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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

—●—
ENROLLED

SENATE BILL NO. 387

(By Mr. Kessie and Mr. Davis)

—●—
PASSED March 4, 1974

In Effect Penalty Sanction Passage



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

387

ENROLLED

Senate Bill No. 387

(By Mr. KUSIC 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
- 2 to the civil service provisions of this article shall be re-

3 moved, discharged, suspended or reduced in rank or pay
4 except for just cause, which shall not be religious or poli-
5 tical, except as hereinbefore provided in section nine-
6 teen of this article; and no such member shall be re-
7 moved, discharged, suspended or reduced except as pro-
8 vided by the civil service provisions of this article, and in
9 no event until he shall have been furnished with a writ-
10 ten statement of the reasons for such action. In every
11 case of such removal, discharge, suspension or reduction,
12 a copy of the statement of reasons therefor and of the
13 written answer thereto, if the member sought to be re-
14 moved, discharged, suspended or reduced desires to file
15 such written answer, shall be furnished to the police-
16 men's civil service commission and entered upon its rec-
17 ords. If the member sought to be removed, discharged,
18 suspended or reduced shall demand it, the commission
19 shall grant him a public hearing, which hearing shall be
20 held within a period of ten days from the filing of the
21 charges in writing or the written answer thereto, which-
22 ever shall last occur. At such hearing the burden shall
23 be upon the removing, discharging, suspending or re-
24 ducing officer, hereinafter in this section referred to as
25 "removing officer," to show just cause for his action, and in
26 the event the removing officer fails to show just cause for
27 his action before the commission, then the member re-
28 moved, discharged, suspended or reduced shall be reinstat-
29 ed with full pay, forthwith and without any additional or-
30 der, for the entire period during which he may have been
31 prevented from performing his usual employment, and no
32 charges shall be officially recorded against his record.
33 A written record of all testimony taken at such hearing
34 shall be kept and preserved by the commission, which
35 record shall be sealed and not be open to public inspec-
36 tion, if no appeal be taken from the action of the com-
37 mission.

38 (b) In the event that the commission shall sustain
39 the action of the removing officer, the member removed,
40 discharged, suspended or reduced shall have an im-
41 mediate right of appeal to the circuit court of the
42 county wherein the city or the major portion of the
43 territory thereof is located. In the event that the com-

44 mission shall reinstate the member removed, discharged,
45 suspended or reduced, the removing officer shall have
46 an immediate right of appeal to said circuit court. Any
47 appeal must be taken within ninety days from the date
48 of entry by the commission of its final order; upon an
49 appeal being taken and docketed with the clerk of
50 the circuit court of said county, the circuit court shall
51 proceed to hear the appeal upon the original record
52 made before the commission and no additional proof shall
53 be permitted to be introduced. The circuit court's decision
54 shall be final, but the member or removing officer, as the
55 case may be, against whom the decision of the circuit court
56 is rendered shall have the right to petition the supreme
57 court of appeals for a review of the circuit court's decision,
58 as in other civil cases. Such member or removing officer
59 shall also have the right, where appropriate, to seek in lieu
60 of an appeal, a writ of mandamus.

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

65 (d) If for reasons of economy or other reasons it
66 shall be deemed necessary by any Class I or Class II
67 city to reduce the number of paid members of its paid
68 police department, said city shall follow the procedure
69 set forth in this subsection (d). The reduction in mem-
70 bers of the said paid police department of said city shall
71 be effected by suspending the last man or men, including
72 probationers, who have been appointed to said paid po-
73 lice department. Such removal shall be accomplished by
74 suspending the number desired in the inverse order of
75 their appointment: *Provided*, That in the event the said
76 paid police department shall again be increased in num-
77 bers to the strength existing prior to such reduction of
78 members the said members suspended under the terms
79 of this subsection shall be reinstated in the inverse order
80 of their suspension before any new appointment to said
81 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.

1 (a) No member of any paid fire department subject
2 to the civil service provisions of this article shall be re-
3 moved, discharged, suspended or reduced in rank or pay
4 except for just cause, which shall not be religious or po-
5 litical, except as hereinbefore provided in section twenty-
6 four of this article; and no such member shall be re-
7 moved, discharged, suspended or reduced except as pro-
8 vided by the civil service provisions of this article, and
9 in no event until he shall have been furnished with a
10 written statement of the reasons for such action. In every
11 case of such removal, discharge, suspension or reduction,
12 a copy of the statement of reasons therefor and of the
13 written answer thereto, if the member sought to be re-
14 moved, discharged, suspended or reduced desires to file
15 such written answer, shall be furnished to the firemen's
16 civil service commission and entered upon its records.
17 If the member sought to be removed, discharged, sus-
18 pended or reduced shall demand it, the commission shall
19 grant him a public hearing, which hearing shall be held
20 within a period of ten days from the filing of the charges
21 in writing or the written answer thereto, whichever shall
22 last occur. At such hearing the burden shall be upon the
23 removing, discharging, suspending or reducing officer,
24 hereinafter in this section referred to as "removing offi-
25 cer," to show just cause for his action, and in the event the
26 removing officer fails to show just cause for his action be-
27 fore the commission, then the member removed, dis-
28 charged, suspended or reduced shall be reinstated with full
29 pay, forthwith and without any additional order, for the en-
30 tire period during which he may have been prevented
31 from performing his usual employment, and no charges
32 shall be officially recorded against his record. A written
33 record of all testimony taken at such hearing shall be kept
34 and preserved by the commission, which record shall be
35 sealed and not be open to public inspection, if no appeal
36 be taken from the action of the commission.

37 (b) In the event that the commission shall sustain the
38 action of the removing officer the member removed, dis-
39 charged, suspended or reduced shall have an immediate
40 right of appeal to the circuit court of the county wherein
41 the municipality or the major portion of the territory
42 thereof is located. In the event that the commission shall
43 reinstate the member removed, discharged, suspended or
44 reduced, the removing officer shall have an immediate
45 right of appeal to said circuit court. Any appeal must be
46 taken within ninety days from the date of entry by the
47 commission of its final order; upon an appeal being taken
48 and docketed with the clerk of the circuit court of said
49 county, the circuit court shall proceed to hear the appeal
50 upon the original record made before the commission and
51 no additional proof shall be permitted to be introduced.
52 The circuit court's decision shall be final, but the member
53 or removing officer, as the case may be, against whom
54 the decision of the circuit court is rendered shall have the
55 right to petition the supreme court of appeals for a re-
56 view of the circuit court's decision, as in other civil cases.
57 Such member or removing officer shall also have the right,
58 where appropriate, to seek in lieu of an appeal, a writ of
59 mandamus.

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

64 (d) If for reasons of economy or other reasons it shall
65 be deemed necessary by any such municipality to reduce
66 the number of paid members of its paid fire department,
67 said municipality shall follow the procedure set forth in
68 this subsection (d). The reduction in members of the said
69 paid fire department of said municipality shall be effected
70 by suspending the last man or men, including probation-
71 ers, who have been appointed to said paid fire department.

72 Such removal shall be accomplished by suspending the
73 number desired in the inverse order of their appointment:
74 *Provided*, That in the event the said paid fire department
75 shall again be increased in numbers to the strength exist-
76 ing prior to such reduction of members the said members
77 suspended under the terms of this subsection shall be
78 reinstated in the inverse order of their suspension before
79 any new appointment to said paid fire department shall be
80 made.

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

H. Warral Warral
Chairman Senate Committee

Florence M. Churton
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Haward W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. T. Brotherton Jr.
President of the Senate

Lewis J. H. Hennis
Speaker House of Delegates

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

And A. Thane Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/5/74
Time 4:38 p.m.