

HB 4256 S

Vetoed

FILED

2006 APR -4 P 2:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4256

(By Delegates Stemple, Proudfoot, William Mahan, Michael, Argento and Perdue)



Passed March 9, 2006

In Effect Ninety Days from Passage

FILED

2006 APR -4 P 2: 21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 4256

(BY DELEGATES STEMPLER, PROUDFOOT, WILLIAM
MAHAN, MICHAEL, ARGENTO AND PERDUE)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §6-6-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §6-6-7a, all relating to providing a procedure for removal of county, district or municipal officers; providing a procedure for removal of members appointed to county or municipal boards, authorities or commissions for fixed terms; requiring written notice of intent to remove; allowing an appointed member to object in writing to removal; requiring a hearing when a member objects to removal; requiring a written decision after a removal hearing to include findings of fact and conclusions of law supporting the decision whether or not to remove a member of a board, authority or commission; setting time periods for certain actions; authorizing the appeal of a decision to circuit court; requiring written decisions when removing members who fail to respond to notice of intent to remove; authorizing appointment of persons to fill vacancies created when a member is removed; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §6-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §6-6-7a, all to read as follows:

ARTICLE 6. REMOVAL OF OFFICERS.

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

1 (a) Any person holding any elective county, school district
2 or municipal office, including the office of a member of a board
3 of education and the office of magistrate, the term or tenure of
4 which office is fixed by law, except judges of the circuit courts,
5 may be removed from office in the manner provided in this
6 section for official misconduct, malfeasance in office, incompe-
7 tence, neglect of duty or gross immorality or for any of the
8 causes or on any of the grounds provided by any other statute.

9 (b) Charges may be preferred:

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

17 (2) In the case of any municipal officer, by the prosecuting
18 attorney of the county wherein municipality is located, or the
19 greater portion thereof, is located, any other elected officer of
20 the municipality, or by any number of persons other than the
21 prosecuting attorney or other municipal elective officer of the
22 municipality who are residents of the municipality, which

23 number shall be the lesser of twenty-five or one percent of the
24 total number of voters of the municipality participating in the
25 election at which the governing body was chosen which
26 election next preceded the filing of the petition.

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

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

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

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

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

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

89 shall be conducted and prosecuted by the prosecuting attorney
90 of the county in which the officer proceeded against resides,
91 and on any appeal from the order of the three-judge court in the
92 case, the Attorney General of the state shall represent the
93 people. When any municipal officer is proceeded against the
94 solicitor or municipal attorney for the municipality may assist
95 in the prosecution of the charges.

**§6-6-7a. Removal of appointive county, district or municipal
officers with fixed terms.**

1 (a) The governing body or officer authorized by law to
2 appoint any nonelected person to any county, district, or
3 municipal board, authority, or commission, the term or tenure
4 of which is fixed by law, may remove any member appointed
5 to the board, authority or commission for official misconduct,
6 incompetence, neglect of duty, malfeasance or gross immorality
7 in accordance with the procedures set forth in subsection (b).

8 (b)(1) The member shall be given written notice via
9 certified mail return receipt requested by addressee only, of the
10 intent to remove the member from appointed office by the
11 governing body or officer which made the appointment. The
12 notice shall include the reasons for removal set forth with
13 specificity and the procedures by which the member may object
14 to the removal.

15 (2) A member receiving a notice of intent to remove may
16 respond to the notice of intent to remove and request a hearing
17 before the governing body or officer. The response shall be in
18 writing and set forth the specific reasons why the member
19 should not be removed. The response must be received by the
20 governing body or officer within twenty days of the member's
21 receipt of the notice of intent to remove.

22 (3) Upon receipt of a written response to a notice of intent
23 to remove, the governing body or officer shall set a date, time

24 and place for a hearing not more than ten days from the date of
25 receipt of the response from the member, and shall give written
26 notice of the hearing to the member setting forth the hearing
27 date, time and place no less than five days prior to the hearing
28 date.

29 (4) The governing body or officer which made the appoint-
30 ment shall hear the charges and all evidence in support of or in
31 opposition to the removal. The governing body or officer shall
32 issue a written decision containing findings of fact and conclu-
33 sions of law to support its decision either removing or refusing
34 to remove a member from a board, authority or commission
35 within five days of the date of the hearing. The written decision
36 shall be sent to the member and to the board, authority or
37 commission of which the person was a member.

38 (5) An appeal from the decision of the governing body or
39 officer may be taken by a member who is adversely affected by
40 the decision to the circuit court of the county in which the
41 governing body or officer is located in accordance with the
42 provisions of article five, chapter twenty-nine-a of this code
43 governing judicial review of contested cases.

44 (6) If a member receives a notice of intent to remove and
45 does not respond to the notice in writing within ten days of
46 receipt of the notice of intent to remove, the governing body or
47 officer shall issue a written decision removing that member
48 from the board, authority or commission effective the day
49 following the expiration of the ten-day period to respond. A
50 copy of the decision shall be sent to the removed member and
51 to the board, commission or authority from which the member
52 was removed.

53 (7) When a member is removed from a board, authority or
54 commission in accordance with the provisions of this section,
55 the governing body or officer may make an appointment to fill
56 the vacancy for the remainder of the removed member's term.

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


Chairman Senate Committee


Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is disapproved this the 4th
day of April, 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2006

Time 3:20 pm