

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 267**

BY SENATOR BLAIR

[Originating in the Committee on Government

Organization; reported on February 12, 2016.]



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

*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 to read as follows:

**ARTICLE 6. REMOVAL OF OFFICERS.**

**§6-6-1. Definitions.**

1 ~~The term “neglect of duty,” or the term “official misconduct,” as used in this article, shall~~  
2 ~~include the willful waste of public funds by any officer or officers, or the appointment by him or~~  
3 ~~them of an incompetent or disqualified person to any office or position and the retention of such~~  
4 ~~person in office, or in the position to which he was appointed, after such incompetency or~~  
5 ~~disqualification is made to appear, when it is in the power of such officer to remove such~~  
6 ~~incompetent or disqualified person. The term “incompetence,” as used in this article, shall include~~  
7 ~~the wasting or misappropriation of public funds by any officer, habitual drunkenness, habitual~~  
8 ~~addiction to the use of narcotic drugs, adultery, neglect of duty, or gross immorality, on the part~~  
9 ~~of any officer. The term “incompetent person,” as used in this section, shall include any appointee~~  
10 ~~or employee of any officer or officers, including county court, municipal bodies or officers, and~~  
11 ~~boards of education, who willfully wastes or misappropriates public funds, or who is guilty of~~  
12 ~~habitual drunkenness, habitual addiction to the use of narcotic drugs, adultery, neglect of duty or~~  
13 ~~gross immorality.~~

14 (a) The term “official misconduct”, as used in this article, means any willful unlawful  
15 behavior by a public officer in the course of his or her performance of the duties of the public office  
16 which are committed during the officer’s present term of office.

17           **(b) The term “neglect of duty”, as used in this article, means the knowing refusal or willful**  
18 **failure of a public officer to perform an essential act or duty of the office required by law and**  
19 **occurring during the officer’s present term of office.**

20           **(c) The term “incompetence”, as used in this article, shall include the following acts or**  
21 **adjudications committed or arising during the challenged officer’s present term of office: The**  
22 **repeated waste or misappropriation of public funds by any officer when the officer knew, or should**  
23 **have known, that such use of funds was inappropriate or inconsistent with the lawful duties of the**  
24 **office; conviction of a misdemeanor involving dishonesty or violence; conviction of a felony; having**  
25 **been the subject of a determination of incapacity, as defined and governed by section seven,**  
26 **article thirty, chapter sixteen of this code; or gross immorality affecting the officer’s ability to**  
27 **perform the essential official duties of his or her office.**

28           **(d) The term “qualified petitioner”, as used in this article, means a person who was**  
29 **registered to vote in the election in which the officer was chosen which next preceded the filing of**  
30 **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, ~~malfeasance in office,~~ neglect of duty, incompetence, ~~neglect of duty or gross~~  
6 ~~immorality~~ or for any of the causes or on any of the grounds provided by any other statute.

7           (b) Charges may be ~~preferred~~ proffered:

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 percent of the total number of voters of the county participating in the general election next~~  
12 ~~preceding the filing of such charges.~~

13 ~~(2) In the case of any municipal officer, by the prosecuting attorney of the county wherein~~  
14 ~~such municipality, or the greater portion thereof, is located, any other elected officer of the~~  
15 ~~municipality, or by any number of persons other than the prosecuting attorney or other municipal~~  
16 ~~elective officer of the municipality who are residents of the municipality, which number shall be~~  
17 ~~the lesser of twenty-five or one percent of the total number of voters of the municipality~~  
18 ~~participating in the election at which the governing body was chosen which election next preceded~~  
19 ~~the filing of the petition.~~

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

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

24 (B) By petition of a number of qualified petitioners, which number shall be the lesser of  
25 two thousand or ten percent of the number of registered voters in the election in which the  
26 challenged officer was chosen which next preceded the filing of the petition. Such petition shall  
27 set forth therein the name and office of the challenged officer, the alleged wrongful acts and the  
28 grounds for removal.

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

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

33 (B) By petition of a number of qualified petitioners, which number shall be the lesser of  
34 two thousand or ten percent of the number of registered voters in the election in which the  
35 challenged officer was chosen which next preceded the filing of the petition. Such petition shall  
36 set forth therein the name and office of the challenged officer, the alleged wrongful acts and the  
37 grounds for removal.

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

42           ~~(c) The charges shall be reduced to writing in the form of a petition duly verified by at least  
43 one of the persons bringing the same, and shall be entered of record by the court, or the judge  
44 thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together  
45 with a copy of the petition, requiring the officer or person named therein to appear before the  
46 court, at the courthouse of the county where such officer resides, and answer the charges on a  
47 day to be named therein, which summons shall be served at least twenty days before the return  
48 day thereof in the manner by which a summons commencing a civil suit may be served.~~

49           ~~The court, or judge thereof in vacation, or in the case of any multijudge circuit, the chief  
50 judge thereof, shall, without delay forward a copy of the petition to the Supreme Court of Appeals  
51 and shall ask for the impaneling or convening of a three-judge court consisting of three circuit  
52 judges of the state. The chief justice of the Supreme Court of Appeals shall without delay  
53 designate and appoint three circuit judges within the state, not more than one of whom shall be  
54 from the same circuit in which the petition is filed and, in the order of such appointment, shall  
55 designate the date, time and place for the convening of such three-judge court, which date and  
56 time shall not be less than twenty days from the date of the filing of the petition.~~

57           ~~Such three-judge court shall, without a jury, hear the charges and all evidence offered in  
58 support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove  
59 any such officer or person from office and place the records, papers and property of his or her  
60 office in the possession of some other officer or person for safekeeping or in the possession of  
61 the person appointed as hereinafter provided to fill the office temporarily. Any final order either  
62 removing or refusing to remove any such person from office shall contain such findings of fact~~

63 ~~and conclusions of law as the three-judge court shall deem sufficient to support its decision of all~~  
64 ~~issues presented to it in the matter.~~

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

70 (d) When removal is proffered by petition, the charges shall be reduced to writing and  
71 each page on which signatures are affixed shall include the name and office of the challenged  
72 officer, the charges or grounds for removal, which may be achieved by attachment to each  
73 signature page, and an informed acknowledgement of an agreement with the charges. At least  
74 one of the persons bringing the petition shall serve the original petition upon the circuit court in  
75 whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal  
76 action.

77 (e) Any resolution or petition submitted pursuant to this section shall be received and  
78 entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon  
79 be issued by the clerk of such court, together with a copy of the resolution or petition, requiring  
80 the officer or person named therein, or legal counsel therefor, to appear before the court for a  
81 preliminary hearing, at the courthouse of the county where such officer resides, for the purpose  
82 of a judicial determination as to the validity of the resolution or petition, and to hear any related  
83 objections or motions that may be presented. The summons shall be served in the manner by  
84 which a summons commencing a civil suit may be served within five (5) business days of the  
85 receipt of the resolution or petition by the court.

86 (f) The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief  
87 judge thereof, shall have authority to evaluate any resolution or petition for any procedural defect,  
88 and to consider all the allegations made in the resolution or petition in light of the applicable case

89 law and the required strict construction of the grounds asserted, and conclude whether or not the  
90 allegations asserted would be sufficient, if proven by clear and convincing evidence, to warrant  
91 the removal of the officer from office. In the case of a petition, the court may require that the clerk  
92 responsible for the maintenance of voting records for the governing body for whom the officer  
93 serves provide an affidavit verifying the number of qualified petitioner signatures and the  
94 applicable total number of registered voters.

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

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

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

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

127           ~~(e)~~(h) In any case wherein the charges are ~~preferred~~ proffered by the chief inspector and  
128 supervisor of public offices against the county commission or any member thereof or any county,  
129 school district or municipal officer, the proceedings under this section shall be conducted and  
130 prosecuted in the same manner set forth herein for removal by resolution or petition by the  
131 prosecuting attorney of the county in which the officer proceeded against resides, and on any  
132 appeal from the order of the three-judge court in any such case, the Attorney General of the state  
133 shall represent the people. When any municipal officer is proceeded against the solicitor or  
134 municipal attorney for such municipality may assist in the prosecution of the charges.

135           (i) If a judicial proceeding under this section is dismissed or otherwise resolved in favor of  
136 the challenged officer, the political subdivision for which the officer serves shall be responsible for  
137 the court costs and reasonable attorney fees for the officer.

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 a heading or the present law and underscoring indicates new language that would be added.