



# House of Representatives

General Assembly

**File No. 736**

February Session, 2008

Substitute House Bill No. 5894

*House of Representatives, April 28, 2008*

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE RECALL OF ELECTED MUNICIPAL OFFICIALS AND THE FILLING OF VACANCIES FOR CERTAIN CHIEF ELECTED OFFICIALS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2008*) (a) Any municipality may,  
2 by ordinance adopted by its legislative body or in any town in which  
3 the legislative body is a town meeting, by the board of selectmen,  
4 provide for the recall of any elected official of a municipality who is  
5 elected to a term of four years, except the chief elected official of a  
6 municipality that has a population of more than one hundred  
7 thousand, provided such ordinance complies with the provisions of  
8 this section.

9 (b) Any such ordinance shall provide for the recall of such an  
10 elected official for any of the following reasons, provided such conduct  
11 occurred during the official's term of office: (1) Misappropriation of  
12 public property or funds, (2) violation of the oath of office, (3) any

13 felony conviction, (4) any act of malfeasance that adversely affects the  
14 rights and interests of the public, and (5) failure to perform any duty  
15 prescribed by law.

16 (c) No such ordinance shall authorize the recall of such an elected  
17 official during the first one hundred twenty days of such official's term  
18 or during the final one hundred twenty days of such official's term.

19 (d) Such ordinance shall authorize any three residents of such  
20 municipality who are electors to initiate the recall of such elected  
21 official by filing a joint affidavit with the town clerk of the  
22 municipality which: (1) States the name of such elected official, (2)  
23 requests recall petition forms, (3) attests that such electors, in good  
24 faith, desire and propose to file a petition for the recall of such elected  
25 official, and (4) contains a detailed statement of the grounds alleged for  
26 such recall. Upon the filing of such affidavit, the town clerk shall issue  
27 recall petition forms to such residents. Any resident of the  
28 municipality who is an elector may sign said petition.

29 (e) The Secretary of the State shall prescribe the form of the recall  
30 petition described in subsection (d) of this section and such petition  
31 shall be available from the town clerk of any municipality that  
32 authorizes the recall of such elected officials. The recall petition form  
33 shall include a space for the name and office of the official whose recall  
34 is sought, a space for the electors who are initiating such recall to  
35 indicate the grounds for such recall, a statement that the purpose of the  
36 petition is to seek a referendum on the recall of such official, a  
37 statement of instructions to persons circulating the petition, lines for  
38 the signatures, street addresses and dates of births of persons signing  
39 the petition, spaces for the time and date on which the completed  
40 petition is filed with the town clerk and spaces for the information  
41 required under subsection (f) of this section concerning the circulation  
42 of the petition.

43 (f) Such ordinance shall provide that each circulator of a recall  
44 petition page shall be a resident of such municipality and an elector.  
45 Each separate page of such petition shall contain a statement as to the

46 authenticity of the signatures on the petition and the number of such  
47 signatures, and shall be signed under the penalties of false statement  
48 by the circulator of the petition page, setting forth such circulator's  
49 address and attesting that each person whose name appears on such  
50 sheet signed the same in person in the presence of such circulator, that  
51 the circulator either knows each such signer or that the signer  
52 satisfactorily identified the signer to the circulator. Each separate sheet  
53 of such petition shall also be acknowledged before an appropriate  
54 person as provided in section 1-29 of the general statutes.

55 (g) Any person who signs a name other than the person's own to a  
56 recall petition or who signs a name other than the person's own as  
57 circulator of said petition shall be fined not more than one hundred  
58 dollars or imprisoned not more than one year, or both.

59 (h) Such ordinance shall provide that no petition for the recall of an  
60 official shall be effective unless filed with the town clerk not later than  
61 four o'clock p.m. on the sixtieth calendar day after the town clerk  
62 issues petition forms for such recall under subsection (d) of this  
63 section. Upon the filing of a recall petition, the town clerk shall sign  
64 and give to the person so submitting a page or pages of such petition a  
65 receipt indicating the number of such pages filed and the date and  
66 time when such pages were filed. The town clerk shall forthwith  
67 transmit the petition to the registrars of voters of the municipality who  
68 shall forthwith certify on each such petition page the number of  
69 signers on the page who are electors in the municipality. In the  
70 checking of signatures on recall petition pages, the registrars shall  
71 reject any name if such name does not appear on the last-completed  
72 active registry list in the municipality. The registrars shall not reject  
73 any name for which the street address on the petition is different from  
74 the street address on the registry list, if the person's date of birth, as  
75 shown on the petition page, is the same as the date of birth on the  
76 person's registration record. Each petition page shall contain a  
77 statement signed by a registrar of voters of said municipality attesting  
78 that the circulator is a resident of said municipality and an elector.  
79 Unless such a statement by a registrar appears on each page so

80 submitted, the registrars shall reject such page. Any page of a petition  
81 that does not contain a statement by the circulator as to the  
82 authenticity of the signatures on the page, or upon which the  
83 statement of the circulator is incomplete in any respect shall be rejected  
84 by the registrars. The registrars shall also reject any page of a petition  
85 they determine to have been circulated in violation of any other  
86 provision of this section. The registrars shall complete their verification  
87 of petition signatures and return the petition with their certifications to  
88 the town clerk not later than seven calendar days after the petition is  
89 filed with the town clerk.

90 (i) If, upon receiving a recall petition from the registrars of voters  
91 under subsection (h) of this section, the town clerk determines that the  
92 number of valid signatures on the petition is at least: (1) Thirty per cent  
93 of the total number of electors whose names appear on the active  
94 registry list of said municipality for a municipality with a population  
95 of less than one thousand persons, (2) twenty-five per cent of the total  
96 number of electors whose names appear on the active registry list of  
97 said municipality for a municipality with a population of not less than  
98 one thousand persons but not more than nine thousand nine hundred  
99 ninety-nine persons, (3) twenty per cent of the total number of electors  
100 whose names appear on the active registry list of said municipality for  
101 a municipality with a population of not less than ten thousand persons  
102 but not more than forty-nine thousand nine hundred ninety-nine  
103 persons, (4) fifteen per cent of the total number of electors whose  
104 names appear on the active registry list of said municipality for a  
105 municipality with a population of not less than fifty thousand persons  
106 but not more than ninety-nine thousand nine hundred ninety-nine  
107 persons, or (5) ten per cent of the total number of electors whose names  
108 appear on the active registry list of said municipality for a municipality  
109 with a population of not less than one hundred thousand persons, as  
110 applicable, (A) the town clerk shall forthwith certify the petition and  
111 submit said certification to the legislative body of the municipality,  
112 and (B) said legislative body shall, not later than seven days after  
113 receipt of said certification, order a referendum to be held on the recall  
114 of such elected official of the municipality not later than thirty days

115 after receipt of said certification.

116 (j) Any recall referendum conducted pursuant to this section shall  
117 also be conducted in accordance with the provisions of chapter 152 of  
118 the general statutes, provided such referendum shall only be valid if  
119 twenty-five per cent or more of the number of electors whose names  
120 appeared on the active registry list of said municipality at the time of  
121 the last municipal election vote in such referendum. The form of the  
122 question to be used on the voting machine ballot labels and absentee  
123 ballots at said referendum shall be "Shall (name of the official and  
124 office) be recalled?" If, upon the official determination of the results of  
125 such vote, a majority of all the votes cast are in approval of the  
126 question, the elected official's office shall be vacant and shall be filled  
127 in accordance with the applicable provision of state or municipal law  
128 concerning the filling of vacancies in said office.

129 (k) The provisions of this section shall not apply to any municipality  
130 for which state or municipal authority exists on the effective date of  
131 this section for the recall of an elected official of the municipality.

132 Sec. 2. (NEW) (*Effective from passage*) (a) Notwithstanding any  
133 provision of the general statutes, whenever any chief elected official of  
134 a municipality with a population of more than one hundred thousand  
135 leaves office due to a felony conviction, is granted accelerated  
136 rehabilitation under section 54-56e of the 2008 supplement to the  
137 general statutes or receives any other penalty stemming from a felony  
138 charge, such office vacancy shall be filled by conducting a special  
139 election as follows: Except as otherwise provided by law, the Governor  
140 shall, not more than ten days after the occurrence of such vacancy,  
141 issue writs of election directed to the applicable town clerk or assistant  
142 town clerk ordering an election to be held on the sixtieth day after the  
143 issue of such writs on a day, other than a Saturday or Sunday, to fill  
144 such vacancy, provided (1) if such a vacancy occurs between the one  
145 hundred twenty-fifth day and the sixty-third day before the day of a  
146 regular state or municipal election in November of any year, the  
147 Governor shall so issue such writs on the sixtieth day before the day of

148 such regular election, ordering an election to be held on the day of  
 149 such regular election, (2) if such a vacancy occurs after the sixty-third  
 150 day before the day of a regular state election but before the regular  
 151 state election, the Governor shall not issue such writs and no election  
 152 shall be held under this section, and (3) if a primary for such office  
 153 occurs pursuant to subparagraph (C) of subdivision (1) of section 9-450  
 154 of the general statutes, the Governor shall, not later than ten days  
 155 following the filing of a candidacy for nomination by a person other  
 156 than the party-endorsed candidate, issue new writs of election, in place  
 157 of those first issued pursuant to this section.

158 (b) The Governor shall cause writs of election issued pursuant to  
 159 subsection (a) of this section to be conveyed to a state marshal, who  
 160 shall forthwith transmit an attested copy thereof to such clerk or  
 161 assistant clerk. Such clerk or assistant clerk, on receiving such writs,  
 162 shall warn elections to be held on the day appointed therein in the  
 163 same manner as state elections are warned, which elections shall be  
 164 organized and conducted as are state elections, and the vote shall be  
 165 declared, certified, directed, deposited, returned and transmitted in the  
 166 same manner as at a state election.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	New section
Sec. 2	<i>from passage</i>	New section

**PD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 09 \$</b>	<b>FY 10 \$</b>
Various Municipalities	STATE MANDATE - Cost	Potential	Potential

### **Explanation**

This bill provides provisions for the recall of any elected official of a municipality, except the chief elected official of a municipality that has a population of more than 100,000. The bill could result in a cost to municipalities associated with a recall referendum. The cost for holding a recall referendum at a regular election is minimal, relating to the printing of referendum ballots and associated referendum signage. The cost to conduct a referendum at a special election varies by town population. Small towns, such as Andover and Roxbury, can hold a referendum for \$1,000. Large cities, such as Bridgeport and Stamford, will incur costs ranging from \$45,000 to \$90,000 to hold a referendum at a special election.

If a majority of the votes cast in the referendum favor the recall, the elected official's office will be vacant and that vacancy will be filled according to the provisions of the municipal charter or ordinance. Costs associated with filling the vacancy will vary by the official's office and the municipality's provisions regarding the filling of the vacancy.

In the event that a chief elected official of a municipality with a population of more than 100,000 must leave office due to provisions specified in the bill, that municipality must fill the position through a

special election and if necessary, hold a primary election prior to the general election. If it is not the current practice of the municipality to hold a special election, such a special election would incur costs to the municipality. The potential costs to municipalities with a population of over 100,000 to hold a primary or special election is approximately \$75,000.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis**

**sHB 5894**

***AN ACT CONCERNING THE RECALL OF ELECTED MUNICIPAL OFFICIALS AND THE FILLING OF VACANCIES FOR CERTAIN CHIEF ELECTED OFFICIALS.***

**SUMMARY:**

This bill authorizes municipalities with populations of 100,000 or less to recall municipal elected officials serving four-year terms after their first 120 days in office and before their last 120 days. It allows municipalities with populations over 100,000 to recall officials serving four-year terms, but not chief elected officials (CEOs). The bill specifies that its recall provisions do not apply to any municipality that has the authority to recall municipal officials as of its effective date (see BACKGROUND).

Unless a charter or special act provides otherwise, the bill establishes a special election process to fill a vacancy that occurs when the CEO of a municipality with a population of over 100,000 leaves office after (1) a felony conviction, (2) a grant of accelerated rehabilitation, or (3) any other penalty stemming from a felony charge (see COMMENT). (Since penalties are imposed after a conviction or plea of guilty or no contest, the legal effect of “penalty stemming from a felony charge” is unclear.) The bill’s special election process is modeled after the process for filling congressional vacancies. Depending on when the vacancy occurs, the process consists of the governor issuing writs of election and provides the option for a primary. However, it is unclear whether any municipality is required to follow this process since existing law supersedes the bill (see COMMENT).

**EFFECTIVE DATE:** The special election provision is effective from passage and the recall provision is effective July 1, 2008.

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**RECALL PROCEDURE**

Under the bill, municipalities with populations of 100,000 or less have the authority to recall their elected officials serving four-year terms. To do so, a municipality's legislative body or board of selectmen, whichever is applicable, must adopt an ordinance authorizing recall through referendum. The ordinance must comply with the bill's requirements concerning the grounds, initiating action, petition, signature requirements and verification process, and referendum's voting threshold, among other things.

**Grounds**

A recall ordinance must allow for the recall of a municipal elected official serving a four-year term on any of the following grounds, provided the conduct occurred during the term of office:

1. misappropriation of public property or funds,
2. violation of the oath of office,
3. any felony conviction,
4. any act of malfeasance that adversely affects the rights and interests of the public, or
5. failure to perform any duty prescribed by law.

**Initiating Action**

Under the ordinance, three residents who are electors in the municipality may initiate recall by filing a joint affidavit with the town clerk that (1) states the official's name; (2) requests recall petition forms; (3) attests that they, in good faith, propose to file a petition to recall the official; and (4) details the alleged grounds. The town clerk must provide them with the petition when they file the affidavit.

**Petition Forms and Circulators**

The bill requires the secretary of the state to create a standard petition form. The petition form must include:

1. space for the name and office of the official who is the proposed recall's subject;
2. space for the recall grounds;
3. a statement that the petition's purpose is to seek a recall referendum;
4. instructions for the petition circulators;
5. lines for signatures, addresses, and birth dates of people who sign the petition ("signers");
6. space for the time and date when the petition is filed with the town clerk; and
7. space for the circulator's signature, address, and attestations described below.

The ordinance must allow any resident who is an elector in the municipality to circulate a petition. Circulators must sign each petition page under penalty of false statement, include their address, and attest (1) to the authenticity and number of signatures and (2) that each signer did so in their presence and is either someone they know or, alternatively, provided satisfactory identification. They must also have each page acknowledged by a person authorized by law to do so, including a notary public or an attorney admitted to the Connecticut Bar. By law, the penalty for false statement is a class A misdemeanor, which is punishable by up to one year in prison, a fine of up to \$2,000, or both.

In addition, any person who falsifies a signature as signer or as a circulator may be subject to a fine of up to \$100, up to one year in prison, or both.

#### ***Schedule and Signature Verification Process***

Under the ordinance, a circulator must file a recall petition with the town clerk by 4:00 p.m. on the 60th day after the clerk issues it. The

town clerk must sign the petition and provide a receipt indicating the number of pages filed, and the time and date. The clerk must immediately transmit the petition to the registrars of voters. Similarly, the registrars must immediately verify the signatures to determine the signers' electoral status. The registrars must complete the verification process within seven days after the circulator files the petition with the town clerk.

**Reasons for Rejecting Signatures or Petition Pages.** The ordinance must allow any resident who is an elector to sign the recall petition. The registrars of voters must reject names that do not appear on the municipality's last active voter registry list but accept those that indicate different addresses on the petition as compared to the voter registry list, as long as the birth dates are consistent. The registrars must include a statement on each petition page attesting that the circulator is a resident and an elector of the municipality. If they are unable to make this statement for any petition page, they must reject it. Similarly, the registrars must reject any page that lacks a circulator's statement of authenticity or has an incomplete statement of authenticity. Finally, they must reject any petition they determine violates the ordinance.

Any signer who falsifies a signature may be subject to a fine of up to \$100, one year in prison, or both.

**Signature Requirements.** A recall referendum may proceed only if the town clerk determines that the petition meets the signature requirements. If the petition contains the required number of valid signatures, the clerk must immediately certify the petition and submit it to the municipality's legislative body. Within seven days of receiving the certification, the legislative body must order the recall referendum, which must occur within 30 days of the certification.

The minimum number of valid signatures required is a percentage of the number of electors on the municipality's active voter registry list and based on its population. Table 1 shows the requirements.

**TABLE 1: SIGNATURE REQUIREMENTS**

<i>Municipality's Population</i>	<i>Signatures Required as % of Total Number of Electors on Active Registry</i>
Less than 1,000	30%
1,000 to 9,999	25%
10,000 to 49,999	20%
50,000 to 99,999	15%
100,000 or more	10%

For a municipality with a population over 100,000, the petition may not seek to recall a CEO.

### ***Voting Threshold and Ballot Designation***

A recall referendum is valid only if at least 25% of the electors whose names were on the active registry list at the time of the last municipal election vote. The ballot designation to be used is: "Shall (name of the official and office) be recalled?"

If a majority of all votes cast approve the question, the official is recalled. The office becomes vacant and is filled according to the law on filling vacancies for that office.

## **BACKGROUND**

### ***Related Court Case***

The state Supreme Court has ruled that, because the General Assembly has not enacted legislation explicitly conferring the power to recall elected officials and the authority is not implied in other powers, towns cannot enact recall provisions by charter or ordinance (*Simons v. Canty*, 195 Conn. 524 (1985)). The only Connecticut towns that currently have authority to recall local officials are the five that were granted the authority by special act before the enactment of the Constitution's home rule provision. They are Bristol, Milford, New Haven, Stratford, and Westport.

### ***Municipalities with Populations Over 100,000***

As of the 2000 census, the following five municipalities had

populations over 100,000: Bridgeport, Hartford, New Haven, Stamford, and Waterbury.

***Legislative History***

The House referred the bill (file 477) to the Planning and Development Committee, which reported a substitute establishing the special election procedure.

**COMMENTS**

***Applicability to Charter Towns***

The bill (§ 2) applies only to municipalities with populations of over 100,000 that are governed under (1) the General Statutes or (2) a charter that requires a CEO vacancy to be filled as prescribed by the General Statutes.

Since the five Connecticut municipalities with populations over 100,000 each have a charter provision for filling CEO vacancies, it appears that no municipalities would be required to hold a special election under the bill.

***Existing Law Supersedes the Bill***

The bill (§ 2) establishes a process for conducting a special election, unless one already exists. There is a process for filling municipal vacancies at a special election (see CGS §§ 9-220 and 9-164); thus, § 2 appears to have no legal effect.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 13    Nay 0    (03/17/2008)

Planning and Development Committee

Joint Favorable Substitute

Yea 14    Nay 1    (04/14/2008)