

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 518**

4 (By Senators Palumbo, Foster, Jenkins, Klempa, Browning and
5 Williams)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 15, 2012.]
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13 A BILL to amend and reenact §6-5-5 of the Code of West Virginia,
14 1931, as amended; to amend and reenact §6-6-1 and §6-6-9 of
15 said code; to amend and reenact §61-5-4 and §61-5-5 of said
16 code; and to amend and reenact §61-5A-9 of said code, all
17 relating to matters affecting the right to hold office;
18 prohibiting certain persons from being elected or appointed to
19 positions under the laws of the State of West Virginia;
20 requiring certain persons to vacate office upon conviction of
21 certain crimes; defining terms; removing superfluous language;
22 and making technical edits.

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

24 That §6-5-5 of the Code of West Virginia, 1931, as amended, be
25 amended and reenacted; that §6-6-1 and §6-6-9 of said code be
26 amended and reenacted; that §61-5-4 and §61-5-5 of said code be

1 amended and reenacted; and that §61-5A-9 of said code be amended
2 and reenacted, all to read as follows:

3 **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

4 **ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD**
5 **OFFICE.**

6 **§6-5-5. Disqualification by conviction of treason, felony, or**
7 **bribery or perjury.**

8 (a) No person under conviction for treason, perjury, bribery
9 or any felony may be elected or appointed to any public office
10 under the laws of this state.

11 (b) As used in this section:

12 (1) "Felony" means a crime punishable by incarceration for a
13 period in excess of one year in the courts of this state, another
14 state or the United States; and

15 (2) "Under conviction" means a finding of guilt which has not
16 been reversed, vacated or expunged by a court of competent
17 jurisdiction or unconditionally pardoned by an executive or entity
18 with the authority to so act.

19 **ARTICLE 6. REMOVAL OF OFFICERS.**

20 **§6-6-1. Definitions.**

21 As used in this article:

22 (1) The term "neglect of duty" or the term "official
23 misconduct" as used in this article, shall include the willful
24 waste of public funds by any officer or officers, or the
25 appointment by ~~him~~ the officer or ~~them~~ the officers of an
26 incompetent or disqualified person to any office or position and

1 the retention of such person in office, or in the position to which
2 ~~he~~ the person was appointed, after such incompetency or
3 disqualification is made to appear, when it is in the power of such
4 officer to remove such incompetent or disqualified person.

5 (2) The term "incompetence" ~~as used in this article,~~ shall
6 include the wasting or misappropriation of public funds by any
7 officer, habitual drunkenness, habitual addiction to the use of
8 narcotic drugs, adultery, neglect of duty or gross immorality on
9 the part of any officer.

10 (3) The term "incompetent person" ~~as used in this section,~~
11 shall include any appointee or employee of any officer or officers,
12 including county court, municipal bodies or officers and boards of
13 education, who willfully wastes or misappropriates public funds, or
14 who is guilty of habitual drunkenness, habitual addiction to the
15 use of narcotic drugs, adultery, neglect of duty or gross
16 immorality.

17 (4) The term "felony" means a crime punishable by
18 incarceration for a period in excess of one year in the courts of
19 this state, another state or the United States.

20 (5) The term "conviction becomes final" means a finding of
21 guilt after all opportunity for direct appeal has expired or all
22 direct appeals have concluded without the conviction being
23 reversed, vacated or expunged by a court of competent jurisdiction.

24 **§6-6-9. Forfeiture of office on conviction of offense.**

25 Any person holding any elected or appointed public office, who
26 is convicted in any court of any felony offense or any misdemeanor

1 offense, where the misdemeanor offense has a penalty requiring
2 forfeiture of office or disqualifying a person from holding any
3 office or position of honor, trust or profit in this state, the
4 ~~punishment or penalty for which, under any provision of the~~
5 ~~Constitution of the State, or any law now in effect, or which may~~
6 ~~hereafter become effective, entails a forfeiture of the office held~~
7 ~~by the person convicted,~~ shall be removed from office by the
8 judgment of the court, ~~entered upon such conviction~~ once the
9 conviction becomes final.

10 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

11 **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

12 **§61-5-4. Bribery or attempted bribery; penalty.**

13 If any person shall bribe, by directly or indirectly giving to
14 or bestowing upon, or shall attempt to bribe by directly or
15 indirectly giving to or bestowing upon, any executive, legislative,
16 judicial, or ministerial officer of this state, or any member of
17 the Legislature, after his or her election or appointment and
18 either before or after he or she shall have been qualified or shall
19 have taken his or her seat, any gift, gratuity, money, testimonial
20 or other valuable thing, or shall make promise thereof, in order to
21 influence him or her in the performance of any of his or her
22 official, public duties, or with intent to influence his or her
23 act, vote, opinion, decision or judgment on any matter, question,
24 cause or proceeding, or to induce or procure him or her to vote or
25 withhold his or her vote on any question or proceeding which is
26 then or may thereafter be pending, or may by law come or be brought

1 before him or her in his or her official capacity, he or she shall
2 be guilty of a felony, and, upon conviction, shall be imprisoned in
3 the penitentiary not less than one nor more than ten years. ~~and~~
4 ~~shall, moreover, be forever disqualified from holding any office or~~
5 ~~position of honor, trust or profit in this state.~~

6 **§61-5-5. Demanding or receiving bribes; penalty.**

7 Any executive, legislative, judicial or ministerial officer,
8 or member of the Legislature, who shall demand, receive or accept
9 any gift, gratuity, money, testimonial or other valuable thing, or
10 shall exact any promise to make such gift or to pay to him or her,
11 money, testimonial or other valuable thing, or to do any act
12 beneficial to such officer or member of the Legislature, from any
13 person, company or corporation, under an agreement or understanding
14 that his or her vote, opinion, judgment or decision shall be given
15 or withheld in any particular manner upon a particular side of any
16 question, cause or proceeding, which is, or may be by law brought
17 before him or her in his or her official capacity, or that in such
18 capacity he or she shall make any particular nomination or
19 appointment, or for any vote or influence he or she may give or
20 withhold as such officer or member of the Legislature, or that such
21 officer will fail to perform or improperly perform any of his or
22 her official, public duties, shall be guilty of a felony and, upon
23 conviction thereof, shall be confined in the penitentiary not less
24 than one nor more than ten years. ~~and in addition thereto such~~
25 ~~officer or member of the Legislature shall forfeit the office then~~
26 ~~held by him and shall be forever disqualified from holding any~~

1 ~~office or position of honor, trust or profit in this state.~~

2 **ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.**

3 **§61-5A-9. Penalties; disqualification to hold office; statute of**
4 **limitations for misdemeanor offenses.**

5 (a) Any person who violates any of the provisions of section
6 three of this article shall be guilty of a felony, and, upon
7 conviction thereof, shall be punished, if an individual, by
8 imprisonment in the penitentiary not less than one nor more than
9 ten years, and, if a corporation, by a fine of not exceeding
10 \$50,000. ~~Any person convicted of violating any of the provisions~~
11 ~~of section three of this article shall also be forever disqualified~~
12 ~~from holding any office or position of honor, trust or profit of~~
13 ~~government in this state.~~

14 (b) Any person who violates any of the provisions of section
15 four of this article shall be guilty of a misdemeanor, and, upon
16 conviction thereof, shall be punished by confinement in jail not
17 less than three months nor more than one year or by a fine of not
18 exceeding \$5,000 or, in the discretion of the court, by both such
19 confinement and fine.

20 (c) Any person who violates any of the provisions of section
21 five of this article shall be guilty of a misdemeanor, and, upon
22 conviction thereof, shall be punished by confinement in jail not
23 less than three months nor more than one year or by a fine of not
24 exceeding \$5,000 or, in the discretion of the court, by both such
25 confinement and fine, unless such person threatened to commit a
26 crime or made a threat with the purpose to influence an

1 administrative or judicial proceeding, in which event, he or she
2 shall, upon conviction thereof, be guilty of a felony and shall be
3 punished as specified in subsection (a) of this section for a
4 violation of any of the provisions of section three of this
5 article.

6 (d) Any person who violates any of the provisions of section
7 six or section seven of this article shall be guilty of a
8 misdemeanor, and, upon conviction thereof, shall be punished by
9 confinement in jail not less than three months nor more than one
10 year or by a fine of not less than \$50 nor more than \$1,000 or, in
11 the discretion of the court, by both such confinement and fine.

12 (e) Notwithstanding the provisions of section nine, article
13 eleven of this chapter or any other provision of law to the
14 contrary, a prosecution for a misdemeanor under the provisions of
15 this article shall be commenced within six years after the offense
16 was committed.