

No: 1013



# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

OFFICE OF THE  
SECRETARY OF STATE

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## ENROLLED

Com. Sub. for  
HOUSE BILL No. 1013

(By Mr. Del. Murphy)

Passed April 13, 1985

In Effect 90 Days From Passage

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1013**  
**(By DELEGATE MURPHY)**

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[Passed April 13, 1985; in effect ninety days from passage.]

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AN ACT to amend and reenact section seven, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twenty-nine, thirty and thirty-one, article eight, chapter eleven of said code; and to further amend article eight by adding thereto a new section, designated section thirty-one-a, all relating generally to the liability of and the removal from office of certain public officials in the several political subdivisions of the state; setting forth the grounds upon which such persons may be so removed; identifying the person or persons and number thereof who may prefer charges against such officers; requiring such charges to be preferred in writing before the circuit court of the county wherein such officer resides; requiring the convening of a three-judge court consisting of three circuit judges to hear the matter without a jury; establishing certain procedures with respect to such proceedings and the time within which the same must be heard; requiring certain findings of fact and conclusions of law to be made with respect to any final decision of such three-judge court; providing for an appeal to the supreme court of appeals with respect to a final decision of such court and certain procedures relating to such appeal; providing for the filling of any vacancy of the office from which any such person was removed; requiring certain duties of the prosecuting attorney

of the county wherein the charges are brought and of the attorney general of the state upon any appeal therefrom in certain cases; providing for the personal liability of such officers for the negligent illegal expenditure of public moneys; providing for certain criminal liability for the willful illegal expenditure of such moneys and prescribing the punishment therefor; providing that such persons may not be removed from office except upon a showing of willful or grossly negligent behavior with respect to such illegal expenditures; clarifying that certain described conduct shall not constitute gross negligence or willful conduct; setting forth certain instances wherein such officials may be personally liable or liable upon his or her official bond; recovery of punitive damages in certain instances and the amount thereof; and providing for the recovery of attorney fees in certain instances.

*Be it enacted by the Legislature of West Virginia:*

That section seven, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections twenty-nine, thirty and thirty-one, article eight, chapter eleven of said code be amended and reenacted; and that article eight be further amended by adding thereto a new section, designated section thirty-one-a, all to read as follows:

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **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  
2 municipal office, including the office of member of a board  
3 of education and the office of magistrate, the term or tenure  
4 of which office is fixed by law, whether the office be elective  
5 or appointive, except judges of the circuit courts, may be  
6 removed from such office in the manner provided in this  
7 section for official misconduct, malfeasance in office,  
8 incompetence, neglect of duty or gross immorality or for any  
9 of the causes or on any of the grounds provided by any other  
10 statute.

11 (b) Charges may be preferred:

12 (1) In the case of any county officer, member of a district  
13 board of education or magistrate, by the county commission,  
14 or other tribunal in lieu thereof, any other officer of the county  
15 or by any number of persons other than such county officers,  
16 which number shall be the lesser of fifty or one percent of the  
17 total number of voters of the county participating in the  
18 general election next preceding the filing of such charges.

19 (2) In the case of any municipal officer, by the prosecuting  
20 attorney of the county wherein such municipality, or the  
21 greater portion thereof, is located, any other elective officer  
22 of the municipality, or by any number of persons other than  
23 the prosecuting attorney or other municipal elective officer of  
24 the municipality who are residents of the municipality, which  
25 number shall be the lesser of twenty-five or one percent of the  
26 total number of voters of the municipality participating in the  
27 election at which the governing body was chosen which  
28 election next preceded the filing of the petition.

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

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

45 The court, or judge thereof in vacation, or in the case of  
46 any multi-judge circuit, the chief judge thereof, shall without  
47 delay forward a copy of the petition to the supreme court of  
48 appeals and shall ask for the impaneling or convening of a  
49 three-judge court consisting of three circuit judges of the state.  
50 The chief justice of the supreme court of appeals shall without  
51 delay designate and appoint three circuit judges within the

52 state, not more than one of whom shall be from the same  
53 circuit in which the petition is filed and, in the order of such  
54 appointment, shall designate the date, time and place for the  
55 convening of such three-judge court, which date and time shall  
56 not be less than twenty days from the date of the filing of  
57 the petition.

58 Such three-judge court shall, without a jury, hear the  
59 charges and all evidence offered in support thereof or in  
60 opposition thereto and upon satisfactory proof of the charges  
61 shall remove any such officer or person from office and place  
62 the records, papers and property of his office in the possession  
63 of some other officer or person for safekeeping or in the  
64 possession of the person appointed as hereinafter provided to  
65 fill the office temporarily. Any final order either removing or  
66 refusing to remove any such person from office shall contain  
67 such findings of fact and conclusions of law as the three-judge  
68 court shall deem sufficient to support its decision of all issues  
69 presented to it in the matter.

70 (d) An appeal from an order of such three-judge court  
71 removing or refusing to remove any person from office  
72 pursuant to this section may be taken to the supreme court  
73 of appeals within thirty days from the date of entry of the  
74 order from which the appeal is to be taken. The supreme court  
75 of appeals shall consider and decide the appeal upon the  
76 original papers and documents, without requiring the same to  
77 be printed and shall enforce its findings by proper writ. From  
78 the date of any order of the three-judge court removing an  
79 officer under this section until the expiration of thirty days  
80 thereafter, and, if an appeal be taken, until the date of  
81 suspension of such order, if suspended by the three-judge court  
82 and if not suspended, until the final adjudication of the matter  
83 by the supreme court of appeals the officer, commission or  
84 body having power to fill a vacancy in such office may fill  
85 the same by a temporary appointment until a final decision  
86 of the matter, and when a final decision is made by the  
87 supreme court of appeals shall fill the vacancy in the manner  
88 provided by law for such office.

89 (e) In any case wherein the charges are preferred by the  
90 chief inspector and supervisor of public offices against the  
91 county commission or any member thereof or any county  
92 district or municipal officer, the proceedings under this section

93 shall be conducted and prosecuted by the prosecuting attorney  
 94 of the county in which the officer proceeded against resides,  
 95 and on any appeal from the order of the three-judge court in  
 96 any such case, the attorney general of the state shall represent  
 97 the people. When any municipal officer is proceeded against  
 98 the solicitor or municipal attorney for such municipality may  
 99 assist in the prosecution of the charges.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-29. Personal liability of official participating in unlawful expenditure.**

1 A person who in his official capacity negligently participates  
 2 in the violation of either section twenty-five or section twenty-  
 3 six of this article shall be personally liable, jointly and  
 4 severally, for the amount illegally expended.

#### **§11-8-30. Recovery of unlawful expenditure from participating official by action; costs.**

1 A person who in his official capacity negligently participates  
 2 in an illegal expenditure may be proceeded against for the  
 3 recovery of the amount illegally expended. The political  
 4 subdivision concerned, a taxpayer of the subdivision, the state  
 5 tax commissioner or a person prejudiced may bring the  
 6 proceeding.

7 All moneys recovered in these proceedings shall be paid into  
 8 the treasury of the proper fiscal body and credited to the  
 9 proper fund. Recovery in these proceedings shall, in all cases,  
 10 include the principal and interest on the principal at a  
 11 reasonable rate of interest as set by the court in the judgment  
 12 order and may include, in the discretion of the court, a penalty  
 13 of not more than twenty-five percent of the aggregate amount  
 14 of the judgment and interest.

15 If the plaintiff prevail, he shall recover against the  
 16 defendant, the costs of the proceedings, including a reasonable  
 17 attorney's fee to be fixed by the trial court and included in  
 18 the taxation of costs.

#### **§11-8-31. Criminal liability of official violating provisions of article; proceeding for removal.**

1 A person who in his official capacity willfully violates the

2 provisions of this article shall be guilty of a misdemeanor, and,  
3 upon conviction, shall be fined not more than five hundred  
4 dollars, or confined in jail not more than one year, or both.  
5 Upon conviction he shall also forfeit his office: *Provided*, That  
6 no liability shall arise under the provisions of this section so  
7 far as obligations may have been incurred or may be incurred  
8 prior to the time tax levies may be made under the provisions  
9 of this article by fiscal bodies having for their purpose the  
10 maintenance and operation of free schools or other govern-  
11 mental functions for the fiscal year one thousand nine hundred  
12 thirty-three—one thousand nine hundred thirty-four.

13 Proceedings for the removal of a member of a local fiscal  
14 body who has willfully or with gross negligence violated any  
15 of the provisions of this article shall be brought and  
16 maintained in accordance with and shall be subject to the  
17 provisions of section seven, article six, chapter six of this code.

18 An attested copy of the petition and the charges contained  
19 therein shall be served upon the defendants at least twenty  
20 days prior to the date of hearing. No other pleading or notice  
21 of the proceedings shall be necessary.

22 If any person in his or her official capacity participates in  
23 an illegal expenditure and in so doing acts in accordance with  
24 and upon the advice of his or her statutory attorney or duly  
25 appointed attorney, which advice was asked for, received and  
26 given in good faith, such person so acting shall not be deemed  
27 guilty of gross negligence or of willfully violating any of the  
28 provisions of this article but may be found to have so acted  
29 in a negligent manner and may be proceeded against for the  
30 recovery of the amount illegally or improperly expended, both  
31 personally or upon his or her official bond.

**§11-8-31a. Recovery of attorneys fees authorized.**

1 The governing body of the governmental entity of which a  
2 person is an official is hereby authorized to reimburse such  
3 person for the reasonable amount of such person's attorney  
4 fees in any case:

5 (a) Wherein such person has successfully defended against  
6 an action seeking his or her removal from office, or

7 (b) Wherein such person has successfully defended against  
8 an action seeking the recovery of moneys alleged to have been

9 wrongfully expended.

10 In either case such governing body shall have authority to  
11 determine if such reimbursement is warranted and the  
12 reasonableness of the amount sought to be recovered.

*James H. ...*  
*...*

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

*Garrett E. Eshen*  
Chairman Senate Committee

*Floyd Fuller*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Miller*  
Clerk of the Senate

*Donald L. Kopp*  
Clerk of the House of Delegates

*Don Tenthorn*  
President of the Senate

*Joseph P. Albright*  
Speaker of the House of Delegates

The within *appeared* this the *2nd*  
*May*, 1985.  
day of

*Archie Moore Jr.*  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/85

Time 7:12 p.m.