

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 435

BY SENATOR OJEDA

[Introduced January 31, 2018; Referred
to the Committee on Government Organization; and then
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 removing elected or appointed officers; expanding removal procedures to apply to all
 3 county, school district, municipal, judicial, legislative, or statewide office; detailing process
 4 for removal of a legislator; detailing process for removal of a statewide official; and
 5 adjusting relevant language to conform.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. REMOVAL OF OFFICERS.

§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 in this state, including
 2 ~~the office of a member of a Board of Education and the office of magistrate~~ any county, school
 3 district, municipal, judicial, legislative or statewide office, the term or tenure of which office is fixed
 4 by law, whether the office be elective or appointive, ~~except judges of the circuit courts~~ may be
 5 removed from such office in the manner provided in this section for official misconduct, neglect of
 6 duty, incompetence or for any of the causes or on any of the grounds provided by any other
 7 statute.

8 (b) Charges may be proffered:

9 (1) In the case of any county officer, member of a board of education, ~~or~~ magistrate or
 10 other county-wide elected or appointed officer:

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

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

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

16 (i) In a county with a population in excess of fifty thousand; the lesser of two thousand or
 17 ten percent of the number of registered voters who participated in the particular election in which

18 the challenged officer was chosen which next preceded the filing of the petition;

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

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

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

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

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

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

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

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

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

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

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

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

49 (3) In the case of any member of the Senate or member of the House of Delegates:

50 (A) By the prosecuting attorney of a county wherein the member of the Senate or House
51 of Delegates resides, or the greater portion of the Senate or House of Delegates district is located;
52 or

53 (B) By petition of a number of qualified petitioners, which number shall be ten percent of
54 the number of registered voters who participated in the particular election in which the challenged
55 officer was chosen which next preceded the filing of the petition.

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

58 (4) In the case of any statewide elected or appointed officer by petition of a number of
59 qualified petitioners, which number shall be ten percent of the number of registered voters who
60 participated in the particular election in which the challenged officer was chosen which next
61 preceded the filing of the petition. Such petition shall set forth therein the name and office of the
62 challenged officer, the alleged wrongful acts and the grounds for removal.

63 ~~(3)~~ (5) By the chief inspector and supervisor of public offices of the state where the person
64 sought to be removed is entrusted by law with the collection, custody and expenditure of public
65 moneys because of any intentional or unlawful misapplication, misappropriation or embezzlement
66 of such moneys.

67 (c) When removal is proffered by a duly enacted resolution of a county commission or
68 municipal governing body, a certified copy of the resolution shall be served by the clerk of the
69 commission or municipal governing body upon the circuit court in whose jurisdiction the officer

70 serves within five business days of adoption of the resolution. The proffering county commission
71 or municipal governing body shall be responsible for the prosecution of the removal resolution.

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

76 (e) When removal is proffered by petition, the charges shall be reduced to writing and
77 each page on which signatures are affixed shall include the name and office of the challenged
78 officer, the charges or grounds for removal, which may be achieved by attachment to each
79 signature page, and an informed acknowledgement of an agreement with the charges. At least
80 one of the persons bringing the petition shall serve the original petition upon ~~the~~ a circuit court in
81 whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal
82 action. If the petition is for removal of a statewide elected or appointed officer, the petition shall
83 be served upon the circuit court in which the officer resides or the Kanawha County Circuit Court.

84 (f) Any resolution or petition submitted pursuant to this section shall be received and
85 entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon
86 be issued by the clerk of such court, together with a copy of the resolution or petition, requiring
87 the officer or person named therein, or legal counsel therefor, to appear before the court for a
88 preliminary hearing, at the courthouse of the county where such officer resides, for the purpose
89 of a judicial determination as to the validity of the resolution or petition, the clerk having
90 ascertained whether such signatures are the signatures of eligible residents, and to hear any
91 related objections or motions that may be presented. The summons shall be served in the manner
92 by which a summons commencing a civil suit may be served within five business days of the
93 receipt of the resolution or petition by the court.

94 (g)(1) The court, or judge thereof in vacation, or in the case of any multijudge circuit, the
95 chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural

96 defect, and to consider all the allegations made in the resolution or petition in light of the applicable
97 case law and the required strict construction of the grounds asserted, and conclude whether or
98 not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to
99 warrant the removal of the officer from office. In the case of a petition, the court may require that
100 the clerk responsible for the maintenance of voting records for the governing body for whom the
101 officer serves provide an affidavit verifying the number of qualified petitioner signatures and the
102 applicable total number of registered voters.

103 (2) If the court finds, after consideration of any motions or objections, or in the court's
104 discretion provided for herein, that the resolution or petition is defective or the allegations stated
105 therein do not meet the standards for removal set forth herein, the resolution or petition shall be
106 dismissed by the court. If the court finds that the resolution or petition is sufficient under the
107 standards for removal set forth herein to proceed to a hearing before a three-judge court, the court
108 shall forward a copy of the resolution or petition to the Supreme Court of Appeals.

109 (3) Upon receipt of said resolution or petition, the Chief Justice of the Supreme Court of
110 Appeals shall, not fewer than twenty days from the date of the receipt of the resolution or petition,
111 designate and appoint three circuit judges within the state, not more than one of whom shall be
112 from the same circuit in which the resolution or petition was filed and, in the order of such
113 appointment, shall require that the three-judge court designate the date, time and place for the
114 hearing of the resolution or petition forthwith.

115 (4) Such three-judge court shall, without a jury, hear the charges, any motions filed by
116 either party and all evidence offered in support thereof or in opposition thereto, and upon
117 satisfactory proof of the charges by clear and convincing evidence, shall remove any such officer
118 from office and place the records, papers and property of his office in the possession of some
119 other officer or person for safekeeping or in the possession of the person appointed as hereinafter
120 provided to fill the office temporarily. Any final order either removing or refusing to remove any
121 such person from office shall contain such findings of fact and conclusions of law as the three-

122 judge court shall deem sufficient to support its decision of all issues presented to it in the matter.

123 (h) An appeal from an order of such three-judge court removing or refusing to remove any
124 person from office pursuant to this section may be taken to the Supreme Court of Appeals within
125 thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court
126 of Appeals shall consider and decide the appeal upon the original papers and documents, without
127 requiring the same to be printed and shall enforce its findings by proper writ. From the date of any
128 order of the three-judge court removing an officer under this section until the expiration of thirty
129 days thereafter, and, if an appeal be taken, until the date of suspension of such order, if
130 suspended by the three-judge court and if not suspended, until the final adjudication of the matter
131 by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy
132 in such office may fill the same by a temporary appointment until a final decision of the matter,
133 and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the
134 manner provided by law for such office.

135 (i) In any case wherein the charges are proffered by the chief inspector and supervisor of
136 public offices against the ~~county commission or any member thereof or any county, school district~~
137 ~~or municipal~~ officer, the proceedings under this section shall be conducted and prosecuted in the
138 same manner set forth herein for removal by resolution or petition by the prosecuting attorney of
139 the county in which the officer proceeded against resides, and on any appeal from the order of
140 the three-judge court in any such case, the Attorney General of the state shall represent the
141 people. When any municipal officer is proceeded against the solicitor or municipal attorney for
142 such municipality may assist in the prosecution of the charges.

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

NOTE: The purpose of this bill is to expand the ability of the people of West Virginia to remove elected officials for official misconduct, incompetence, neglect of duty, or other reasons provided by law.

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