

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 267

BY SENATOR BLAIR, *original sponsor*

[Passed March 12, 2016; in effect 90 days from passage]

1 AN ACT to amend and reenact §6-6-1 and §6-6-7 of the Code of West Virginia, 1931, as
2 amended, all relating to modifying the procedure for removal of certain county, school
3 district and municipal officers; modifying definitions; and providing political subdivisions be
4 responsible for costs associated with removal proceedings when the outcome is in favor
5 of a challenged officer acting in good faith.

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, all to read as follows:

ARTICLE 6. REMOVAL OF OFFICERS

§6-6-1. Definitions.

1 (a) The term “official misconduct”, as used in this article, means conviction of a felony
2 during the officer’s present term of office or any willful unlawful behavior by a public officer in the
3 course of his or her performance of the duties of the public office.

4 (b) The term “neglect of duty”, as used in this article, means the knowing refusal or willful
5 failure of a public officer to perform an essential act or duty of the office required by law.

6 (c) The term “incompetence”, as used in this article, may include the following acts or
7 adjudications committed or arising during the challenged officer’s term of office: The waste or
8 misappropriation of public funds by any officer when the officer knew, or should have known, that
9 such use of funds was inappropriate or inconsistent with the lawful duties of the office; conviction
10 of a misdemeanor involving dishonesty or gross immorality, having been the subject of a
11 determination of incapacity, as defined and governed by section seven, article thirty, chapter
12 sixteen of this code; or other conduct affecting the officer’s ability to perform the essential official
13 duties of his or her office including but not limited to habitual drunkenness or addiction to the use
14 of narcotic drugs.

15 (d) The term “qualified petitioner”, as used in this article, means a person who was
16 registered to vote in the election in which the officer was chosen which next preceded the filing of
17 the petition.

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

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, neglect of duty, incompetence or for any of the causes or on any of the grounds
6 provided by any other statute.

7 (b) Charges may be proffered:

8 (1) In the case of any county officer, member of a board of education or magistrate:

9 (A) By a duly enacted resolution of the county commission which sets forth therein the
10 name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts
11 occurred and the grounds for removal as provided in this article;

12 (B) By the prosecuting attorney of the county; or

13 (C) By petition of a number of qualified petitioners, which number shall be:

14 (i) In a county with a population in excess of fifty thousand; the lesser of two thousand or
15 ten percent of the number of registered voters who participated in the particular election in which
16 the challenged officer was chosen which next preceded the filing of the petition;

17 (ii) In a county with a population in excess of ten thousand but not in excess of fifty
18 thousand, the lesser of five hundred or ten percent of the number of registered voters who
19 participated in the particular election in which the challenged officer was chosen which next
20 preceded the filing of the petition; and

21 (iii) In a county with a population not in excess of ten thousand, the lesser of one hundred
22 or ten percent of the number of registered voters who participated in the particular election in
23 which the challenged officer was chosen which next preceded the filing of the petition.

24 Such petition shall set forth therein the name and office of the challenged officer, the
25 alleged wrongful acts and the grounds for removal.

26 (2) In the case of any municipal officer:

27 (A) By a duly enacted resolution of the governing body of the municipality which sets forth
28 therein the name and office of the challenged officer, the alleged wrongful acts, the dates the
29 alleged acts occurred and the grounds for removal as provided in this article;

30 (B) By the prosecuting attorney of the county wherein such municipality, or the greater
31 portion thereof, is located; or

32 (C) By petition of a number of qualified petitioners, which number shall be:

33 (i) In a Class I city, the lesser of two thousand or ten percent of the number of registered
34 voters who participated in the particular election in which the challenged officer was chosen which
35 next preceded the filing of the petition;

36 (ii) In a Class II city, the lesser of five hundred or ten percent of the number of registered
37 voters who participated in the particular election in which the challenged officer was chosen which
38 next preceded the filing of the petition;

39 (iii) In a Class III city, the lesser of one hundred or ten percent of the number of registered
40 voters who participated in the particular election in which the challenged officer was chosen which
41 next preceded the filing of the petition; and

42 (iv) In a Class IV town or village, the lesser of fifty or ten percent of the number of registered
43 voters who participated in the particular election in which the challenged officer was chosen which
44 next preceded the filing of the petition.

45 Such petition shall set forth therein the name and office of the challenged officer, the
46 alleged wrongful acts and the grounds for removal.

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

51 (c) When removal is proffered by a duly enacted resolution of a county commission or
52 municipal governing body, a certified copy of the resolution shall be served by the clerk of the
53 commission or municipal governing body upon the circuit court in whose jurisdiction the officer
54 serves within five business days of adoption of the resolution. The proffering county commission
55 or municipal governing body shall be responsible for the prosecution of the removal resolution.

56 (d) When removal is proffered by the prosecuting attorney, the charges shall be reduced
57 to writing and the charges shall be served upon the circuit court in whose jurisdiction the officer
58 serves, and the prosecuting attorney shall be responsible for the prosecution of the removal
59 action.

60 (e) When removal is proffered by petition, the charges shall be reduced to writing and
61 each page on which signatures are affixed shall include the name and office of the challenged
62 officer, the charges or grounds for removal, which may be achieved by attachment to each
63 signature page, and an informed acknowledgement of an agreement with the charges. At least
64 one of the persons bringing the petition shall serve the original petition upon the circuit court in
65 whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal
66 action.

67 (f) Any resolution or petition submitted pursuant to this section shall be received and
68 entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon
69 be issued by the clerk of such court, together with a copy of the resolution or petition, requiring
70 the officer or person named therein, or legal counsel therefor, to appear before the court for a
71 preliminary hearing, at the courthouse of the county where such officer resides, for the purpose
72 of a judicial determination as to the validity of the resolution or petition, the clerk having

73 ascertained whether such signatures are the signatures of eligible residents, and to hear any
74 related objections or motions that may be presented. The summons shall be served in the manner
75 by which a summons commencing a civil suit may be served within five business days of the
76 receipt of the resolution or petition by the court.

77 (g) The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the
78 chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural
79 defect, and to consider all the allegations made in the resolution or petition in light of the applicable
80 case law and the required strict construction of the grounds asserted, and conclude whether or
81 not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to
82 warrant the removal of the officer from office. In the case of a petition, the court may require that
83 the clerk responsible for the maintenance of voting records for the governing body for whom the
84 officer serves provide an affidavit verifying the number of qualified petitioner signatures and the
85 applicable total number of registered voters.

86 If the court finds, after consideration of any motions or objections, or in the court's
87 discretion provided for herein, that the resolution or petition is defective or the allegations stated
88 therein do not meet the standards for removal set forth herein, the resolution or petition shall be
89 dismissed by the court. If the court finds that the resolution or petition is sufficient under the
90 standards for removal set forth herein to proceed to a hearing before a three-judge court, the court
91 shall forward a copy of the resolution or petition to the Supreme Court of Appeals.

92 Upon receipt of said resolution or petition, the chief justice of the Supreme Court of
93 Appeals shall, not fewer than twenty days from the date of the receipt of the resolution or petition,
94 designate and appoint three circuit judges within the state, not more than one of whom shall be
95 from the same circuit in which the resolution or petition was filed and, in the order of such
96 appointment, shall require that the three-judge court designate the date, time and place for the
97 hearing of the resolution or petition forthwith.

98 Such three-judge court shall, without a jury, hear the charges, any motions filed by either
99 party and all evidence offered in support thereof or in opposition thereto, and upon satisfactory
100 proof of the charges by clear and convincing evidence, shall remove any such officer from office
101 and place the records, papers and property of his office in the possession of some other officer
102 or person for safekeeping or in the possession of the person appointed as hereinafter provided to
103 fill the office temporarily. Any final order either removing or refusing to remove any such person
104 from office shall contain such findings of fact and conclusions of law as the three-judge court shall
105 deem sufficient to support its decision of all issues presented to it in the matter.

106 (h) An appeal from an order of such three-judge court removing or refusing to remove any
107 person from office pursuant to this section may be taken to the Supreme Court of Appeals within
108 thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court
109 of Appeals shall consider and decide the appeal upon the original papers and documents, without
110 requiring the same to be printed and shall enforce its findings by proper writ. From the date of any
111 order of the three-judge court removing an officer under this section until the expiration of thirty
112 days thereafter, and, if an appeal be taken, until the date of suspension of such order, if
113 suspended by the three-judge court and if not suspended, until the final adjudication of the matter
114 by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy
115 in such office may fill the same by a temporary appointment until a final decision of the matter,
116 and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the
117 manner provided by law for such office.

118 (i) In any case wherein the charges are proffered by the chief inspector and supervisor of
119 public offices against the county commission or any member thereof or any county, school district
120 or municipal officer, the proceedings under this section shall be conducted and prosecuted in the
121 same manner set forth herein for removal by resolution or petition by the prosecuting attorney of
122 the county in which the officer proceeded against resides, and on any appeal from the order of
123 the three-judge court in any such case, the Attorney General of the state shall represent the

124 people. When any municipal officer is proceeded against the solicitor or municipal attorney for
125 such municipality may assist in the prosecution of the charges.

126 (j) If a judicial proceeding under this section is dismissed or otherwise resolved in favor of
127 the challenged officer who has been found to be acting in good faith, the political subdivision for
128 which the officer serves shall be responsible for the court costs and reasonable attorney fees for
129 the officer.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2016.

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Governor