remove a bad actor.

**Rep. Ertelt:** The power should remain with the people to remove those from office they no longer support. While this may bring us in line with other elected officials, this is a whole year.

**Chairman J. Dockter:** This bill is set up where you can't go just a few months. I think a year is reasonable.

**Rep. Ertelt:** The complaint is you can do it within a few months of the election but this moves it to 12. We can do what the law already allows us to do. We are limiting when this can be done.

**Rep. Adams:** If you read it says if there is a regular scheduled election in one year. You would have to have two elections in one year if you wanted to get rid of them.

**Rep. Simons:** If this was on the ballot I wonder how our constituents would vote this?

**Rep. Hatlestad:** The governor has the power to remove an elected official. So you would not stay in office even though it is a year before the election, the governor will, if sufficient evidence, kick you lose.

**Rep. Simons:** The governor does have that right but so do the people. If the governor isn't doing his job, then this would. This is local control.

**Vote : Yes 10, no 4, absent 0.**

**Carrier: Rep. Fegley**

Date: 1-25-19  
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1201

House Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Adams Seconded By Rep. Longmuir

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:		/			
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson	/				
Rep K. Koppelman:	/				
Rep. Longmuir	/				
Rep. Magrum:		/			
Rep. Simons:		/			
Rep. Toman:		/			
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg	/				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Fegley

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1201: Political Subdivisions Committee (Rep. Dockter, Chairman)** recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1201 was placed on the Eleventh order on the calendar.

**2019 SENATE POLITICAL SUBDIVISIONS**

**HB 1201**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

HB1201  
2/28/2019  
Job # 32992

☐ Subcommittee  
☐ Conference Committee

Committee Clerk: Mary Jo Wocken
---------------------------------

### Explanation or reason for introduction of bill/resolution:

Relating to recalling of elected officials.

### Minutes:

Written attachment#1 Stephanie Dassinger Written attachment #2 John Arnold
---

**Chairman Burckhard** opened the hearing on HB1201. All senators are present.

**Representative Klemin**, District 47. Here to testify on HB 1201. It deals with recall elections. I was asked to introduce this bill by the North Dakota League of Cities. There are constitutional provisions relating to recall of public officials. But we have some statutes which put a little more into procedure as to how that is done to implement the constitutional provisions and one of these statutes particularly the one that is in Section 2 of this bill contains some ambiguities. In 2017 there was an Attorney General's opinion relating to what those ambiguities are and what could be done about it. This bill is intended to clarify the ambiguities and then in Section 1, I believe is just to carry that same language into that part of the section of the statute.

**Senator J. Lee:** I would like to know how this differs from the bill we just sent over to the House? The one we had in Political subs before the Senate bill that dealt with recall elections.

**Representative Klemin:** I don't know anything about that particular bill, but maybe Stephanie does, since she is from the League of Cities.

**Ms. Stephanie Dassigner**, Deputy Director, North Dakota League of Cities, **Written attachment #1.** To address the question about the other bill that was on recall elections, but you did have a bill to eliminate restrictions on recall elections that was defeated. She is in support of this bill.

**Alex Carthew:** Replied SB2311 to Senator J. Lee's question.

**Ms. Stephanie Dassinger:** Continued her written testimony.

**Chairman Burckhard:** So, legislators can be recalled I see on this section 1.



**Ms. Stephanie Dassinger:** I have no power to change that, it is in the Constitution.

**Mr. John Arnold:** State Election Director on behalf of Secretary of State Al Jaeger. **Written attachment #2.** He spoke in support of HB 1201.

**Senator Anderson:** Who determines when the recall election is to be held? If I file a petition for a recall of somebody, do I get to state that in the petition or is that at the next regular election or who determines that?

**Mr. John Arnold:** That is up to the local political subdivision. One of the committee would turn in their petitions to the city auditor or school business manager, whoever that official would be. That official has 30 days to verify the signatures. At the conclusion of either that 30 days or if they finish their work early, and decide that there are enough signatures to call a special election, then they have to do that right away. A special election can't be called in less than 95 days, or more than 105 days.

**Senator Anderson:** So this is a special election that is called, not necessarily the scheduled next regular election.

**Mr. John Arnold:** Yes, that is correct. That would be a special election.

**Chairman Burckhard:** How many signatures are required for the petition?

**Mr. John Arnold:** Oh it's a percentage. It varies by whether it is a constitutional officer or a rural subdivision. But I can get all that and email it to you.

**Senator J. Dotzenrod:** You said something about this election had to be held within not more than 105 days and not less than 95 days. That is within what event? What event occurs in a political subdivision having approved the petition?

**Mr. John Arnold:** That is correct. At the approval of verifying there are enough valid signatures the City Auditor or school business manager would call the election and that election would be called within that 95 to 105 -day deadline. The purpose for that time frame is to allow all candidates at least 30 days to gather signatures to get their name on the ballot. The filing deadline is 64 days before the election.

**Senator J. Dotzenrod:** Once they've received the petition, asking for this recall, is there a time limit upon that they have to operate on after getting that petition before they say that it is approved?

**Mr. John Arnold:** The filing officer has 30 days to conduct a review of the signatures.

**Senator J. Dotzenrod:** I was surprised to hear that it's that narrow window. 95-105 days. That election could be any month of the year, could be early or late or that is a pretty narrow 10-day window that gets set. There is no regularity to when a special election takes place. It is going to be set by the time when they approve that at the local board. That is more or less is going to set that election date within 10 days.

**Mr. John Arnold:** The limit again for that minimum is to allow people enough time to gather signatures so they can't say the election is going to be in 65 days and the filing deadline is tomorrow at 4pm by the way, and not it is 6pm at our meeting. The other side of that is you don't want to allow the political subdivisions so much authority to say we're going to schedule this in 300 days, or by the way that is right before the other election. It is too late at that point.

**Mr. Larry Syverson:** Totally in support of this bill.

**Chairman Burckhard** asked for opposition and neutral testimony for HB1201. No one came forward.

### **Committee Discussion:**

**Senator J. Dotzenrod:** Before you close the hearing, I am not sure we're going to get anymore witnesses to speak or not, but if I understand this right, if the regular election date is on November 6, the next regular election. Then it is one year when the special election that would be requested, and it can't be less than one year from that date, so if you go back to the preceding November 6, then if you go back 95 days from that date, that's when the petition or governing board would have to approve this. So, actually the person is going to have to get started about a year and a half before the election to get their signatures and get it turned in and then the approval comes and then the 105- day clock starts running. When that clock runs out, you still have to be one year before the election. So, am I understanding the time line correctly?

**Chairman Burckhard:** I think that is right. You would have to start considering whether you would want to do this, two years before the next general election.

**Senator J. Lee:** It takes several months to accomplish the process also. So if you started after that. I understand exactly what you're saying. It seems like an awful lot of preplanning stuff. But if it's within that year, and it takes two or three months to get the petitions and everything going, within 6 months unless somebody is charged with a felony, or something I suppose and is now in prison, maybe. What do you do when something like that happens? Maybe it is worth just hanging on until the next election. It happened at a school district that was between where you live and where I live, and all but one bit the dust.

**Senator J. Dotzenrod:** I am not really asking this questions to pass judgment about whether it is good or bad, I just want to make sure that I understand if we pass this bill, exactly what it would really mean so that I understand dates and timelines. I really don't have any particular problem with doing this, I just want to make sure that I am pretty clear on how it would work.

**Chairman Burckhard:** Maybe we could research it on our own. There is a couple of governor's in Illinois that are in jail and several governors in Louisiana that are in jail.

**Chairman Burckhard:** Closed the hearing on HB1201.

**Senator J. Lee:** I move a do pass on 1201.

**Senator J. Dotzenrod:** 2<sup>nd</sup>

**Roll call vote:** 6-0-0

**Carrier:** Senator Kannianen

Date: 2-28-2019  
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. H.B. 1201**

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Judy Lee Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson	X				
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Kannianen

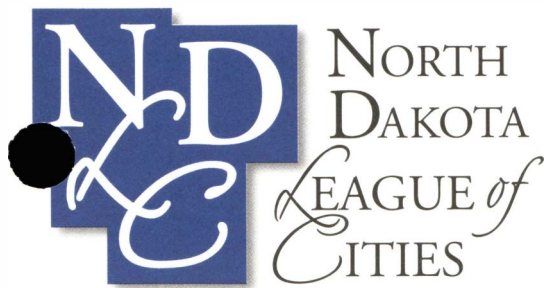
If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1201: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1201 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**HB 1201**



#1

1-25-19

January 25, 2019

House Political Subdivisions Committee  
HB 1201

Chairman Dockter and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities.

I appear before you today to express the League's support of HB 1201.

The purpose of HB 1201 is to clear up an ambiguity with the language that exists for the timing of recall elections. Section 1 of the bill relates to the recall of elected officials who are subject to recall under section 10, Article III of the North Dakota Constitution. In other words, it applies to elected officers such as Supreme Court Justices, Legislators, and County Commissioners.

Section 2 of the bill relates to the recall of elected officials from political subdivisions. This provision applies to city elected officials. Please note the language relating to the timing of both sections have been amended so that it is consistent.

Questions have arisen about the interpretation of NDCC § 44-08-01. The issue that came up was whether the one-year time period, during which a recall election cannot occur, is measured from the actual recall election or the filing of the recall petition. In 2017, the Attorney General issued an opinion determining that the language in NDCC § 44-08-21 was ambiguous and ultimately determining that the one-year prohibition started from the filing of the recall petition. Under this interpretation, the possibility exists that a city could hold a recall election and have its general city election for the same office within about nine months or less of each other.

Section 2 of HB 1201 eliminates the ambiguous language in NDCC § 44-08-01 and provides that it is the recall election that starts the one-year election timeline, not the filing of the recall petition.

For these reasons, the League urges the committee to vote DO PASS on HB 1201.

Thank you for your time and consideration.

#2  
1-25-19

## HB 1201 – RECALL ELECTIONS

### TESTIMONY OF ERIK R. JOHNSON, FARGO CITY ATTORNEY, to the House Political Subdivisions Committee

--**This bill needed to clarify law.** In a formal opinion, the Attorney General has recognized that the “timing” language for recall elections is ambiguous under the current statute. This bill would clarify that ambiguity and make the recall election law for local governments much more clear and the recall process more efficient by avoiding the arguably unnecessary duplication of elections.

In the winter/spring of 2017, a petition for recall of one of Fargo’s city commissioners [hereinafter referred to as the “Subject Commissioner”] was being circulated. The state statute pertaining to city commission recalls, N.D.C.C. §44-08-21, stated that the Subject Commissioner, who would be up for re-election in June 2018, would not be subject to recall or a recall election “within one year”; but “within one year of what”? I asked the Attorney General for his formal opinion. The Attorney General, while recognizing the inherent ambiguity of the statute, construed the law to mean that the Subject Commissioner was not subject to recall in situations where the Subject Commissioner would be up for re-election anyway (at a regular election) within one year of the date the City Auditor certifies the signed petition for recall. Attorney General Opinion N.D.A.G. 2017-L-02 (May 5, 2017). In Fargo’s situation, the Auditor would certify the petition in May 2017 and then, a re-call election would need to be scheduled within 105 days thereof—in September 2017, even though the Subject Commissioner was up for re-election at the June 2018 regular City election. As it turned out the petitioners for recall of the Subject Commission withdrew their petition and, so, the matter resolved itself immediately; however, had it not been withdrawn, the city would have followed the Attorney General’s interpretation of the law and scheduled a special election for September 2017—only nine months prior to the regular June 2018 city commission elections.

--**Current Law and Attorney General Opinion.** The citizens have the right to recall state and local elected officials by petition. If a proper petition is presented containing the required number of valid signatures, the “subject elected official” will be made to provides a time window when In North Dakota, a city commissioner (or council member) can be recalled from office and be made can be recalled upon appropriate The citizens’ right to petition government extends to a right of recalling Section 44-08-21 sets forth the process to follow to recall elected officials of political subdivisions that are not subject to recall under Article III of the North Dakota Constitution. Recall petitions (after having been circulated for signatures by the requisite number of electors) must be filed with the appropriate “filing officer”. In the case of a city commission recall, the filing officer is the city auditor. If the filing officer certifies the validity of the recall petition, a special election must be held within no later than 105 days following the date of the city auditor’s certification. Pertinent parts of the applicable statute, N.D.C.C. §44-08-21, are set forth below.

The Attorney General was asked whether the said one-year period commences from the date of

the city auditor's certification or the date of the actual recall election. The Attorney General opined that (a) the statute was ambiguous and (b) that using rules of construction of ambiguous laws, the one-year period is to be calculated from the date the city auditor certified the petition. N.D.A.G. 2017-L-02 (May 5, 2017). As this opinion would have been applied to Fargo's recent situation, the recall election would occur within nine months of the June 2018 general city election—the election when the voters would have a chance to unseat that same city commissioner. Again, in rendering his opinion, the Attorney General recognized the ambiguity of our existing statute and, therefore, the statute would benefit from clarification. The statute could be revised so that it reads in a manner consistent with the Attorney General's interpretation—using the date of the filing officer's certification of the recall petition as the start date for measuring the one-year period—however, I think a better clarification is provided in HB 1201, making the start date for measuring the one-year period as the date of the recall election. We think this is a better result, a fair result and a more efficient result from the standpoint of saving taxpayer money. It is a result that will avoid having a recall election that is followed relatively shortly by a regular election—one in which, by the way, the official being recalled could choose to run again, such election effectively becoming a second “recall election” within a one-year period. There is existing law elsewhere in the Century Code for guidance. In cases involving officials who are elected in November, the re-call election limitation clearly prohibits elections the same calendar year. N.D.C.C. §16.1-01-09.1(11). We think this result is consistent with a general intent of minimizing the expense and burden of a recall election when the elected official that is subject to recall would otherwise be up for re-election anyway shortly thereafter—in that case, within 10 months—the same calendar year. Since city elections are held in June (coinciding with the state and federal primary election cycle), the “calendar year” definition seems too short (six months). Rather, any recall election should be required to be held at least a full 12-months any regular election occurring within a full 12-months from a date on very soon and the legislature deemed “very soon” to be defined as a public vote within a one-year period would seem an appropriate threshold.

#### **REQUESTED ACTION:**

HB 1201 would clarify the law to prohibit recall elections that would be held within a year of the recalled official being up for re-election at a regular election. We respectfully suggest a “do pass” recommendation from the House Political Subdivisions Committee.

**Erik R. Johnson**  
**City Attorney -- Fargo**  
**505 Broadway, Suite 206**  
**Fargo, ND 58102**  
**O: 701-280-1901**  
**C: 701-371-6850**  
[ejohnson@lawfargo.com](mailto:ejohnson@lawfargo.com)

#### **N.D.C.C. §44-08-21. Recall of elected officials of political subdivisions.**

1. An elected official of a political subdivision, except an official subject to recall under section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors



equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections....

3. Once circulated, the recall petition must be filed with the filing officer with whom a petition for nomination to the office in question is filed [the city auditor for any city].... The [city auditor] shall pass on the sufficiency of a petition pursuant to section 16.1-01-09.1. Except as otherwise provided in this section, the filing officer shall call a special election to be held not sooner than ninety-five days nor later than one hundred five days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would be within ninety-five days of the next scheduled election....

4. ... No official is subject to recall twice during the term for which the official was elected. An official whose office is on the ballot at a regularly scheduled election occurring within one year is not subject to recall. [Emphasis added.]

#3

ALVIN A. JAEGER  
SECRETARY OF STATE

HOME PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



PHONE (701) 328-2900  
FAX (701) 328-2992

E-MAIL [sos@nd.gov](mailto:sos@nd.gov)

## SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 25, 2019

**TO:** Chairman Jason Dockter and Members of the House Political Subdivisions Committee

**FR:** Jim Silrum, Deputy Secretary of State on behalf of Secretary of State Al Jaeger

**RE:** HB 1201 – Recalling Elected Officials

House Bill 1201 accomplishes two things, it removes ambiguity in the Century Code while creating uniformity in how public officials may be recalled.

Section 1, page 1, lines 6-8: Changes the timeframe during which a recall election for a statewide, district, or county officer can be scheduled. That is, it cannot occur within one year of the next regularly scheduled general election in which the official being recalled could be reelected. Under current law, a recall election may not be held within the calendar year the officer's position would be on the ballot. In practical terms, this change means that recall elections for statewide, district, or county officers must be held by early November in the year preceding the office being on the ballot. As the law is worded now, these elections could be held as late as December 31 of the year prior to the next general election.

Section 2, page 1 lines 21-23: The new language clarifies that a recall election of an official from a political subdivision cannot occur if the recall election is scheduled to be held within one year of the next regularly scheduled election in which the official could be reelected. As subsection 4 of section 44-08-21 is currently written, ambiguity exists as to which event "triggers" the one-year timeframe during which an official is not subject to recall. This ambiguity resulted in the Fargo City Attorney seeking an Attorney General's opinion to determine whether the one-year triggering event is when the filing officer certifies a petition as being sufficient (i.e., contains the requisite number of valid signatures) for setting the recall election or the one-year date from when the next election is held in which the official could be reelected.

Ultimately, this bill attempts to bring consistency between the recall statutes for all elected officials.

We request your favorable consideration and a Do Pass recommendation.

HB 1201 #4

1-25-19

Good morning, my name is Casey Buchmann and I live in Washburn, ND. First off, I want to thank the chairman and this committee for all your work for the state and its people. And to remind you that as an elected official you work for the people of North Dakota and not the other way around.

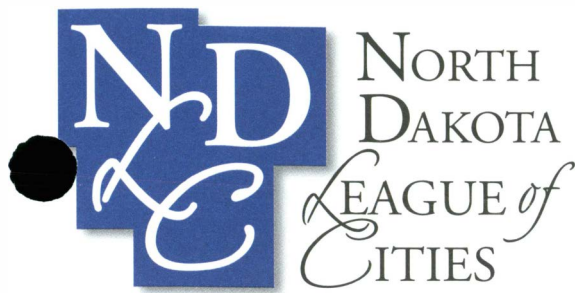
I came here today to speak against HB 1201. Article III, Section 1 of the North Dakota Constitution states: **While the legislative power of this state shall be vested in a assembly consisting of a senate and a house of representatives, the people reserve the power to propose and enact laws by initiative, including the call for a constitutional convention; to approve and reject legislative Acts, or parts thereof by referendum; to propose and adopt constitutional amendments by initiative; and to recall certain elected officials. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.** In Section 10 of Article III the constitution it explains the process of a recall.

I believe the direct democracy is one of the most important aspects of our state and country. And it's constantly under attack in small subtle ways. HB 1201 is one of those subtle ways.

As I was familiarizing myself with Subsection 11 of section 16.1-01-09.1 and Subsection 4 of the section 44-08-21 of the North Dakota Century Code where this bill changes the wording or adds to it. I immediately thought of the last line of our State's constitution in Article III, Section 1 which states: **Laws maybe enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.**

To me, it seems that the process of direct democracy in our state is under attack in North Dakota. It happens time and time again. This small subtle change goes against our constitution. Where does this amendment facilitate or makes it easier? It doesn't! Where does this amendment make safeguards? It doesn't! The subsections where this amendment is changing the wording, in my opinion goes directly against Article III, Section 1 of our constitution. It hampers, restricts and impairs the power of the people.

I urge the committee members to vote a do not pass on HB 1201 and protect the rights of the people of North Dakota



N.B. 1201  
2.28.2019  
att #1

February 28, 2019

Senate Political Subdivisions Committee  
HB 1201

Chairman Burckhard and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities.

I appear before you today to express the League's support of HB 1201.

The purpose of HB 1201 is to clear up an ambiguity with the language that exists for the timing of recall elections. Section 1 of the bill relates to the recall of elected officials who are subject to recall under section 10, Article III of the North Dakota Constitution. In other words, it applies to elected officers such as Supreme Court Justices, Legislators, and County Commissioners.

Section 2 of the bill relates to the recall of elected officials from political subdivisions. This provision applies to city elected officials. Please note the language relating to the timing of both sections have been amended so that it is consistent.

Questions have arisen about the interpretation of NDCC § 44-08-01. The issue that came up was whether the one-year time period, during which a recall election cannot occur, is measured from the actual recall election or the filing of the recall petition. In 2017, the Attorney General issued an opinion determining that the language in NDCC § 44-08-21 was ambiguous and ultimately determining that the one-year prohibition started from the filing of the recall petition. Under this interpretation, the possibility exists that a city could hold a recall election and have its general city election for the same office within about nine months or less of each other.

Section 2 of HB 1201 eliminates the ambiguous language in NDCC § 44-08-01 and provides that it is the recall election that starts the one-year election timeline, not the filing of the recall petition.

For these reasons, the League urges the committee to vote DO PASS on HB 1201.

Thank you for your time and consideration.

*H.B. 1201*  
*2 28 2019*  
*Att #2*

ALVIN A. JAEGER  
SECRETARY OF STATE

HOME PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



PHONE (701) 328-2900  
FAX (701) 328-2992

E-MAIL [sos@nd.gov](mailto:sos@nd.gov)

**SECRETARY OF STATE**  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

February 28, 2019

**TO:** Chairman Randy Burckhard and Members of the Senate Political Subdivisions Committee

**FR:** John Arnold, State Election Director on behalf of Secretary of State Al Jaeger

**RE:** HB 1201 – Recalling Elected Officials

House Bill 1201 accomplishes two things, it removes ambiguity in the Century Code while creating uniformity in how public officials may be recalled.

Section 1, page 1, lines 6-8: Changes the timeframe during which a recall election for a statewide, district, or county officer can be scheduled. That is, it cannot occur within one year of the next regularly scheduled general election in which the official being recalled could be reelected. Under current law, a recall election may not be held within the calendar year the officer's position would be on the ballot. In practical terms, this change means that recall elections for statewide, district, or county officers must be held by early November in the year preceding the office being on the ballot. As the law is worded now, these elections could be held as late as December 31 of the year prior to the next general election.

Section 2, page 1 lines 21-23: The new language clarifies that a recall election of an official from a political subdivision cannot occur if the recall election is scheduled to be held within one year of the next regularly scheduled election in which the official could be reelected. As subsection 4 of section 44-08-21 is currently written, ambiguity exists as to which event "triggers" the one-year timeframe during which an official is not subject to recall. This ambiguity resulted in the Fargo City Attorney seeking an Attorney General's opinion to determine whether the one-year triggering event is when the filing officer certifies a petition as being sufficient (i.e., contains the requisite number of valid signatures) for setting the recall election or the one-year date from when the next election is held in which the official could be reelected.

Ultimately, this bill attempts to bring consistency between the recall statutes for all elected officials.

We request your favorable consideration and a Do Pass recommendation.