

**H. B. 2818**

(By Delegate Walters (By Request))  
[Introduced February 19, 2015; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §6-6-7 of the Code of West Virginia, 1931, as amended, relating to increasing the threshold of signatures of named petitioners required to bring a petition seeking removal of a public official.

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

That §6-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. REMOVAL OF OFFICERS.**

**§6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds.**

(a) Any person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct,

1 malfeasance in office, incompetence, neglect of duty or gross immorality or for any of the causes or  
2 on any of the grounds provided by any other statute.

3 (b) Charges may be preferred:

4 (1) In the case of any county officer, member of a district board of education or magistrate,  
5 by the county commission, or other tribunal in lieu thereof, any other officer of the county, or by any  
6 number of persons other than such county officers, which number shall be ~~the lesser of fifty or one~~  
7 ten percent of the total number of voters of the county participating in the general election next  
8 preceding the filing of such charges. If preferred by the latter, the petitions asserting such charges  
9 shall be brought in the name of the voters of the county, and shall further designate one person by  
10 name who will serve as the voters' representative.

11 (2) In the case of any municipal officer, by the prosecuting attorney of the county wherein  
12 such municipality, or the greater portion thereof, is located, any other elected officer of the  
13 municipality, or by any number of persons other than the prosecuting attorney or other municipal  
14 elective officer of the municipality who are residents of the municipality, which number shall be ~~the~~  
15 ~~lesser of twenty-five or one~~ ten percent of the total number of voters of the municipality participating  
16 in the election at which the governing body was chosen which election next preceded the filing of  
17 the petition. If preferred by the latter, the petition asserting such charges shall be brought in the  
18 name of the voters of the municipality, and shall further designate one person by name who will  
19 serve as the voters' representative.

20 (3) By the chief inspector and supervisor of public offices of the state where the person  
21 sought to be removed is entrusted by law with the collection, custody and expenditure of public  
22 moneys because of any misapplication, misappropriation or embezzlement of such moneys.

1 (c) The charges shall be reduced to writing in the form of a petition and all persons bringing  
2 the same shall sign the petition and affirm they have reviewed and consented to the charges  
3 contained therein, ~~duly verified by at least one of the persons bringing the same,~~ and the petition  
4 shall be entered of record by the court, or the judge thereof in vacation, and a summons shall  
5 thereupon be issued by the clerk of such court, together with a copy of the petition, requiring the  
6 officer or person named therein to appear before the court, at the courthouse of the county where  
7 such officer resides, and answer the charges on a day to be named therein, which summons shall be  
8 served at least twenty days before the return day thereof in the manner by which a summons  
9 commencing a civil suit may be served.

10 Following service of the summons upon the officer or person named therein, the parties may  
11 file motions and conduct discovery, as needed, in accordance with the West Virginia Rules of Civil  
12 Procedure.

13 The court, or judge thereof in vacation, or in the case of any multijudge circuit, the chief  
14 judge thereof, shall, without delay forward a copy of the petition to the Supreme Court of Appeals  
15 and shall ask for the impaneling or convening of a three-judge court consisting of three circuit judges  
16 of the state. The chief justice of the Supreme Court of Appeals shall without delay designate and  
17 appoint three circuit judges within the state, not more than one of whom shall be from the same  
18 circuit in which the petition is filed and, in the order of such appointment, shall designate the date,  
19 time and place for the convening of such three-judge court, which date and time shall not be less than  
20 twenty days from the date of the filing of the petition.

21 Such three-judge court shall, without a jury, hear the charges and all evidence offered in  
22 support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove any

1 such officer or person from office and place the records, papers and property of his or her office in  
2 the possession of some other officer or person for safekeeping or in the possession of the person  
3 appointed as hereinafter provided to fill the office temporarily. Any final order either removing or  
4 refusing to remove any such person from office shall contain such findings of fact and conclusions  
5 of law as the three-judge court shall deem sufficient to support its decision of all issues presented  
6 to it in the matter.

7 (d) An appeal from an order of such three-judge court removing or refusing to remove any  
8 person from office pursuant to this section may be taken to the Supreme Court of Appeals within  
9 thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court  
10 of Appeals shall consider and decide the appeal upon the original papers and documents, without  
11 requiring the same to be printed and shall enforce its findings by proper writ. From the date of any  
12 order of the three-judge court removing an officer under this section until the expiration of thirty  
13 days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended  
14 by the three-judge court and if not suspended, until the final adjudication of the matter by the  
15 Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy in such  
16 office may fill the same by a temporary appointment until a final decision of the matter, and when  
17 a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the manner  
18 provided by law for such office.

19 (e) In any case wherein the charges are preferred by the chief inspector and supervisor of  
20 public offices against the county commission or any member thereof or any county district or  
21 municipal officer, the proceedings under this section shall be conducted and prosecuted by the  
22 prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal

1 from the order of the three-judge court in any such case, the Attorney General of the state shall  
2 represent the people. When any municipal officer is proceeded against the solicitor or municipal  
3 attorney for such municipality may assist in the prosecution of the charges.

NOTE: The purpose of this bill is to increase the threshold of signatures of named petitioners required to bring a petition seeking removal of a public official.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.