

H. B. 2737

(By Delegates Manchin, Doyle, Lawrence, Longstreth,
Miley and Varner)

[Introduced January 21, 2011; referred to the
Committee on Political Subdivision then the Judiciary.]

A BILL to amend and reenact §6-6-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §6-6-7a, all relating to providing a procedure for removal of county, district or municipal officers; providing a procedure for removal of members appointed to county or municipal boards, authorities or commissions for fixed terms; requiring written notice of intent to remove; allowing an appointed member to object in writing to removal; requiring a hearing when a member objects to removal; requiring a written decision after a removal hearing to include findings of fact and conclusions of law supporting the decision whether or not to remove a member of a board, authority or commission; setting time periods for certain actions; authorizing the appeal of a decision to circuit court; requiring written decisions when removing members who fail to respond to notice of intent to remove; authorizing appointment of persons to fill vacancies created

1 when a member is removed; and making technical corrections.

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

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

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

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

10 (a) Any person holding any elective county, school district or
11 municipal office, including the office of a member of a board of
12 education and the office of magistrate, the term or tenure of which
13 office is fixed by law, ~~whether the office be elective or~~
14 ~~appointive,~~ except judges of the circuit courts, may be removed
15 from ~~such~~ office in the manner provided in this section for
16 official misconduct, malfeasance in office, incompetence, neglect
17 of duty or gross immorality or for any of the causes or on any of
18 the grounds provided by any other statute.

19 (b) Charges may be preferred:

20 (1) In the case of any county officer, member of a district
21 board of education or magistrate, by the county commission, or
22 other tribunal in lieu thereof, any other officer of the county, or
23 by any number of persons other than ~~such~~ county officers, which
24 number shall be the lesser of fifty or one percent of the total

1 number of voters of the county participating in the general
2 election next preceding the filing of ~~such~~ charges.

3 (2) In the case of any municipal officer, by the prosecuting
4 attorney of the county wherein ~~such~~ municipality is located, or the
5 greater portion thereof, is located, any other elected officer of
6 the municipality, or by any number of persons other than the
7 prosecuting attorney or other municipal elective officer of the
8 municipality who are residents of the municipality, which number
9 shall be the lesser of twenty-five or one percent of the total
10 number of voters of the municipality participating in the election
11 at which the governing body was chosen which election next preceded
12 the filing of the petition.

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

18 (c) The charges shall be reduced to writing in the form of a
19 petition duly verified by at least one of the persons bringing the
20 same, and shall be entered of record by the court, or the judge
21 thereof in vacation, and a summons shall thereupon be issued by the
22 clerk of ~~such~~ the court, together with a copy of the petition,
23 requiring the officer or person named therein to appear before the
24 court, at the courthouse of the county where ~~such~~ the officer

1 resides, and answer the charges on a day to be named therein, which
2 summons shall be served at least twenty days before the return day
3 thereof in the manner by which a summons commencing a civil suit
4 may be served.

5 The court, or judge thereof in vacation, or in the case of any
6 multijudge circuit, the chief judge thereof, shall, without delay
7 forward a copy of the petition to the Supreme Court of Appeals and
8 shall ask for the impaneling or convening of a three-judge court
9 consisting of three circuit judges of the state. The Chief Justice
10 of the Supreme Court of Appeals shall without delay designate and
11 appoint three circuit judges within the state, not more than one of
12 whom shall be from the same circuit in which the petition is filed
13 and, in the order of ~~such~~ appointment, shall designate the date,
14 time and place for the convening of ~~such~~ the three-judge court,
15 which date and time ~~shall~~ may not be less than twenty days from the
16 date of the filing of the petition.

17 ~~Such~~ The three-judge court shall, without a jury, hear the
18 charges and all evidence offered in support thereof or in
19 opposition thereto and upon satisfactory proof of the charges shall
20 remove any ~~such~~ officer or person from office and place the
21 records, papers and property of his or her office in the possession
22 of some other officer or person for safekeeping or in the
23 possession of the person appointed as hereinafter provided to fill
24 the office temporarily. Any final order either removing or

1 refusing to remove any ~~such~~ person from office shall contain ~~such~~
2 findings of fact and conclusions of law as the three-judge court
3 shall deem sufficient to support its decision of all issues
4 presented to it in the matter.

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

23 (e) In any case wherein the charges are preferred by the chief
24 inspector and supervisor of public offices against the county

1 commission or any member thereof or any county district or
2 municipal officer, the proceedings under this section shall be
3 conducted and prosecuted by the prosecuting attorney of the county
4 in which the officer proceeded against resides, and on any appeal
5 from the order of the three-judge court in ~~any such~~ the case, the
6 Attorney General of the state shall represent the people. When any
7 municipal officer is proceeded against the solicitor or municipal
8 attorney for ~~such~~ the municipality may assist in the prosecution of
9 the charges.

10 **§6-6-7a. Removal of appointive county, district or municipal**
11 **officers with fixed terms.**

12 (a) The governing body or officer authorized by law to appoint
13 any nonelected person to any county, district, or municipal board,
14 authority, or commission, the term or tenure of which is fixed by
15 law, may remove any member appointed to the board, authority or
16 commission for official misconduct, incompetence, neglect of duty,
17 malfeasance or gross immorality in accordance with the procedures
18 set forth in subsection (b).

19 (b) (1) The member shall be given written notice via certified
20 mail return receipt requested by addressee only, of the intent to
21 remove the member from appointed office by the governing body or
22 officer which made the appointment. The notice shall include the
23 reasons for removal set forth with specificity and the procedures
24 by which the member may object to the removal.

1 (2) A member receiving a notice of intent to remove may
2 respond to the notice of intent to remove and request a hearing
3 before the governing body or officer. The response shall be in
4 writing and set forth the specific reasons why the member should
5 not be removed. The response must be received by the governing
6 body or officer within twenty days of the member's receipt of the
7 notice of intent to remove.

8 (3) Upon receipt of a written response to a notice of intent
9 to remove, the governing body or officer shall set a date, time and
10 place for a hearing not more than twenty days from the date of
11 receipt of the response from the member, and shall give written
12 notice of the hearing to the member setting forth the hearing date,
13 time and place no less than five days prior to the hearing date.

14 (4) The governing body or officer which made the appointment
15 shall hear the charges and all evidence in support of or in
16 opposition to the removal. The governing body or officer shall
17 issue a written decision containing findings of fact and
18 conclusions of law to support its decision either removing or
19 refusing to remove a member from a board, authority or commission
20 within five days of the date of the hearing. The written decision
21 shall be sent to the member and to the board, authority or
22 commission of which the person was a member.

23 (5) An appeal from the decision of the governing body or
24 officer may be taken by a member who is adversely affected by the

1 decision to the circuit court of the county in which the governing
2 body or officer is located in accordance with the provisions of
3 article five, chapter twenty-nine-a of this code governing judicial
4 review of contested cases.

5 (6) If a member receives a notice of intent to remove and does
6 not respond to the notice in writing within twenty days of receipt
7 of the notice of intent to remove, the governing body or officer
8 shall issue a written decision removing that member from the board,
9 authority or commission effective the day following the expiration
10 of the twenty day period to respond. A copy of the decision shall
11 be sent to the removed member and to the board, commission or
12 authority from which the member was removed.

13 (7) When a member is removed from a board, authority or
14 commission in accordance with the provisions of this section, the
15 governing body or officer may make an appointment to fill the
16 vacancy for the remainder of the removed member's term.

NOTE: The purpose of this bill is to allow local governments to remove, for just cause, any appointments that they currently have the authority to make. The bill provides a procedure for removal of county, district or municipal officers and a procedure for removal of members appointed to county or municipal boards, authorities or commissions for fixed terms that requires written notice of intent to remove. The bill allows an appointed member to object in writing to removal and requires a hearing when a member objects to removal. The bill also requires a written decision after a removal hearing that includes findings of fact and conclusions of law supporting the decision whether or not to remove a member of a board, authority or commission. The bill authorizes the appeal of a decision to circuit court and requires written

decisions when removing members who fail to respond to notice of intent to remove. The bill additionally authorizes appointment of persons to fill vacancies created when a member is removed and makes technical corrections.

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

§6-6-7a is new; therefore, it has been completely underscored.