

A BILL

ENTITLED

An Act further to amend the Constitution of Jamaica in order to provide for impeachment of Senators and members of the House of Representatives; and for connected matters.

The Constitution (Amendment) (Impeachment)
Act 2021



History of the Impeachment Bill

- **In 1993, the Constitutional Commission recommended that certain public officials be impeached for misconduct.**
- **In 1995, a Joint Select Committee of Parliament endorsed the need for an impeachment process with respect to parliamentarians, and recommended that the Constitution of Jamaica be amended for this purpose.**
- **In 2011, an Impeachment Bill was drafted, but it was never debated and did not go any further.**
- **In 2016, PM Andrew Holness committed to tabling an Impeachment Bill within 100 days. However, he failed to take any action to make it happen.**
- **In April 2021, amidst growing concerns about Parliament's inability to act in the face of egregious conduct by a parliamentarian, the Leader of the Opposition Mark Golding has brought to Parliament an updated version of the 2011 Impeachment Bill.**

PROPOSED AMENDMENTS

Section 41

A new subsection (5) provides for the removal of a MP/Senator who is found guilty of an impeachable offence by the Impeachment Tribunal, whose recommendation to remove the MP/Senator is approved by the House in which he/she sits.

Section 71

Amended to provide that the office of the Prime Minister or a Minister becomes vacant if he/she is removed from the House under section 41(5).

Section 80

Amended to provide that the office of the Leader of the Opposition becomes vacant if he/she is removed from the House under section 41(5).

Insert New Chapter VIA

Lists the impeachable offences; establishes an Impeachment Committee within Parliament; establishes the Impeachment Tribunal as an independent body outside Parliament; sets out the impeachment process from start to finish.

What is an Impeachable Offence

An impeachable offence is misconduct in the form of:

- Corruption or misappropriation of public funds or property**
- Persistent neglect of the duties/responsibilities of a MP or Senator, or refusal to exercise their duties/responsibilities**
- Abuse of official authority**
- Deliberately misleading Parliament, or intentionally abusing the privileges of Parliament**
- Egregious conduct or other misbehavior unbecoming the holder of the office of MP/Senator which makes him/her unfit to continue to hold that office or brings that office into disrepute**

Who can request impeachment?

Any of the following persons can request the impeachment of a MP or Senator for an alleged impeachable offence:

- Three MPs or three Senators, acting pursuant to a petition that has been signed by at least 1,000 persons on the Voters List (signatures authenticated by a JP)**
- The Auditor-General**
- The DPP**
- The Chairman or any other member of the Integrity Commission, its Director of Investigations or its Director of Corruption Prosecutions**
- The Director of Elections**
- The Political Ombudsman**
- The Chairman of any Commission of Enquiry**

Composition of the Impeachment Committee

The Impeachment Committee has 7 members:

- President of the Senate (Chairman)**
- Two MPs appointed by the Prime Minister**
- Two MPs appointed by the Leader of Opposition**
- One Senator appointed by the Prime Minister**
- One Senator appointed by the Leader of Opposition**

Functions of the Impeachment Committee

- Considers complaints alleging that a MP/Senator has committed an impeachable offence
- Holds hearings (open to the public) to determine if there is a *prima facie* case that an impeachable offence has been committed
- Where a *prima facie* case has been established, the Impeachment Committee prepares the Articles of Impeachment to go to the Impeachment Tribunal for adjudication

Composition of the Impeachment Tribunal

The Impeachment Tribunal has 5 members, who are appointed by the Governor

General:

- One member appointed on the advice of the Prime Minister**
- One member appointed on the advice of the Leader of Opposition**
- Three members appointed after GG has consulted with the above two members**
- Two of these three members must be qualified to hold (or have held) the office of a Judge of the Supreme Court or Court of Appeal**

Members of either House of Parliament are not eligible to be appointed to the Impeachment Tribunal

Role of the Impeachment Tribunal & then Parliament

The Impeachment Tribunal:

- **Receives the Articles of Impeachment**
- **Conducts a hearing (open to the public)**
- **Determines whether the MP/Senator has committed an impeachable offence**
- **Recommends the appropriate penalty, if they determine that the MP/Senator has committed an impeachable offence**

If found guilty, the penalties may be any one or more of the following:

- **Censure of the MP/Senator**
- **Removal of the MP/Senator from the House of Representatives or the Senate, and/or removal from an office held by the MP/Senator**
- **Disqualification of the MP/Senator from holding any other public office**

The House of Representatives or the Senate may then (by majority vote) affirm, modify or dismiss the recommendations of the Impeachment Tribunal. A MP/Senator who has been impeached may still face prosecution for a criminal offence.

The Impeachment Process



Impeachment Committee

The 7-person Impeachment Committee meets to consider the request (the meeting is open to the public) and decides whether there is a *prima facie* case for impeachment. Unless at least 5 members decide that there is no *prima facie* case of an impeachment offence, the Articles of Impeachment are prepared and sent to the Impeachment Tribunal.

Penalties

The penalties recommended by the Impeachment Tribunal may be the censure of the MP/Senator, the removal of the MP/Senator from the House of Representatives/Senate and/or the removal of the MP/Senator from any public office he/she holds.

Final Decision

The House of Representatives/Senate then passes a resolution (by majority vote) whether to affirm, modify or dismiss the penalty recommended by the Impeachment Tribunal. If a recommendation of removal is affirmed, the MP/Senator thereupon ceases to be a MP/Senator and his/her seat becomes vacant.

STEP

01

The Request

Request sent to Parliament for impeachment of a MP/Senator for an alleged impeachment offence (see slide 5 above)

STEP

02

Impeachment Tribunal

The 5-person Impeachment Tribunal conducts a hearing (open to the public) to determine whether the MP/Senator has committed an impeachment offence, and (if at least 3 of the 5 find him/her guilty) recommends the appropriate penalty to the House of Parliament in which the MP/Senator sits.

STEP

03

STEP

04

STEP

05

relation or from
point of view.
Impeachment
charge of miscon
of a public office
crime against the
right for what is