S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 12, 2016

Introduced by M. of A. SEPULVEDA -- read once and referred to the Committee on Election Law

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing the addition of a new article 20 to the constitution, in relation to providing for the recall of an elected official

Section 1. Resolved (if the Senate concur), That article 20 of the constitution be renumbered article 21 and a new article 20 be added to read as follows:

ARTICLE XX

RECALL OF AN ELECTED OFFICER

SECTION 1. RECALL IS THE POWER OF THE ELECTORS TO REMOVE AN ELECTED OFFICER.

S 2. FOR PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: 1."STATE ELECTED OFFICIAL" SHALL MEAN THE GOVERNOR, THE LIEUTENANT GOVERNOR, THE COMPTROLLER, THE ATTORNEY GENERAL OR A MEMBER OF THE STATE LEGISLATURE; AND

2. "LOCAL ELECTED OFFICIAL" SHALL MEAN ANY OFFICER ELECTED TO A POSITION WITH A COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT OR DISTRICT CORPORATION, OR ANY AGENCY, DEPARTMENT, DIVISION, BOARD, COMMISSION OR BUREAU THEREOF OR A JUDGE OR JUSTICE OF THE SUPREME COURT, TRIAL COURT, COUNTY COURT OR LOCAL COURT.

S 3. 1. RECALL OF A STATE ELECTED OFFICIAL OR LOCAL ELECTED OFFICIAL IS INITIATED BY DELIVERING TO THE SECRETARY OF STATE A PETITION ALLEGING REASON FOR RECALL. PROPONENTS HAVE NINETY DAYS TO FILE SIGNED PETITIONS.

2. A RECALL PETITION MUST STATE CLEARLY AND FACTUALLY THE REASON OR REASONS FOR THE RECALL, WHICH MUST BE BASED ON THE ELECTED OFFICIAL'S CONDUCT DURING HIS OR HER TERM OF OFFICE. PERMISSIBLE REASONS SHALL INCLUDE:

(A) PHYSICAL OR MENTAL LACK OF FITNESS, OR ACT OF MALFEASANCE OR MISCONDUCT WHILE IN OFFICE;

(B) VIOLATION OF OATH OF OFFICE;

(C) FAILURE TO PERFORM DUTIES PRESCRIBED BY LAW;

(D) WILLFULLY MISUSED, CONVERTED, OR MISAPPROPRIATED, WITHOUT AUTHORITY, PUBLIC PROPERTY OR PUBLIC FUNDS ENTRUSTED TO OR ASSOCIATED WITH THE ELECTIVE OFFICE TO WHICH THE OFFICIAL HAS BEEN ELECTED OR APPOINTED; OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(E) A FINDING OF PROBABLE CAUSE OF ETHICS VIOLATION HAS BEEN MADE BY THE NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS OR ANY MUNICIPAL ETHICS COMMISSION, OR NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT.

3. A PETITION TO RECALL A STATE ELECTED OFFICIAL MUST BE SIGNED BY TEN PERCENT OF ELIGIBLE VOTERS. SIGNATURES TO RECALL LOCAL ELECTED OFFICIALS MUST EQUAL FIFTEEN PERCENT OF ELIGIBLE VOTERS.

4. THE SECRETARY OF STATE SHALL MAINTAIN A CONTINUOUS COUNT OF THE SIGNATURES CERTIFIED TO THAT OFFICE.

S 4. 1. AN ELECTION TO DETERMINE WHETHER TO RECALL A STATE ELECTED OFFICIAL OR LOCAL ELECTED OFFICIAL AND, IF APPROPRIATE, TO ELECT A SUCCESSOR SHALL BE CALLED BY THE GOVERNOR AND HELD NOT LESS THAN SIXTY DAYS NOR MORE THAN EIGHTY DAYS FROM THE DATE OF CERTIFICATION OF SUFFICIENT SIGNATURES.

2. A RECALL ELECTION MAY BE CONDUCTED WITHIN ONE HUNDRED EIGHTY DAYS FROM THE DATE OF CERTIFICATION OF SUFFICIENT SIGNATURES IN ORDER THAT THE ELECTION MAY BE CONSOLIDATED WITH THE NEXT REGULARLY SCHEDULED ELECTION OCCURRING WHOLLY OR PARTIALLY WITHIN THE SAME JURISDICTION IN WHICH THE RECALL ELECTION IS HELD, IF THE NUMBER OF VOTERS ELIGIBLE TO VOTE AT THAT NEXT REGULARLY SCHEDULED ELECTION EQUAL AT LEAST FIFTY PERCENT OF ALL THE VOTERS ELIGIBLE TO VOTE AT THE RECALL ELECTION.

3. IF THE MAJORITY VOTE ON THE QUESTION IS TO RECALL, THE OFFICER IS REMOVED AND, IF THERE IS A CANDIDATE, THE CANDIDATE WHO RECEIVES A PLURALITY IS THE SUCCESSOR. THE OFFICER MAY NOT BE A CANDIDATE, NOR SHALL THERE BE ANY CANDIDACY FOR AN OFFICE FILED PURSUANT TO SECTION TWO OF ARTICLE SIX.

S 5. THE LEGISLATURE SHALL PROVIDE FOR CIRCULATION, FILING, AND CERTIFICATION OF PETITIONS, NOMINATION OF CANDIDATES, AND THE RECALL ELECTION.

S 6. IF RECALL OF THE GOVERNOR IS INITIATED, THE RECALL DUTIES OF THAT OFFICE SHALL BE PERFORMED BY THE LIEUTENANT GOVERNOR.

S 7. IF A RECALL EFFORT IS UNSUCCESSFUL, ANOTHER RECALL MAY NOT BE INITIATED AGAINST THE OFFICER UNTIL SIX MONTHS AFTER THE ELECTION.

S 8. THE LEGISLATURE SHALL PROVIDE FOR RECALL OF LOCAL OFFICERS. THIS SECTION DOES NOT AFFECT COUNTIES AND CITIES WHOSE CHARTERS PROVIDE FOR RECALL.

S 2. Resolved (if the Senate concur), That the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.