

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2818

2015 Carryover

(BY DELEGATE WALTERS (BY REQUEST))

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §6-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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.

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 official
 5 misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality or for any
 6 of the causes or on any of the grounds provided by any other statute.

7 (b) Charges may be preferred:

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

15 (2) In the case of any municipal officer, by the prosecuting attorney of the county wherein

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

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

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

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

39 The court, or judge thereof in vacation, or in the case of any multijudge circuit, the chief

40 judge thereof, shall, without delay forward a copy of the petition to the Supreme Court of Appeals
41 and shall ask for the impaneling or convening of a three-judge court consisting of three circuit
42 judges of the state. The chief justice of the Supreme Court of Appeals shall without delay
43 designate and appoint three circuit judges within the state, not more than one of whom shall be
44 from the same circuit in which the petition is filed and, in the order of such appointment, shall
45 designate the date, time and place for the convening of such three-judge court, which date and
46 time shall not be less than twenty days from the date of the filing of the petition.

47 Such three-judge court shall, without a jury, hear the charges and all evidence offered in
48 support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove
49 any such officer or person from office and place the records, papers and property of his or her
50 office in the possession of some other officer or person for safekeeping or in the possession of
51 the person appointed as hereinafter provided to fill the office temporarily. Any final order either
52 removing or refusing to remove any such person from office shall contain such findings of fact
53 and conclusions of law as the three-judge court shall deem sufficient to support its decision of all
54 issues presented to it in the matter.

55 (d) An appeal from an order of such three-judge court removing or refusing to remove any
56 person from office pursuant to this section may be taken to the Supreme Court of Appeals within
57 thirty days from the date of entry of the order from which the appeal is taken. The Supreme
58 Court of Appeals shall consider and decide the appeal upon the original papers and documents,
59 without requiring the same to be printed and shall enforce its findings by proper writ. From the
60 date of any order of the three-judge court removing an officer under this section until the expiration
61 of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if
62 suspended by the three-judge court and if not suspended, until the final adjudication of the matter
63 by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy

64 in such office may fill the same by a temporary appointment until a final decision of the matter,
65 and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the
66 manner provided by law for such office.

67 (e) In any case wherein the charges are preferred by the chief inspector and supervisor of
68 public offices against the county commission or any member thereof or any county district or
69 municipal officer, the proceedings under this section shall be conducted and prosecuted by the
70 prosecuting attorney of the county in which the officer proceeded against resides, and on any
71 appeal from the order of the three-judge court in any such case, the Attorney General of the state
72 shall represent the people. When any municipal officer is proceeded against the solicitor or
73 municipal 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.