

As Introduced

125th General Assembly
Regular Session
2003-2004

H. B. No. 181

Representatives Schaffer, McGregor, Willamowski, Allen, Flowers, Brinkman,
C. Evans, Setzer, Wolpert, Aslanides, G. Smith, Buehrer

A B I L L

To enact sections 3.16 and 2961.02 of the Revised Code to permit the Governor to suspend from office in accordance with a specified procedure any elected local government official charged with a felony related to the official's administration of, or conduct in the performance of the duties of, the office and to prohibit a person who is convicted of certain theft offenses, or any other felony or recent misdemeanor involving fraud, deceit, or theft, from holding a public office or position of public employment, or serving in certain unpaid volunteer positions, that involve substantial management or control of certain public or private property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3.16 and 2961.02 of the Revised Code be enacted to read as follows:

Sec. 3.16. (A) As used in this section:

(1) "Prosecuting attorney" means the prosecuting attorney of the county in which the public official serves.

(2) "Public official" means any elected officer of a political subdivision as defined in section 2744.01 of the Revised Code. 20
21
22

(B)(1) If a public official is charged with a felony in a state or federal court and if the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney with responsibility to prosecute the case determines that the felony relates to the public official's administration of, or conduct in the performance of the duties of, the office of the public official, the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney with responsibility to prosecute the case shall transmit a copy of the charging document to the governor with a request that the governor proceed as provided in this section. 23
24
25
26
27
28
29
30
31
32
33

Upon receipt of the attorney general's or prosecuting attorney's request, the governor shall provide the public official with a written notice that, not later than fourteen days after the date of the notice, the public official may file with the governor a written statement either voluntarily authorizing the governor to suspend the public official from office or setting forth the reasons why the public official should not be suspended from office. If the public official so authorizes a suspension from office, the governor shall authorize the voluntary suspension, but still proceed with appointing the special commission described in division (B)(2) of this section and follow the other procedures set forth in this section. 34
35
36
37
38
39
40
41
42
43
44
45

(2) Not sooner than fourteen days after receipt of the attorney general's or prosecuting attorney's request, the governor shall appoint a special commission that, except as otherwise provided in this division, shall be composed of the attorney general and two public officials who hold the same office as the charged public official. At least one commission member shall be 46
47
48
49
50
51

of the same political party as the charged public official. 52
Members of the commission shall receive no compensation for their 53
services but shall be reimbursed for any expenses incurred in 54
connection with commission functions from funds appropriated to 55
the governor's office. If the attorney general is prosecuting the 56
case against the charged public official, the attorney general 57
shall not serve on the commission, and the governor shall instead 58
appoint to the commission a retired justice of the supreme court 59
or a retired judge of a court of appeals of this state. 60

(C) Once appointed, a special commission shall make the 61
determination required by this division and file a written report 62
of its findings and that determination with the governor within 63
fourteen days, unless the governor grants the commission a longer 64
period of time to take this action. The commission shall determine 65
whether the public official's administration of, or conduct in the 66
performance of the duties of, the official's office, as covered by 67
the charges, adversely affects the functioning of that office and 68
whether the rights and interests of the public are adversely 69
affected thereby. If the commission so determines, it shall 70
include in its report a recommendation that the public official be 71
suspended from office. 72

Notwithstanding anything to the contrary in section 121.22 of 73
the Revised Code, all meetings of the special commission shall be 74
closed to the public. Notwithstanding anything to the contrary in 75
section 149.43 of the Revised Code, the records of the commission 76
shall not be made available to the public for inspection or 77
copying until the commission files its report with the governor. 78

(D) The governor shall review the findings, determination, 79
and recommendation of the special commission and, if, and only if, 80
the commission recommends the suspension of the charged public 81
official, may suspend the public official from office immediately, 82
without the need for any further action. That suspension shall 83

continue until one of the following occurs: the public official is
reinstated to office as provided in division (E) of this section;
all charges are disposed of by dismissal or by a finding or
findings of not guilty; or a successor is elected and qualified to
serve the next succeeding term of the public official's office.

84
85
86
87
88

If a special commission does not recommend the suspension of
a public official who previously was voluntarily suspended from
office under division (B) of this section, or if the governor,
after reviewing a special commission's recommendation to suspend,
determines not to continue the suspension of a public official who
previously was voluntarily suspended from office under division
(B) of this section, that public official's voluntary suspension
shall end immediately upon the governor's review of the
commission's recommendation not to suspend or upon the governor's
determination not to continue the voluntary suspension.

89
90
91
92
93
94
95
96
97
98

(E) If the governor suspends a public official from office
under division (D) of this section or continues under that
division the suspension of a public official who was voluntarily
suspended from office under division (B) of this section, the
public official may petition the governor to reappoint the special
commission involved to again review the official's suspension. The
governor, in the governor's discretion, may reappoint the
commission to review the suspension. If it is reappointed, the
commission, within fourteen days of the reappointment, shall make
a determination and file a written report of the determination,
its findings, and its recommendation as described in division (C)
of this section. If the commission recommends that the suspension
of the public official not be continued, the public official shall
be immediately reinstated to office.

99
100
101
102
103
104
105
106
107
108
109
110
111
112

(F) Any public official suspended from office under this
section shall continue to receive while suspended the compensation
that the official is entitled to receive for holding that office

113
114
115

until the public official pleads guilty to or is found guilty of 116
any felony with which the public official is charged. For the 117
duration of the public official's suspension, a replacement 118
official shall be appointed or elected to perform the public 119
official's duties of office in the manner provided by law for 120
filling a vacancy in that office. The replacement official shall 121
have all of the rights, powers, and responsibilities of, and shall 122
be entitled to the same rate of pay as, the suspended public 123
official. 124

Sec. 2961.02. (A) As used in this section: 125

(1) "Disqualifying offense" means an offense that has both of 126
the following characteristics: 127

(a) It is one of the following: 128

(i) A theft offense that is a felony or that is a misdemeanor 129
of the first, second, or third degree the conviction of which 130
occurred not more than ten years before the holding of the public 131
office or position of public employment or the serving as a 132
volunteer; 133

(ii) A felony or a misdemeanor under the laws of this state, 134
another state, or the United States, or under the ordinances of a 135
municipal corporation of this state or another state, that is not 136
covered by division (A)(1)(a)(i) of this section, that involves 137
fraud, deceit, or theft, and that, in the case of a misdemeanor, 138
the conviction of which occurred not more than ten years before 139
the holding of the public office or position of public employment 140
or the serving as a volunteer. 141

(b) It is an offense for which the laws of this state, 142
another state, or the United States do not otherwise contain a 143
provision specifying permanent disqualification, or 144
disqualification for a specified period, from holding a public 145

office or position of public employment, or from serving as an 146
unpaid volunteer, as a result of conviction of the offense, 147
including, but not limited to, a provision such as that in 148
division (C)(1) of section 2921.41 of the Revised Code. 149

(2) "Political subdivision" has the same meaning as in 150
section 2744.01 of the Revised Code. 151

(3) "Private entity" includes an individual, corporation, 152
limited liability company, business trust, estate, trust, 153
partnership, or association that receives any funds from a state 154
agency or political subdivision to perform an activity on behalf 155
of the state agency or political subdivision. 156

(4) "State agency" has the same meaning as in section 1.60 of 157
the Revised Code. 158

(5) "Theft offense" has the same meaning as in section 159
2913.01 of the Revised Code. 160

(6) "Volunteer" means a person who serves as a volunteer 161
without compensation with a state agency or political subdivision, 162
or who serves as a volunteer without compensation with a private 163
entity, including, but not limited to, an uncompensated auxiliary 164
police officer, auxiliary deputy sheriff, or volunteer 165
firefighter. 166

(B) Any person who is convicted of a disqualifying offense is 167
incompetent to hold a public office or position of public 168
employment or to serve as a volunteer, if holding the public 169
office or position of public employment or serving as the 170
volunteer involves substantial management or control over the 171
property of a state agency, political subdivision, or private 172
entity. 173

(C) Division (B) of this section does not apply if a 174
conviction of a disqualifying offense is reversed, expunged, or 175

annulled. The full pardon of a person convicted of a disqualifying 176
offense restores the privileges forfeited under division (B) of 177
this section, but the pardon does not release the person from the 178
costs of the person's conviction in this state, unless so 179
specified. 180