

Senate Bill No. 484

(By Senator Carmichael)

[Introduced February 13, 2015;
referred to the Committee on
Government Organization;
and then 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 altering ways to remove public officials.

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.

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 office
3 is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may
4 be removed from such office in the manner provided in this section for official misconduct,
5 malfeasance in office, incompetence, neglect of duty or gross immorality or for any of the causes or
6 on any of the grounds provided by any other statute.

7 (b) Charges may be preferred:

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

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

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

20 (c) The charges shall be reduced to writing in the form of a petition ~~duly verified by at least~~
21 ~~one of the persons bringing the same~~ and all persons bringing the same shall sign the petition and
22 affirm they have reviewed and consented to the charges contained therein, and the petition shall be

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1 entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be
2 issued by the clerk of such court, together with a copy of the petition, requiring the officer or person
3 named therein to appear before the court, at the courthouse of the county where such officer resides,
4 and answer the charges on a day to be named therein, which summons shall be served at least twenty
5 days before the return day thereof in the manner by which a summons commencing a civil suit may
6 be served.

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

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

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

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

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

16 (e) In any case wherein the charges are preferred by the chief inspector and supervisor of
17 public offices against the county commission or any member thereof or any county, district or
18 municipal officer, the proceedings under this section shall be conducted and prosecuted by the
19 prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal
20 from the order of the three-judge court in any such case, the Attorney General of the state shall
21 represent the people. When any municipal officer is proceeded against, the solicitor or municipal
22 attorney for such municipality may assist in the prosecution of the charges.

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(NOTE: The purpose of this bill is to alter the procedure for the removal of public officials.

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