WEST VIRGINIA CODE CHAPTER 6 ARTICLE 6

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§6-6-1. Definitions.

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

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

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

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

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§6-6-2. Retirement of incapacitated justices, judges and magistrates; expulsion of members of Legislature.

Any justice, judge, or magistrate may be retired from office because of advancing years and attendant physical or mental incapacity, in the manner prescribed in section eight of article eight of the Constitution of this state, and by rules prescribed, adopted, promulgated and amended pursuant thereto.

The Senate or House of Delegates may expel a member of the body in the manner prescribed in section twenty-five of article six of the Constitution.

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§6-6-3. Impeachment.

Any officer of the state or any judge may be impeached and removed from office for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor, in the manner prescribed in section 9 of article IV of the Constitution of this state.

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§6-6-4. Removal by Governor of appointee.

Any person who has been, or may hereafter be appointed by the Governor to any office or position of trust under the laws of this state, whether his tenure of office is fixed by law or not, may be removed by the Governor at his will and pleasure. In removing such officer, appointee, or employee, it shall not be necessary for the Governor to assign any cause for such removal.

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§6-6-5. Removal by Governor of state elective officer -- Grounds.

Any state officer holding any elective office (except the Governor, any judge, or a member of the Legislature of this state) may be removed from office, by the Governor, in the manner provided in the following section: (a) When disqualified from holding the office under any provision of the Constitution of this state, or any law now in force, or which may hereafter be enacted, whether such disqualification arose before or after his induction into office; (b) for official misconduct, malfeasance in office, incompetence, neglect of duty, or gross immorality.

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§6-6-6. Removal by Governor of state elective officer -- Procedure; appeal.

The charges on which the removal of any officer mentioned in the preceding section is sought shall be reduced to writing and signed by a citizen or citizens of this state, and verified by the affidavit of one or more of the signers; or, in case the removal is sought of an officer entrusted by law with the collection, custody and expenditure of public moneys, because of any misapplication, misappropriation, or embezzlement of such moneys, the charges may be signed and verified as aforesaid, or be signed by the chief inspector and supervisor of public offices of the state. If, on examination of the charges by the Governor, it shall appear that the officer should be removed, if the charges be true, he shall cause a summons thereupon to be issued containing a copy of the charges, requiring the officer named therein to appear and answer the same on the day and at a place named therein, and cause the same to be served upon such officer at least twenty days before the return day thereof, which summons may be served in the same manner as a summons commencing a civil suit. On the return day of the summons, at the place therein named, the Governor shall proceed to hear proof of the charges made, and may adjourn the hearing from time to time and from place to place.

In all such hearings before the Governor, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing by the Governor, at his own instance or at the instance of such officer against whom charges may have been brought as aforesaid; and in case of disobedience to a subpoena or other process of the Governor, the Governor, or such officer, against whom charges may have been brought as aforesaid, may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents, and such court, in case of a refusal to obey the subpoena issued to any person, shall issue an order requiring such person to appear before the Governor and produce all books and papers, if deemed proper, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such witness shall never be prosecuted or suffer any penalty or forfeiture for any offense concerning which he is compelled to furnish information or testify. A written record shall be kept of all testimony and other proceedings before the Governor.

At the close of the hearing, if the charges are sustained by satisfactory proof, the Governor shall remove such officer from the discharge of the duties of his office, and place the records, papers and property pertaining to the office in the possession of some other officer for safekeeping. The order of removal shall become final at the expiration of thirty days from the date thereof, unless appealed from, as hereinafter provided. In the event an appeal is taken from the order of removal, it shall not become final until decided by the Supreme Court of Appeals.

The vacancy in the office shall not be filled until the order of removal becomes final. The Governor shall designate some person as deputy of the officer removed, who, in the name of his principal, shall exercise the duties of the office from the date of the order of removal

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until the suspension thereof, if suspended, and if the order be not suspended, until the same shall be affirmed or vacated; or, if no appeal be taken, until the order becomes final.

Any such officer against whom charges may have been brought as aforesaid, feeling aggrieved by his removal from office by the Governor, may present his petition in writing to the Supreme Court of Appeals, or to a judge thereof in vacation, within thirty days after such removal from office by the Governor, praying for the suspension, setting aside or vacating of such order of removal. The court, or the judge, shall fix a time for the hearing on the application, but such hearing shall not be held sooner than five days, unless by agreement of the parties, after the presentation of the petition. Notice of the time and place of such hearing shall be forthwith given to the Governor, or, in case of his absence from the state or from his office, such notice may be given to him by leaving, or causing to be left, a copy thereof at his office in the state Capitol. If the court, or the judge, after such hearing, be of the opinion that a suspending order should issue, the court in its, or the judge in his, discretion, may suspend such removal, and may require bond upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable; and the court, or the judge, shall fix a time for the final hearing on the application. The hearing of the matter shall take precedence over all other matters before the court, except contested elections of Secretary of State, Auditor, treasurer, Attorney General, state superintendent of free schools, commissioner of agriculture, or of a judge of any court. For such final hearing, and before the day fixed therefor, the Governor shall file with the clerk of the Supreme Court of Appeals all papers, documents, testimony, evidence and records, or certified copies thereof, introduced or offered at the hearing resulting in such removal; and shall also file with said clerk a written statement of the cause, and his reasons for making such removal. After argument by counsel, the court shall decide the matter in controversy, both as to the law and evidence, as may seem to it to be just and right, and may affirm the order of removal, or may permanently suspend, set aside and vacate such removal and restore such officer to his office; and in case such removal be not suspended, set aside or vacated by the Supreme Court of Appeals, the Governor shall fill the vacancy caused by the removal of such officer.

The supreme court shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed, and shall enforce its findings by proper writ.

In any case in which the charges are signed and filed by the chief inspector and supervisor of public offices, the proceedings under this section shall be conducted and prosecuted by the Attorney General of the state.

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

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

(b) Charges may be proffered:

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

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

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

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

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

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

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

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

(2) In the case of any municipal officer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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issues presented to it in the matter.

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

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

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

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§6-6-8. Removal of appointive county, district or municipal officers without fixed terms.

The court, board, body or officer authorized by law to appoint any person to any county, magisterial district, independent school district, or municipal office, the term or tenure of which is not fixed by law, may remove any person appointed to any office by such court, board, body or officer, with or without cause, whenever such removal shall be deemed by it, them or for the good of the public service, and the removal of any such person from office shall be final.

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§6-6-9. Forfeiture of office on conviction of offense.

Any person holding any office, convicted in any court of any offense, the punishment or penalty for which, under any provision of the Constitution of the State, or any law now in effect, or which may hereafter become effective, entails a forfeiture of the office held by the person convicted, shall be removed from office by the judgment of the court, entered upon such conviction.

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