

A BILL

FOR AN ACT TO REPEAL SECTIONS 760 AND 763 OF THE CODE, AND ENACT
SUBSTITUTES THEREFOR RELATING TO THE SUSPENSION OF STATE OFFICERS.

Be it enacted by the General Assembly of the State of Iowa :

SECTION 1. That Sections 760 and 763 of the Code be and the same are hereby repealed
2 and the following enacted in lieu thereof :

3 Section 760. Whenever any commission appointed as aforesaid, or under the provi-
4 sions of Section one hundred and thirty-two, of Chapter nine, of Title two, of this Code,
5 shall report that any State officer has been guilty of any defalcation or misappropria-
6 tion of the public money, or that his accounts, papers and books are improperly or
7 unsafely kept, and that the State is liable to suffer loss thereby, the Governor shall
8 forthwith convene the Executive Counsel and submit such report to them, who, if they
9 believe such course necessary to save the State from loss, may temporarily suspend such
10 officer from the exercise of his office, and require him to deliver all the money, books,
11 papers and other property of the State to the Governor, to be disposed of as hereinafter
12 provided. But no State officer shall be suspended without notice and an opportunity to
13 be heard, and explain the irregularities complained of and correct any matter constitut-
14 ing the basis of the charges against him, except such cause is clearly necessary in order
15 to protect the State from loss. When such commission shall make such report to the
16 Governor, the executive counsel (whether they have suspended such State officer or not)
17 shall immediately fix a time when said officer may appear before them and be heard
18 touching the said report and the irregularities charged against him of which he shall
19 have reasonable notice, and may be represented by counsel. The attorney-general shall
20 also be notified and shall appear in behalf of the State, or if he fail to appear the execu-
21 tive counsel shall select some attorney to appear for the State, whose fees shall be fixed
22 by the executive counsel and paid out of the State treasury on their order. On the
23 hearing the officer shall be the defendant and the State the plaintiff. The defendant
24 may file written exceptions to the report of the commission and may also in connection
25 with such exceptions or without citing such exceptions, answer the said report, and on
26 such exceptions and answer or either the hearing shall be had. The State shall be the
27 plaintiff and the officer charged with the irregularities by the report shall be the de-
28 fendant. The report of the commission and the written exceptions thereto, and answer
29 shall constitute the pleadings. The burden of proof shall be on the State to sustain the
30 charges ~~made in the report.~~ The hearing shall be public, and the parol testimony re-

31 duced to writing, and all documentary proof carefully preserved and if any appeal is
32 had the documentary proof shall be duly certified by the Secretary of State and filed in
33 the district court of the county where the hearing is had, to which court either party
34 may appeal by giving written notice thereof to the opposite party within ten days after
35 the executive counsel have given their decision as to whether the charges have been
36 sustained. The decision shall be made within ten days after the hearing is closed, and
37 if the charges are not sustained, the defendant, if he has been suspended, shall be im-
38 mediately restored to his office unless an appeal is taken by the State. If the defendant
39 has not been suspended, and the charges are sustained, and the executive counsel find
40 such course necessary to protect the State from loss, they may suspend him. The execu-
41 tive counsel on the hearing shall, if they find the report sustained, make special findings
42 in writing of the irregularities which they find to exist, and what action if any the de-
43 fendant should take to remove or avoid such irregularities in order to be restored to his
44 office, and said defendant shall be restored to his office by the order of the Governor,
45 whenever the executive counsel are satisfied that defendant has complied with their
46 finding and requirements, or the executive counsel may revoke a suspension at any time,
47 either before or after hearing before them or at any time thereafter, when they are sat-
48 isfied that the necessity for the suspension no longer exists. When an appeal is taken
49 the district court shall proceed to try the same, giving the case preference to all other
50 business. The case shall be tried by the court without a jury, as an equitable action,
51 subject to all the rules governing the trial of such actions. All the evidence shall be
52 carefully preserved and certified by the judge as in other equitable actions. Either
53 party may appeal by serving on the opposite party written notice thereof within ten
54 days after judgment. When the appeal is filed in the Supreme Court, the clerk shall
55 immediately notify the judges thereof, and a day shall be set for hearing the appeal, of
56 which the parties shall be notified by the clerk, and the appeal shall be summarily heard
57 and disposed of, and if necessary the Supreme Court shall convene in special session to
58 hear such appeal. If the defendant has been suspended and the district or Supreme
59 Court finds such suspension unwarranted or erroneous, an order shall be entered of
60 record in the court that the defendant be restored to his office, and thereupon the Gov-
61 ernor shall issue an order accordingly. If the State is successful the costs shall be paid
62 by the defendant. Otherwise the defendant shall pay them or the court may make
63 such appointment of costs as may seem equitable.