

WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1972

ENROLLED

SENATE BILL NO. 2

(By Mr. McCourt (Mr. President)
and Mr. Hubbard

PASSED June 8 1972

In Effect from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 6-28-72

2
#

ENROLLED
Senate Bill No. 2

(By MR. McCOURT, MR. PRESIDENT, and MR. HUBBARD)

[Passed June 8, 1972; in effect from passage.]

AN ACT to repeal sections twenty-one and twenty-two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections nineteen and twenty of said article, relating to the suspension, demotion and discharge of members of the department of public safety; abolishing the board of commissioners of the department of public safety and creating a board of appeals for said department; relating to the rights of replacement appointees to said department; specifying that the right to appeal a suspension or discharge shall not apply to members who have not completed their probationary period with the department of public safety; relating to the appointment, qualifications, terms, compensation and expenses of the members of the board of appeals; relating to the composition of and vacancies on said board of appeals; relating to the powers and duties of said board of appeals; relating to appeals to said board of appeals; relating to appeal hearings by said board of appeals and decisions following such hearings; providing for judicial review of a decision by the board of appeals; and relating to the effect of reversal of a decision of the board of appeals which sustained the superintendent's order.

Be it enacted by the Legislature of West Virginia:

That sections twenty-one and twenty-two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections nineteen and twenty of said article be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-19. Suspension, demotion or discharge of members.

1 The superintendent may suspend, demote in rank or

2 discharge from the service any member of the department
3 of public safety for any of the following causes: Refusing
4 to obey the orders of his superior officer, neglect of duty,
5 drunkenness, immorality, inefficiency, abuse of his au-
6 thority, interference with the lawful right of any person,
7 participation in political activities, primaries, conventions
8 or elections, or any other cause which may in the opinion
9 of the superintendent be necessary for the good of the
10 service. The superintendent shall cause an investigation
11 to be made when notice of any one or more of such
12 causes is brought to his attention and shall determine
13 whether or not the member should be suspended, demoted
14 in rank or discharged. If the superintendent orders the
15 member suspended, demoted in rank or discharged, a
16 written statement of the charges and a written order of
17 suspension, demotion in rank or discharge shall be de-
18 livered personally to the member by his commanding
19 officer, or next in command in the absence of his com-
20 manding officer. The superintendent shall explicitly set
21 forth in any such written statement of charges the details
22 giving rise to the cause or causes upon which he ordered
23 such suspension, demotion in rank or discharge. The
24 member may appeal the superintendent's order to the
25 board of appeals created for such purpose, and all of the
26 original papers in such cases shall be delivered by the
27 superintendent to such board, which shall decide such
28 cases in the manner hereinafter provided.

29 Any person who shall by the superintendent be ap-
30 pointed to membership in said department as a replace-
31 ment appointee, pursuant to section two, article eleven,
32 chapter six of this code, may at any time be discharged at
33 the will and pleasure of the superintendent without the
34 assignment of cause and without right of appeal to the
35 board of appeals.

36 The right of a member to appeal a suspension or dis-
37 charge shall not apply to members until they have com-
38 pleted their probationary period with said department of
39 public safety. Except in cases of emergency, no member
40 of the department shall be transferred without having
41 received at least eight days' notice of such transfer.

§15-2-20. Board of appeals created; members, powers and duties; appeal, hearing and decision.

1 The board of commissioners, heretofore created in
2 this article, is hereby abolished, and there is hereby
3 created a board of appeals composed of five members
4 appointed by the governor, by and with the advice and
5 consent of the Senate. Each member shall serve for a
6 term of five years, except of the members first appointed,
7 one shall be appointed for a term ending the thirtieth
8 day of June, one thousand nine hundred seventy-three,
9 and one each for terms ending one, two, three and four
10 years thereafter. Vacancies shall be filled for the un-
11 expired term by appointment of the governor, by and
12 with the advice and consent of the Senate. Members
13 shall be residents of the state and no more than three
14 shall be members of the same political party. A mem-
15 ber shall hold no other office (other than the office of
16 notary public) or employment under this state during
17 his term, and a member may be reappointed on the ex-
18 piration of his term.

19 As soon as practical after appointment of the board, the
20 members shall convene on call of the governor and there-
21 upon and annually thereafter elect a chairman and such
22 other officers as the board deems necessary. All other
23 meetings of the board shall be on call of the chairman.

24 Each member of the board shall be paid, from appro-
25 priations to the department, the sum of fifty dollars per
26 day for each day necessarily employed in the discharge
27 of his duties as a member of the board, and, in addition
28 thereto, he shall be reimbursed for all reasonable and
29 necessary expenses actually incurred in attending meet-
30 ings of the board.

31 Other than the annual meeting for the purpose of elect-
32 ing a chairman and other officers, the board shall not meet
33 except for the purpose of hearing and considering appeals
34 to it by members of the department.

35 Within fifteen days after a member of the department
36 has received a statement of charges and an order of sus-
37 pension, demotion in rank or discharge by the super-

38 intendent, he may appeal the order to the board by filing
39 with the board, or any of its members, a written notice
40 of appeal. Upon receipt of a notice of appeal, the board
41 shall immediately notify the superintendent by sending
42 him a copy of the notice of appeal and set a date and time
43 for a hearing on the appeal. The hearing shall be set
44 within thirty days after the board has received a member's
45 notice of appeal and the superintendent and member ap-
46 pealing shall be notified by the board of the date and
47 time at least fifteen days prior to the hearing.

48 Any member of the department who timely files a
49 notice of appeal, as aforesaid, may be represented by an
50 attorney or by any member of the department or retired
51 member who is receiving benefits from the death, dis-
52 ability and retirement fund of the department. The super-
53 intendent may be represented by counsel of his choice and
54 has the burden of proof at the hearing as to the charges
55 which he had found to be the cause or causes for his
56 order of suspension, demotion in rank or discharge. The
57 procedure in any hearing before the board shall be in-
58 formal and without adherence to the technical rules of
59 evidence required in proceedings in courts of record. All
60 evidence submitted to the board shall be submitted under
61 oath. The chairman, or any member of the board, shall
62 have authority to administer oaths to witnesses present-
63 ing testimony at a hearing. The board shall designate a
64 reporter for any such hearing who shall report and
65 transcribe all of the proceedings. The accused member
66 may demand a public hearing on the charges, and in the
67 absence of such a demand, the board may determine
68 whether or not the hearing should be public. Any hear-
69 ing may be continued, recessed or adjourned by the
70 board.

71 The superintendent shall provide reasonable office and
72 filing space for use of the board, routine secretarial and
73 clerical assistance and appropriate space for the conduct of
74 hearings. The charges of the reporter in transcribing any
75 hearing shall be paid by the superintendent from avail-
76 able appropriations. At the conclusion of the hearing by
77 the board, the board shall determine whether or not the

78 superintendent's order shall be sustained. The board's
79 decision shall be issued in writing, with copies thereof
80 being sent by the board to the superintendent and to the
81 appealing member by certified mail, return receipt re-
82 quested. The member or the superintendent of the de-
83 partment may appeal a decision of the board to the
84 circuit court of Kanawha county within sixty days of
85 receipt of a copy of the board's decision, and the court
86 shall hear the appeal upon the record and determine all
87 questions submitted to it on appeal from the decision of
88 the board. In the event any decision sustaining the
89 superintendent's order is reversed upon judicial review,
90 which reversal is final, the superintendent shall return the
91 member to his status prior to the superintendent's order,
92 with full payment of any compensation withheld and with
93 full credit for service between the date the superintendent
94 issued his order and the date of the final judicial decision
95 reversing the decision of the board.

96 A hearing shall be conducted by at least three members
97 of the board and the decision of the board shall be made
98 by a majority vote of all of the members of the board.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Justice G. Beall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard W. Garmon
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

George B. East
President of the Senate

Lewis H. McMann
Speaker House of Delegates

The within approved this the 26th
day of June, 1972.

Hubert A. Sasser, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 6/14/72

Time 2:55 p.m.

RECEIVED

JUN 28 5 03 PM '72

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA