

1 **H. B. 2454**

2
3 (By Delegate Ellem (By Request))

4 [Introduced January 13, 2011; referred to the
5 Committee on the Judiciary then Finance.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §3-12-1, §3-12-2, §3-
12 12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9,
13 §3-12-10 and §3-12-11, all relating to recall elections of
14 elected or appointed federal officers that do not hold a life
15 term; grounds for recall election; rules for applying for and
16 the validity of a petition; and successors.

17 *Be it enacted by the Legislature of West Virginia:*

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §3-12-1, §3-12-2, §3-
20 12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-
21 10 and §3-12-11, all to read as follows:

22 **ARTICLE 12. FEDERAL RECALL ELECTIONS IN WEST VIRGINIA.**

23 **§3-12-1. Recall.**

24 (a) A recall may not be undertaken unless the official has

1 served for at least one hundred twenty days of the term for which
2 elected or appointed.

3 (b) This section excludes federal judges or others appointed
4 for a life term.

5 **§3-12-2. Grounds for recall.**

6 Grounds to apply for a recall election petition include:

7 (1) An act of misfeasance, which is defined as doing a lawful
8 act in an unlawful or improper manner;

9 (2) An act of malfeasance, which is defined as wrongdoing or
10 misconduct or the commission of an act that is unlawful;

11 (3) Violation of the oath of office;

12 (4) Incompetence, which is defined as being without adequate
13 ability, knowledge, failing or incapable to meet requirements of
14 the office, not legally qualified for the office, or is mentally
15 deficient; and

16 (5) Failure to perform duties prescribed by law, including,
17 but not limited to, missing votes or meetings.

18 **§3-12-3. Application for recall petition.**

19 An application for a recall petition shall be filed with the
20 Secretary of State and must include:

21 (1) The signatures and residential addresses of at least eight
22 people who reside in the state;

23 (2) A contact person and an alternate for all correspondence
24 must be among the eight original signatures; and

1 (3) A statement in three hundred words or less of the precise
2 grounds for recall from section two.

3 **§3-12-4. Recall petition.**

4 (a) If the Secretary of State determines that the application
5 for recall meets all the requirements of section three he or she
6 shall prepare a recall petition. The petition shall contain:

7 (1) The name of the official to be recalled;

8 (2) The three hundred word statement of the grounds for recall
9 as set out in the application;

10 (3) The date the petition is issued by the Secretary of State;

11 (4) Notice that signatures must be secured within one hundred
12 days after the date the petition is issued;

13 (5) Space for each signature, the printed name of each signer,
14 the date of each signature and the residence and mailing address of
15 each signer;

16 (6) A statement with space for the contact person's sworn
17 signature and date of signing, that the contact person personally
18 circulated the petition, that all signatures were affixed in the
19 presence of the contact person or a member of the eight person
20 recall group, and that the contact person or his or her
21 representative believes the signatures to be those of the persons
22 whose names the purport to be; and

23 (7) Space for indicating the number of signatures on the
24 petition

1 (b) The one hundred days allowed to retrieve signatures starts
2 on the day the petition is received from the Secretary of State.

3 (c) A petition must be filed one hundred eighty days before
4 the end of the term of office of the official to be recalled.

5 **§3-12-5. Signature requirements.**

6 (a) The signatures on a recall petition shall be secured
7 within one hundred days after receipt of the petition from the
8 Secretary of State.

9 (b) The Secretary of State shall determine the number of
10 signatures required on a petition and inform the contact person in
11 writing. The percent of signatures required shall be fifteen
12 percent of the votes cast for the office being recalled at the last
13 regular election held before notifying the Secretary of State of
14 the recall.

15 **§3-12-6. Sufficiency of petition.**

16 (a) The copies of a recall petition shall be assembled and
17 filed as a single instrument with the Secretary of State.

18 (b) Within ten days of the date a petition is filed with the
19 Secretary of State shall:

20 (1) Certify on the petition whether it is sufficient; or

21 (2) If the petition is insufficient, identify the
22 insufficiency and notify the contact person of its insufficiency by
23 certified mail.

24 (c) A petition that is insufficient may be supplemented with

1 additional signatures which shall be filed by the fifteenth day
2 after the petition is rejected if:

3 (1) The petition contains an adequate number of signatures,
4 counting both valid and invalid signatures;

5 (2) The supplementary petition is filed more than one hundred
6 eighty days before the end of the term of office of the official to
7 be recalled;

8 (3) A petition that is insufficient shall be rejected and
9 filed as a public record unless it is supplemented under this
10 subsection;

11 (4) Within ten days after the supplementary filing the clerk
12 shall recertify the petition; and

13 (5) If it is still insufficient, the petition shall be
14 rejected and filed as a public record.

15 **§3-12-7. New recall petition.**

16 New recall petition to recall the same official shall not be
17 filed before one hundred eighty days after a petition is rejected
18 as insufficient.

19 **§3-12-8. Submission.**

20 If the petition is sufficient the Secretary of State shall,
21 within five days, set a date for a recall election.

22 **§3-12-9. Form of recall ballot.**

23 The recall ballot shall contain:

24 (1) The grounds for recall, stated in three hundred words or

1 less previously required by subsection three, section three;

2 (2) A statement by the official named on the recall petition
3 of three hundred words or less, if the officials statement is filed
4 with the Secretary of State at least thirty days before the
5 election; and

6 (3) The following must appear on the ballot, "Shall [name of
7 recalled official] be recalled from the [elected or appointed
8 position] Yes [] No []".

9 **§3-12-10. Effect.**

10 (a) If a majority vote for the recall of the federal official,
11 the office becomes vacant immediately upon certification of the
12 recall election.

13 (b) If an official is not recalled at the election, an
14 application for a petition to recall the same official may not be
15 filed sooner than one hundred eighty days after the election.

16 **§3-12-11. Successors.**

17 (a) If a majority vote to recall the federal officer and upon
18 certification by the Secretary of State, the Governor shall appoint
19 a person to fill the vacancy according the West Virginia
20 Constitution.

21 (b) The Governor may not appoint the person recalled to fill
22 the vacant position.

NOTE: The purpose of this bill is to provide the policies and procedures for a recall election of elected or appointed federal officers that do not hold a life term.

This article is new; therefore, it has been completely underscored.