

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 252**

**Representative Cates**

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**A BILL**

To amend section 309.05 of the Revised Code to 1  
regulate when motions to dismiss and motions for 2  
summary judgment may be filed in actions to remove 3  
a prosecuting attorney. 4

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

**Section 1.** That section 309.05 of the Revised Code be amended 5  
to read as follows: 6

**Sec. 309.05.** On complaint, in writing, signed by one or more 7  
taxpayers, containing distinct charges and specifications of 8  
wanton and willful neglect of duty or gross misconduct in office 9  
by the prosecuting attorney, and filed in the court of common 10  
pleas, the court shall assign the complaint for hearing and shall 11  
cause reasonable notice of ~~such~~ the hearing to be given to the 12  
prosecuting attorney of the time fixed by the court for the 13  
hearing. At the time so fixed, or to which the court adjourns the 14  
hearing, ~~such~~ the court shall hear the evidence adduced by the 15  
complainants and the prosecuting attorney. The court may consider 16  
motions to dismiss made pursuant to Civil Rule 41 and motions for 17  
summary judgment made pursuant to Civil Rule 56 that are filed 18  
before the hearing. If it appears that the prosecuting attorney 19  
has willfully and wantonly neglected to perform ~~his~~ the 20

prosecuting attorney's duties, or has been guilty of gross 21  
misconduct in office, the court shall remove ~~him~~ the prosecuting 22  
attorney from office and declare ~~such~~ the office vacant. Otherwise 23  
the complaint shall be dismissed, and the court shall render 24  
judgment against the losing party for costs. 25

**Section 2.** That existing section 309.05 of the Revised Code 26  
is hereby repealed. 27