

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4432

BY DELEGATES COWLES, IHLE, O'NEAL, WELD,

FLEISCHAUER, MCCUSKEY AND PUSHKIN

[Introduced February 8, 2016; Referred
to the Committee on Political Subdivisions then the
Judiciary.]

1 A BILL to amend and reenact §6-6-1 and §6-6-7 of the Code of West Virginia, 1931, as amended,
 2 and to amend said code by adding thereto a new section, designated §6-6-10, all relating
 3 to removal of officers; defining terms; revising procedures for removal of certain officers
 4 and providing for the payment of costs.

Be it enacted by the Legislature of West Virginia:

1 That §6-6-1 and §6-6-7 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that said code be amended by adding thereto a new section, designated §6-6-10,
 3 all to read as follows:

ARTICLE 6. REMOVAL OF OFFICERS.

§6-6-1. Definitions.

1 (a) The term "neglect of duty," or the term "official misconduct," as used in this article,
 2 means any willful unlawful behavior by a public officer in the performance of the duties of the
 3 public office committed during the challenged officer's present term of office. shall include the
 4 willful waste of public funds by any officer or officers, or the appointment by him the officer or them
 5 the officers of an incompetent or disqualified person to any office or position and the retention of
 6 such person in office, or in the position to which he the person was appointed, after such
 7 incompetency or disqualification is made to appear, when it is in the power of such officer to
 8 remove such incompetent or disqualified person

9 (b) The term "neglect of duty" as used in this article, means the knowing refusal or willful
 10 failure of a public officer to perform an essential act or duty of the office required by law and
 11 occurring during the challenged officer's present term of office.

12 (c) The term "incompetence," as used in this article, shall includes the following acts or
 13 adjudications committed or arising during the challenged officer's present term of office; the
 14 repeated wasting waste or misappropriation of public funds by any officer, when the officer knew
 15 or should have known that such use of funds was inappropriate or inconsistent with the lawful
 16 duties of office; or conviction of a misdemeanor involving dishonesty or violence; or conviction

17 of a felony; or having been the subject of the determination of incapacity, as defined by section
 18 seven, article thirty, chapter sixteen of this code. ~~habitual drunkenness, habitual addiction to the~~
 19 ~~use of narcotic drugs, adultery, neglect of duty, or gross immorality, on the part of any officer. The~~
 20 ~~term "incompetent person," as used in this section, shall include any appointee or employee of~~
 21 ~~any officer or officers, including county court, municipal bodies or officers, and boards of~~
 22 ~~education, who willfully wastes or misappropriates public funds, or who is guilty of habitual~~
 23 ~~drunkenness, habitual addiction to the use of narcotic drugs, adultery, neglect of duty or gross~~
 24 ~~immorality~~

25 (d) The term "qualified petitioner" as used in this article, means a registered voter who
 26 voted in the most recent general election.

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

1 (a) Any person holding any county, school district or municipal office, including the office
 2 of a member of a Board of Education and the office of magistrate, the term or tenure of which
 3 office is fixed by law, whether the office be elective or appointive, except judges of the circuit
 4 courts, may be removed from such office in the manner provided in this section for neglect of
 5 duty, official misconduct, ~~malfeasance in office~~, incompetence, ~~neglect of duty or gross immorality~~
 6 or for any of the causes or on any of the grounds provided by any other statute.

7 (b) Charges may be ~~preferred~~ proffered:

8 (1) In the case of any county officer, member of a ~~district~~ board of education or magistrate,
 9 by a duly enacted resolution of the county commission which shall set forth therein the name and
 10 office of the changed officer, the alleged wrongful acts, the dates the alleged acts occurred and
 11 the grounds for removal as provided in this article or other tribunal in lieu thereof, any other officer
 12 ~~of the county~~, or by petition with a any number of signatures of qualified petitioners not fewer than
 13 ten percent persons other than such county officers, which number shall be the lesser of fifty or
 14 one percent of the total number of voters who voted in the most recent general election of the

15 ~~county participating in the general election next preceding the filing of such charges~~ The petition
16 shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and
17 the grounds for removal as provided in this article.

18 (2) In the case of any municipal officer, by a duly enacted resolution of the governing body
19 of the municipality which shall set forth therein the name and office of the challenged officer, the
20 alleged wrongful acts, the dates the acts occurred and the grounds for removal as provided in this
21 article, the prosecuting attorney of the county wherein such municipality, or the greater portion
22 thereof, is located, any other elected officer of the municipality, or by petition with a any number
23 of signatures of qualified petitioners not fewer than ten percent of persons other than the
24 prosecuting attorney or other municipal elective officer of the municipality who are residents of
25 the municipality, which number shall be the lesser of twenty-five or one percent of the total number
26 of voters who voted in the most recent municipal general election, of the municipality A petition
27 shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and
28 the grounds for removal as provided in this article. ~~participating in the election at which the~~
29 ~~governing body was chosen which election next preceded the filing of the petition.~~

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

34 (c) When removal is proffered by a duly enacted resolution of a county commission or
35 municipal governing body, a certified copy of the resolution shall be served by the clerk of the
36 commission or governing body upon the circuit court in whose jurisdiction the officer serves within
37 five business days of adoption of the resolution. The proffering county commission or governing
38 body shall be responsible for the prosecution of the removal resolution. When removal is
39 proffered by petition, the charges shall be reduced to writing and each page on which signatures
40 are affixed shall include the name and office of the challenged officer, the charges or grounds for

41 removal, which may be achieved by attachment to each signature page, and an informed
42 acknowledgement of and agreement with the charges. in the form of a petition duly verified by at
43 At least one of the persons bringing the same petition shall serve the original petition upon the
44 circuit court in whose jurisdiction the officer serves, and shall be responsible for the prosecution
45 of the removal action. Any such resolution or petition shall be received and entered of record by
46 the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk
47 of such court, together with a copy of the resolution or petition, requiring the officer or person
48 named therein, or legal counsel therefor, to appear before the court for a preliminary hearing, at
49 the courthouse of the county where such officer resides, for the purpose of a judicial determination
50 as to the validity of the resolution or petition and to hear any related objections or motions that
51 may be presented by the officer. and answer the charges on a day to be named therein, which
52 The summons shall be served at least twenty days before the return day thereof in the manner
53 by which a summons commencing a civil suit may be served within five business days of the
54 receipt of the resolution or petition by the court.

55 (d) The court, or judge thereof in vacation, or in the case of any multijudge circuit, the chief
56 judge thereof, shall, have the authority to evaluate any resolution or petition for any procedural
57 defect, and to consider all the allegations made in the resolution or petition in light of the applicable
58 case law and the required strict construction of the ground asserted, and consulted whether or
59 not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to
60 warrant the removal of the officer from office. In the case of a petition, the court may require that
61 the clerk responsible for the maintenance of voting records for the governing body for whom the
62 officer serves provide an affidavit verifying the number of qualified petitioner's signatures and the
63 applicable total number of registered voters.

64 (e) If the court finds, after consideration of any motions or objections filed by the officer
65 and/or in the court's discretion consistent with the authority provided herein, that the resolution or
66 petition is defective or the allegations stated therein do not meet the standards for removal set

67 forth herein, the resolution or petition shall be dismissed by the court. If the court finds that the
68 resolution or petition is sufficient under the standards for removal set forth herein to proceed to a
69 hearing before a three judge court, the court shall, without delay forward a copy of the resolution
70 or petition to the Supreme Court of Appeals. and shall ask for the impaneling or convening of a
71 three-judge court consisting of three circuit judges of the state.

72 (f) Upon receipt of said resolution or petition, the chief justice of the Supreme Court of
73 Appeals shall without delay empanel a three judge court which may consist of the judge who has
74 forwarded the resolution or petition to the supreme court, and two additional judges neither
75 designate and appoint three circuit judges within the state, not more than one of whom shall be
76 from the same circuit in which the petition is filed and, in the order of such appointment, shall
77 designate the date, time and place for the convening of such three-judge court, which date and
78 time shall not be less than twenty days from the date of the receipt by the supreme court of the
79 resolution or the filing of the petition.

80 Such three-judge court shall, without a jury, hear the charges and any motions filed by
81 either party and all evidence offered in support thereof or in opposition thereto and upon
82 satisfactory proof of the charges by clear and convincing evidence as to warrant the removal of
83 the officer shall remove any such officer or person from office and place the records, papers and
84 property of his or her office in the possession of some other officer or person for safekeeping or
85 in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any
86 final order either removing or refusing to remove any such person from office shall contain such
87 findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its
88 decision of all issues presented to it in the matter.

89 ~~(d)~~ (g) An appeal from an order of such three-judge court removing or refusing to remove
90 any person from office pursuant to this section may be taken to the Supreme Court of Appeals
91 within thirty days from the date of entry of the order from which the appeal is taken. The Supreme
92 Court of Appeals shall consider and decide the appeal upon the original papers and documents,

93 without requiring the same to be printed and shall enforce its findings by proper writ. From the
 94 date of any order of the three-judge court removing an officer under this section until the expiration
 95 of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if
 96 suspended by the three-judge court and if not suspended, until the final adjudication of the matter
 97 by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy
 98 in such office may fill the same by a temporary appointment until a final decision of the matter,
 99 and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the
 100 manner provided by law for such office.

101 ~~(e)~~ (h) In any case wherein the charges are preferred by the chief inspector and supervisor
 102 of public offices against the county commission or any member thereof or any county, school
 103 district or municipal officer, the proceedings under this section shall be conducted and prosecuted
 104 in the same manner set forth herein for removal by resolution or petition by the prosecuting
 105 attorney of the county in which the officer proceeded against resides, and on any appeal from the
 106 order of the three-judge court in any such case, the Attorney General of the state shall represent
 107 the people. When any municipal officer is proceeded against the solicitor or municipal attorney
 108 for such municipality may assist in the prosecution of the charges.

§6-6-10. Costs.

1 If a judicial proceeding under this article is dismissed or otherwise resolved in favor of the
 2 challenged officer, the political subdivision for which the officer serves shall pay court costs and
 3 reasonable attorney fees for the officer.

NOTE: The purpose of this bill is to add definitions, amend thresholds and clarify procedures for removal of office of any person holding any county, school district or municipal office, for neglect of duty, malfeasance of office, official misconduct or for any of the causes or on any of the grounds provided by any other statute.

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