WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

SENATE BILL NO. 387

(By Mr. Kizer and Mr. Davis)

PASSED March 4, 1974

In Effect Seven Days from Passage

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3-9-74
ENROLLED

Senate Bill No. 387
(By Mr. Kuzic and Mr. Davis)

[Passed March 4, 1974; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-five, article fifteen of said chapter, all relating to removal, discharge, suspension, reduction in rank or pay, appeal and reduction in number of members of police and fire departments and providing that members of such departments shall have the right to appeal any suspension.

Be it enacted by the Legislature of West Virginia:

That section twenty, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-five, article fifteen of said chapter be amended and reenacted, all to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-20. Removal, discharge, suspension of reduction in rank or pay; appeal; reduction in number of members.

1 (a) No member of any paid police department subject to the civil service provisions of this article shall be re-
moved, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section nineteen of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the policemen's civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer," to show just cause for his action, and in the event the removing officer fails to show just cause for his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain the action of the removing officer, the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the city or the major portion of the territory thereof is located. In the event that the com-
mission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court’s decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court’s decision, as in other civil cases. Such member or removing officer shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any Class I or Class II city to reduce the number of paid members of its paid police department, said city shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid police department of said city shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid police department. Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid police department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid police department shall be made.
ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-25. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section twenty-four of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the firemen's civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer," to show just cause for his action, and in the event the removing officer fails to show just cause for his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.
(b) In the event that the commission shall sustain the action of the removing officer the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the municipality or the major portion of the territory thereof is located. In the event that the commission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court’s decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court’s decision, as in other civil cases. Such member or removing officer shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall be deemed necessary by any such municipality to reduce the number of paid members of its paid fire department, said municipality shall follow the procedure set forth in this subsection (d). The reduction in members of the said paid fire department of said municipality shall be effected by suspending the last man or men, including probationers, who have been appointed to said paid fire department.
Such removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid fire department shall again be increased in numbers to the strength existing prior to such reduction of members the said members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointment to said paid fire department shall be made.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 9th day of March, 1974.

Governor