



CITY OF EDINBURG - CITY COUNCIL

Meeting Date: October 20, 2020

Consider proposed amendment to the City of Edinburg Charter providing for the suspension or removal of elected officials upon felony indictment.

1. Agenda Item:

Consider proposed amendment to the City of Edinburg Charter providing for the suspension or removal of elected officials upon felony indictment. [Legal Department - Omar Ochoa, City Attorney]

2. Description/Scope: Article 2, Section 3 of the City Charter currently provides that if the mayor or any council member 'is convicted of a felony while in office' that elected official must 'forfeit and vacate his/her office.' There is no provision for forfeiture, removal, or suspension upon indictment of a felony. To add that type of provision, the City Charter must be amended.

The City Council has the authority to propose an amendment to the City Charter. But to become effective, Edinburg residents must approve the Charter amendment through an election. The City Council may call a special election or wait until a general election for residents to consider Charter amendments.

Texas law does not provide a process for suspending or removing elected officials indicted for a felony. However, other states and cities in the U.S. provide a variety of processes. Considerations include whether an official is suspended or removed upon felony indictment, whether suspension or removal is automatic or requires further action, whether the City Council or some other authority may review the proposed suspension or removal, and whether the felony must relate to the duties of the office holder.

The options drafted for consideration of action taken upon felony indictment are as follow:

- (1) Automatic forfeiture of office.
- (2) Removal from office by the City Council.
- (3) Automatic suspension from office and appointment of an interim office holder.
- (4) Suspension from office by the City Council and appointment of an interim office holder.

3. Estimated Timeline: The City Council must order an election for Edinburg residents to approve Charter amendments before they may be effective.

4. Budget The cost to hold an election is not available at this time.

Fund/Division/Source:

5. Procurement/Selection Process:

N/A

6. **Staff's Recommendation:** Consider proposed amendment to the City of Edinburg Charter providing for the suspension or removal of elected officials upon felony indictment.

7. **Justification:** As requested.

/s/ Omar Ochoa

Omar Ochoa
City Attorney

ATTACHMENTS:

Attachment A: Draft Proposals

Attachment B: Examples

APPROVED:	_____
NOT APPROVED:	_____
TABLED:	_____
NO ACTION:	_____

**PROPOSED CHARTER AMENDMENTS FOR REMOVAL OR SUSPENSION OF
ELECTED OFFICIAL UPON FELONY INDICTMENT**

Draft 1: Automatic Removal

Art. III, Sec. 3. - Qualifications of Mayor and Council Members.

The mayor and the several council members shall be qualified voters of the City of Edinburg; shall have attained the age of eighteen (18) years; and shall have resided for at least twelve (12) months next preceding his/her election within the corporate limits of the City of Edinburg; provided that if any territory shall have been legally annexed to and incorporated within the boundaries of the City of Edinburg, after the going into effect of this charter, any person who shall have resided in such annexed territory for twelve (12) months next preceding such election and who possesses all other qualifications for council member or mayor herein provided, shall be eligible to be elected mayor or council member. Any mayor or council member ceasing to possess any of the qualifications specified in this section, or who is indicted for or convicted of a felony while in office, shall ipso facto forfeit and vacate his/her office as mayor or council member, as the case may be.

Draft 2: Removal by the City Council.

Art. XVII, Section 14. – Removal from Office.

1. Any elected official of the City may, by a majority vote of the members of City Council not including the elected official who is the subject of the removal, be removed from office upon that elected official being indicted for a felony while serving as an elected official of the City.
2. The elected official against whom removal is sought shall be entitled to reasonable notice that the issue of his or her removal shall be heard by City Council and shall be permitted to testify in his or her own behalf and present such other relevant evidence as determined by the majority of the other members of Council at such Council meeting.
3. Council shall be the sole judge of the grounds constituting removal from office. Council shall initiate the process to establish grounds for removal from office by motion.
4. Upon a vote by a majority of the members of Council, other than the elected official who is the subject of the removal, that grounds exist which subject such elected official to removal from office, Council shall instruct the City Secretary notify the elected official in writing of such removal. Thereafter, the position of the elected official shall be filled in the manner set forth in this Charter and by law for the filling of vacancies in office.

Draft 3: Automatic suspension and appointment of interim office holder.

Art. XVII, Section 14. – Suspension from Office.

1. An elected official of the City who is indicted for a felony while serving as an elected official of the City shall be suspended from office. Such suspension shall automatically,

and without further act of the City or any of its officials, commence upon the filing of the indictment and shall terminate upon (a) the dismissal of the indictment; (b) a conviction for a crime other than a felony; or (c) upon a conviction for a felony.

2. The office of such suspended official may be filled on an interim basis by an interim appointee in the manner provided in this Charter for the filling of vacant offices except that such interim appointment shall terminate immediately upon the occurrence of any of the following: (a) the dismissal of the indictment against the suspended official; (b) the suspended official's conviction for a crime other than a felony; (c) upon the suspended official's conviction for a felony; or (d) upon the end of the term of office from which such official was suspended.
3. Upon the suspended official's conviction for a felony, the convicted official's office shall be filled in the manner set forth in the manner provided in in this Charter and by law for the filling of vacant offices.

Draft 4: Suspension by the City Council and appointment of interim office holder

Art. XVII, Section 14. – Suspension from Office.

1. Any elected official of the City may, by a majority vote of the members of City Council not including the elected official who is the subject of the removal, be suspended from office upon that elected official being indicted for a felony while serving as an elected official of the City.
2. The elected official against whom removal is sought shall be entitled to reasonable notice that the issue of his or her suspension shall be heard by City Council and shall be permitted to testify in his or her own behalf and present such other relevant evidence as determined by the majority of the other members of Council at such Council meeting.
3. Council shall be the sole judge of the grounds constituting suspension from office. Council shall initiate the process to establish grounds for suspension from office by motion.
4. Upon a vote by a majority of the members of Council, other than the elected official who is the subject of the suspension, that grounds exist which subject such elected official to suspension from office, Council shall instruct the City Secretary to notify the elected official in writing of such suspension.
5. Such suspension shall terminate upon (a) the dismissal of the indictment; (b) a conviction for a crime other than a felony; or (c) a conviction for a felony.
6. The office of such suspended official may be filled on an interim basis by an interim appointee in the manner provided in this Charter for the filling of vacant offices except that such interim appointment shall terminate immediately upon the occurrence of any of the following: (a) the dismissal of the indictment against the suspended official; (b) the suspended official's conviction for a crime other than a felony; (c) the suspended official's conviction for a felony; or (d) the end of the term of office from which such official was suspended.

7. Upon the suspended official's conviction for a felony, the convicted official's office shall be filled in the manner set forth in the manner provided in in this Charter and by law for the filling of vacant offices.

Example Removal/ Suspension Provisions

Georgia Constitution

SECTION III.

SUSPENSION AND REMOVAL OF PUBLIC OFFICIALS

Paragraph I. **Procedures for and effect of suspending or removing public officials upon felony indictment.** (a) As used in this Paragraph, the term "public official" means the Governor, the Lieutenant Governor, the Secretary of State, the Attorney General, the State School Superintendent, the Commissioner of Insurance, the Commissioner of Agriculture, the Commissioner of Labor, and any member of the General Assembly.

(b) Upon indictment for a felony by a grand jury of this state or by the United States, which felony indictment relates to the performance or activities of the office of any public official, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Governor or, if the indicted public official is the Governor, to the Lieutenant Governor who shall, subject to subparagraph (d) of this Paragraph, appoint a review commission. If the indicted public official is the Governor, the commission shall be composed of the Attorney General, the Secretary of State, the State School Superintendent, the Commissioner of Insurance, the Commissioner of Agriculture, and the Commissioner of Labor. If the indicted public official is the Attorney General, the commission shall be composed of three other public officials who are not members of the General Assembly. If the indicted public official is not the Governor, the Attorney General, or a member of the General Assembly, the commission shall be composed of the Attorney General and two other public officials who are not members of the General Assembly. If the indicted public official is a member of the General Assembly, the commission shall be composed of the Attorney General and one member of the Senate and one member of the House of Representatives. If the Attorney General brings the indictment against the public official, the Attorney General shall not serve on the commission. In place of the Attorney General, the Governor shall appoint a retired Supreme Court Justice or a retired Court of Appeals Judge. The commission shall provide for a speedy hearing, including notice of the nature and cause of the hearing, process for obtaining witnesses, and the assistance of counsel. Unless a longer period of time is granted by the appointing authority, the commission shall make a written report within 14 days. If the commission determines that the indictment relates to and adversely affects the administration of the office of the indicted public official and that the rights and interests of the public are adversely affected thereby, the Governor or, if the Governor is the indicted public official, the Lieutenant Governor shall suspend the public official immediately and without further action pending the final disposition of the

case or until the expiration of the officer's term of office, whichever occurs first. During the term of office to which such officer was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the officer shall be immediately reinstated to the office from which he was suspended. While a public official is suspended under this Paragraph and until initial conviction by the trial court, the officer shall continue to receive the compensation from his office. After initial conviction by the trial court, the officer shall not be entitled to receive the compensation from his office. If the officer is reinstated to office, he shall be entitled to receive any compensation withheld under the provisions of this Paragraph.

(c) Unless the Governor is the public officer under suspension, for the duration of any suspension under this Paragraph, the Governor shall appoint a replacement officer except in the case of a member of the General Assembly. If the Governor is the public officer under suspension, the provisions of Article V, Section I, Paragraph V of this Constitution shall apply as if the Governor were temporarily disabled. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof.

(d) No commission shall be appointed for a period of 14 days from the day the indictment is received. This period of time may be extended by the Governor. During this period of time, the indicted public official may, in writing, authorize the Governor or, if the Governor is the indicted public official, the Lieutenant Governor to suspend him from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this Paragraph for a nonvoluntary suspension.

(e) After any suspension is imposed under this Paragraph, the suspended public official may petition the appointing authority for a review. The Governor or, if the indicted public official is the Governor, the Lieutenant Governor may reappoint the commission to review the suspension. The commission shall make a written report within 14 days. If the commission recommends that the public official be reinstated, he shall immediately be reinstated to office.

(f) The report and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The report and record of the commission shall not be open to the public.

(g) The provisions of this Paragraph shall not apply to any indictment handed down prior to January 1, 1985.

(h) If a public official who is suspended from office under the provisions of this Paragraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the public official shall be reinstated to office. The public official shall not be reinstated under this subparagraph if he is not so tried based on a continuance granted upon a motion made only by the defendant.

Paragraph II. **Suspension upon felony conviction.** Upon initial conviction of any public official designated in Paragraph I of this section for any felony in a trial court of this state or the United States, regardless of whether the officer has been suspended previously under Paragraph I of this section, such public official shall be immediately and without further action suspended from office. While a public official is suspended from office under this Paragraph, he shall not be entitled to receive the compensation from his office. If the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the public official shall be immediately reinstated to the office from which he was suspended and shall be entitled to receive any compensation withheld under the provisions of this Paragraph. Unless the Governor is the public official under suspension, for the duration of any suspension under this Paragraph, the Governor shall appoint a replacement official except in the case of a member of the General Assembly. If the Governor is the public officer under suspension, the provisions of Article V, Section I, Paragraph V of this Constitution shall apply as if the Governor were temporarily disabled. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof. The provisions of this Paragraph shall not apply to any conviction rendered prior to January 1, 1987.

Massachusetts State Law

Part IV CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

Title I CRIMES AND PUNISHMENTS

Chapter 268A CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES

Section 25 SUSPENSION OF PERSONS UNDER INDICTMENT FOR MISCONDUCT IN OFFICE; NOTICE; COMPENSATION AND FRINGE BENEFITS; TEMPORARY REPLACEMENTS; REINSTATEMENT

Section 25. An officer or employee of a county, city, town or district, howsoever formed, including, but not limited to, regional school districts and regional planning districts, or of any department, board, commission or agency thereof may, during any period such officer or employee is under indictment for misconduct in such office or employment or for misconduct in any elective or appointive public office, trust or employment at any time held by him, be suspended by the appointing authority, whether or not such appointment was subject to approval in any manner. Notice of said suspension shall be given in writing and delivered in hand to said person or his attorney, or sent by registered mail to said person at his residence, his place of business, or the office or place of employment from which he is being suspended. Such notice so given and delivered or sent shall automatically suspend the authority of such person to perform the duties of his office or employment until he is notified in like manner that his suspension is removed. A copy of any

such notice together with an affidavit of service shall be filed as follows: in the case of a county, with the clerk of the superior court of the county in which the officer or employee is employed; in the case of a city, with the city clerk; in the case of a town, with the town clerk; in the case of a regional school district, with the secretary of the regional school district; and in the case of all other districts, with the clerk of the district.

Any person so suspended shall not receive any compensation or salary during the period of suspension, nor shall the period of his suspension be counted in computing his sick leave or vacation benefits or seniority rights, nor shall any person who retires from service while under such suspension be entitled to any pension or retirement benefits, notwithstanding any contrary provisions of law, but all contributions paid by him into a retirement fund, if any, shall be returned to him, subject to section 15 of chapter 32. The employer of a person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

A suspension under this section shall not, in any way, be used to prejudice the rights of the suspended person either civilly or criminally. During the period of any such suspension, the appointing authority may fill the position of the suspended officer or employee on a temporary basis, and the temporary officer or employee shall have all the powers and duties of the officer or employee suspended.

Any such temporary officer or employee who is appointed as a member of a board, commission or agency may be designated as chairman.

If the criminal proceedings against the person suspended are terminated without a finding or verdict of guilty on any of the charges on which he was indicted, his suspension shall be forthwith removed, and he shall receive all compensation or salary due him for the period of his suspension, and the time of his suspension shall count in determining sick leave, vacation, seniority and other rights, and shall be counted as creditable service for purposes of retirement.

Ohio State Law

3.16 Suspension of local official charged with felony relating to official conduct.

(A) As used in this section:

(1) "Prosecuting attorney" means the prosecuting attorney of the county in which a public official who is charged as described in division (B) of this section serves.

(2) "Public official" means any elected officer of a political subdivision as defined in section [2744.01](#) of the Revised Code. "Public official" does not include a judge of a court of record.

(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 chief justice of the supreme court with a request that the chief justice proceed as provided in division (C) of this section. If the attorney general or the prosecuting attorney transmits a copy of the charging document to the chief justice, a copy also shall be sent to the attorney general if the prosecuting attorney transmits the copy to the chief justice or to the prosecuting attorney of the county in which the public official holds office if the attorney general transmits the copy to the chief justice.

(2) Upon transmitting a copy of a charging document and a request to the chief justice of the supreme court under division (B)(1) of this section, the attorney general or prosecuting attorney 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 attorney general or prosecuting attorney, whichever sent the notice, a written statement either voluntarily authorizing the attorney general or prosecuting attorney to prepare a judgment entry for the judge presiding in the case to provisionally 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 voluntarily authorizes the attorney general or prosecuting attorney to prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office as described in this division, the attorney general or prosecuting attorney shall prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office immediately upon receipt of the judgment entry and shall notify the chief justice of the supreme court of the provisional suspension. Upon receipt of the judgment entry, the judge presiding in the case shall sign the judgment entry and file the signed judgment entry in the case. The signing and filing of the judgment entry provisionally suspends the public official from office. The attorney general's or prosecuting attorney's request to the chief justice that was made under division (B)(1) of this section remains applicable regarding the public official, and the chief justice shall establish a special commission pursuant to division (C)(1) of this section. A provisional suspension imposed under this division shall remain in effect until the special commission established by the chief justice enters its judgment under division (C)(3) of this section. After the special commission so enters its judgment, divisions (C)(3) and (4) of this section shall govern the continuation of the suspension. Division (E) of this section applies to a provisional suspension imposed under this division.

If the public official files a written statement setting forth the reasons why the public official should not be suspended from office, the public official shall not be provisionally suspended from office, and the attorney general or prosecuting attorney, whichever sent the notice to the public official, shall transmit a copy of the public official's written statement to the chief justice of the supreme court. The attorney general's or prosecuting attorney's request to the chief justice that was made under division (B)(1) of this section remains applicable regarding the public official, and the chief justice shall establish a special commission pursuant to division (C)(1) of this section.

(C)

(1) Not sooner than fourteen days after the chief justice's receipt of the attorney general's or prosecuting attorney's request under division (B)(1) of this section, the chief justice shall establish a special commission composed of three retired justices or judges of a court of record. A special commission established under this division is an administrative agency. The chief justice shall appoint the members of the special commission and shall provide to the special commission all documents and materials pertaining to the matter that were received from the attorney general or prosecuting attorney under division (B)(1) or (2) of this section. At least one member of the special commission shall be of the same political party as the public official. Members of the special commission shall receive compensation for their services, and shall be reimbursed for any expenses incurred in connection with special commission functions, from funds appropriated to the attorney general's office.

(2) Once established under division (C)(1) of this section, a special commission shall review the document that charges the public official with the felony, all other documents and materials pertaining to the matter that were provided by the chief justice under division (C)(1) of this section, and the facts and circumstances related to the offense charged. Within fourteen days after it is established, the special commission shall make a preliminary determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office. Upon making the preliminary determination, the special commission immediately shall provide the public official with notice of the preliminary determination. The notice may be in writing, by telephone, or in another manner. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, does not adversely affect the functioning of the office or does not adversely affect the rights and interests of the public, the preliminary determination automatically shall become the special commission's final determination for purposes of division (C)(3) of this section. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public and that the public official should be suspended from office, the notice shall inform the public official that the public official may contest the preliminary determination by filing with the special commission, within fourteen days after the date of the notice to the public official, a notice contesting the determination.

If the public official files a notice contesting the preliminary determination within fourteen days after the date of the notice to the public official, the public official may review the reasons and evidence for the determination and may appear at a meeting of the special commission to contest the determination and present the public official's position on the matter. The meeting of the special commission shall be held not later than fourteen days after the public official files the notice contesting the preliminary determination. The public official has a right to be accompanied by an attorney while appearing before the special commission, but the attorney is not entitled to act as counsel or advocate for the public official before the special commission or to present evidence or examine or cross-examine witnesses before the special commission. At the conclusion of the meeting, the special commission shall make a final determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office, and shall proceed in accordance with division (C)(3) of this section.

If the public official does not file a notice contesting the determinations within fourteen days after the date of the notice to the public official, the special commission's preliminary determination automatically shall become its final determination for purposes of division (C)(3) of this section.

Notwithstanding anything to the contrary in section 121.22 of the Revised Code, all meetings of the special commission shall be closed to the public. Notwithstanding anything to the contrary in section [149.43](#) of the Revised Code, the records of the special commission shall not be made available to the public for inspection or copying until the special commission issues its written report under this division.

(3) Upon making the final determination described in division (C)(2) of this section regarding a public official who is charged with a felony, including, if applicable, conducting a meeting pursuant to that division for the public

official to contest the preliminary determination, the special commission shall issue a written report that sets forth its findings and final determination. The special commission shall send the report by certified mail to the public official, the attorney general if the attorney general is prosecuting the case or the prosecuting attorney with responsibility to prosecute the case, whichever is applicable, and any other person that the special commission determines to be appropriate. Upon the issuance of the report, one of the following applies:

(a) If the special commission in its final determination does not determine that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public, the special commission shall include in the report a statement to that effect, and the public official shall not be suspended from office. If the public official was provisionally suspended from office under division (B)(2) of this section, the provisional suspension shall terminate immediately upon the issuance of the report.

(b) If the special commission in its final determination determines that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public, the special commission shall include in the report a holding that the public official be suspended from office. The holding that the public official be suspended from office and the suspension take effect immediately upon the special commission's issuance of the report. If the public official was provisionally suspended from office under division (B)(2) of this section, the holding that the public official be suspended from office shall continue the suspension immediately upon the special commission's issuance of the report. The report and holding shall have the same force and effect as a judgment of a court of record.

(4) A suspension imposed or continued under division (C)(3) of this section shall continue until one of the following occurs:

(a) The public official is reinstated to office by an appeal as provided in division (D) of this section;

(b) All charges are disposed of by dismissal or by a finding or findings of not guilty;

(c) A successor is elected and qualified to serve the next succeeding term of the public official's office.

(D) If a special commission issues a written report and holding pursuant to division (C)(3)(b) of this section that suspends a public official from office or that continues a provisional suspension imposed under division (B)(2) of this section, the public official may appeal the report and holding to the supreme court. The public official shall take the appeal by filing within thirty days of the date on which the report is issued a notice of appeal with the supreme court and the special commission. Unless waived, notice of the appeal shall be served upon all persons to whom the report was sent under division (C)(3) of this section. The special commission, upon written demand filed by the public official, shall file with the supreme court, within thirty days after the filing of the demand, a certified transcript of the proceedings of the special commission pertaining to the report and the evidence considered by the special commission in making its decision.

The supreme court shall consider an appeal under this division on an expedited basis. If the public official appeals the report and holding, the appeal itself does not stay the operation of the suspension imposed or continued under the report and holding. If, upon hearing and consideration of the record and evidence, the supreme court decides that the determinations and findings of the special commission are reasonable and lawful, the court shall affirm the special commission's report and holding, and the suspension, and shall enter final judgment in accordance with its decision. If the public official subsequently pleads guilty to or is found guilty of any felony with which the public official was charged, the public official is liable for any amount of compensation paid to the official during the suspension, with the liability relating back to the date of the original suspension under the special commission's report and holding, and the amount of that liability may be recovered as provided in division (G) of this section. If, upon hearing and consideration of the record and evidence, the supreme court decides that the determinations and findings of the special commission are unreasonable or unlawful, the court shall reverse and vacate the special commission's report and holding, and the suspension, reinstate the public official, and enter final judgment in accordance with its decision.

The clerk of the supreme court shall certify the judgment of the court to the special commission. Upon receipt of the judgment, the special commission shall certify the judgment to all persons to whom the special commission's report was certified under division (C)(3) of this section and shall certify the judgment to all other public officials or take any other action in connection with the judgment as is required to give effect to it.

(E)

(1) Any public official suspended from office under this section shall not exercise any of the rights, powers, or responsibilities of the holder of that office during the period of the suspension. The suspended public official, however, shall retain the title of the holder of that office during the period of the suspension and continue to receive the compensation that the official is entitled to receive for holding that office during the period of the suspension, until the public official pleads guilty to or is found guilty of any felony with which the public official is charged, or until one of the conditions in division (C)(4)(a), (b), or (c) of this section occurs.

(2) If the public official suspended under this section is an elected county official, the board of county commissioners may appoint a person in the official's office as the acting officer to perform the suspended public official's duties between the date of the signing and filing of the judgment entry suspending the elected county official and the time at which the interim replacement official appointed under division (E)(3)(a) or (b) of this section qualifies and takes the office.

(3)

(a) Except as provided in division (E)(3)(b) of this section, for the duration of the public official's suspension, an interim replacement official shall be appointed by the county central committee of the political party that nominated the suspended public official if the suspended public official is an elected county official, to perform the suspended public official's duties. Not less than five nor more than forty-five days after the suspension of a public official that is an elected county official, the county central committee shall meet to appoint the interim replacement official. Not less than four days before the date of the meeting, the chairperson or secretary of the county central committee shall send by first class mail to each member of the committee a written notice that states the time and place of the meeting and the purpose thereof. The approval of a majority of the members of the county central committee present at the meeting is required to appoint the interim replacement official.

(b) If the suspended public official is an elected county official, except for a county commissioner, who was elected as an independent candidate, the board of county commissioners shall appoint the interim replacement official. If the suspended public official is a county commissioner who was elected as an independent candidate, the prosecuting attorney and the remaining county commissioners, by majority vote, shall appoint the interim replacement official.

(4) For the duration of the public official's suspension, an interim replacement official shall be appointed by the probate judge of the court of common pleas if the suspended public official is an elected official of a municipal corporation, township, school district, or other political subdivision, to perform the suspended public official's duties.

(5) An acting officer appointed under division (E)(2) of this section or an interim replacement official appointed under division (E)(3) or (4) of this section shall be certified to the county board of elections and the secretary of state by the county central committee, probate judge of the court of common pleas, or board of county commissioners that made the appointment. The acting officer or interim replacement official so certified shall have all of the rights, powers, and responsibilities of, and shall be entitled to the same rate of pay as, the suspended public official. The acting officer or interim replacement official shall give bond and take the oath of office. If the office of the suspended public official becomes vacant during the period of suspension, a public official shall be appointed or elected to fill such vacancy as provided by law. If a regular election is to occur during the period of suspension, a public official shall be elected as provided by law.

(F) A person appointed as an acting or interim replacement prosecuting attorney shall meet the qualifications to hold the office of a prosecuting attorney under section [309.02](#) of the Revised Code. A person appointed as an acting or interim replacement sheriff shall meet the requirements to hold the office of sheriff prescribed by section [311.01](#) of the Revised Code. A person appointed as an acting or interim replacement coroner shall meet

the requirements to hold the office of coroner prescribed by section [313.02](#) of the Revised Code. And a person appointed as an acting or interim replacement county engineer shall meet the requirements to hold the office of county engineer prescribed by section [315.02](#) of the Revised Code.

(G) A political subdivision may file a civil action in the appropriate court to recover from any former public official of the political subdivision the amount of compensation paid to that former public official in accordance with this division from the date of the former public official's suspension to the date the former public official pleads guilty to or is found guilty of any felony with which the former public official was charged.

Amended by 130th General Assembly File No. TBD, HB 10, §1, eff. 3/23/2015.

Amended by 130th General Assembly File No. 48, SB 68, §1, eff. 12/19/2013.

Effective Date: 05-18-2005 .

Related Legislative Provision: *See 133rd General Assembly File No. TBD, HB 197, §24.*

See 129th General Assembly File No. 39, SB 171, §4 .