

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-15-79

Time 9:15 A.M.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979



ENROLLED

Committee Substitute for

SENATE BILL NO. 473

(By Mr. *Brotherton, Mr. President*)



PASSED March 8, 1979

In Effect from Passage



NO. 413

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 473

(MR. BROTHERTON, MR. PRESIDENT, *original sponsor*)

[Passed March 8, 1979; in effect from passage.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety generally; creating procedures for appeals, convening appeals boards and selection of board members by lot; authorizing members of the appeals boards to administer oaths; subpoena witness and require the production of books and records; no liability for testimony; and providing for contempt proceedings.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-6. Departmental appeals boards; appeal procedures.

1 Appeals of transfers, suspensions, demotions in rank and
2 discharges shall be heard by boards of appeals convened
3 pursuant to the provisions of this section. The boards shall
4 each consist of seven members and five members shall
5 constitute a quorum. A new board shall be convened to
6 hear and determine each new appeal filed by a member
7 of the department. There may be more than one board
8 in existence at the same time meeting on different appeals.
9 A member of the retirement board is eligible to serve on
10 an appeals board.

11 The members of a board shall be chosen by lot by the
12 superintendent with one member to be so chosen from
13 among all the members of each of the seven ranks of
14 trooper through lieutenant, inclusive. No department
15 member may serve on an appeals board if his rank is the
16 same, or if he is a member of the same detachment, as the
17 member making the appeal. If the person making the
18 appeal is a member of one of the ranks of lieutenant
19 through trooper, inclusive, then a captain shall be chosen
20 by lot from among all members of that rank to serve on
21 the board. Within ten days after he has been notified of
22 his selection and assignment to serve on a board, a mem-
23 ber may for cause request to be relieved of such assign-
24 ment. The superintendent shall determine whether the
25 reasons alleged by the member are sufficient cause to re-
26 lieve the member of such assignment. If such request is
27 granted by the superintendent, a new board member shall
28 be selected by lot from the same rank to replace the mem-
29 ber who has been relieved of such assignment.

30 A chairman shall be selected by the members of the
31 board. Each member of a board shall be reimbursed for all
32 reasonable and necessary expenses actually incurred in
33 attending meetings of a board. All expenses of a board
34 shall be paid from appropriations to the department.

35 Within fifteen days after a member of the department
36 has received a notice of transfer or a statement of charges
37 and an order of suspension, demotion in rank or discharge
38 by the superintendent, he may appeal the transfer
39 or order to an appeals board by filing a written
40 notice of appeal with the superintendent. The super-
41 intendent shall promptly record and file each appeal,
42 select a board, notify each new board member of his
43 selection, and furnish to each board member a copy of the
44 notice or order appealed from and the notice of appeal. A
45 hearing by a board of appeals shall be held within thirty
46 days after the superintendent has received a member's
47 notice of appeal. At least fifteen days prior to the hearing
48 date, the board shall notify the superintendent and the
49 member making the appeal of the date, time and place of
50 the hearing.

51 Any member of the department who makes such an
52 appeal, as aforesaid, may be represented by an attorney or
53 by any member of the department or retired member who
54 is receiving benefits from the death, disability and retire-
55 ment fund. The superintendent may be represented by
56 counsel of his choice. In the appeal of a transfer, the mem-
57 ber has the burden of proof that the transfer is not for the
58 purpose of the operational needs of the department. In
59 any other appeal the superintendent has the burden of
60 proof as to the charges alleged. The procedure in any
61 hearing before the board shall be informal and without
62 adherence to the technical rules of evidence required in
63 proceedings in courts of record. All evidence submitted to
64 the board shall be submitted under oath. The chairman,
65 or any member of the board, shall have authority to ad-
66 minister oaths to witnesses, subpoena witnesses and com-
67 pel the production of books and papers pertinent to any
68 appeal or hearing authorized by this section.

69 If any person subpoenaed to appear at any appeal or
70 hearing shall refuse to appear, or shall refuse to answer
71 inquiries propounded at the appeal or hearing or shall fail
72 or refuse to produce books and papers which have been
73 subpoenaed which are pertinent to any appeal or hearing
74 authorized by this section, the board shall report the facts
75 to the circuit court of Kanawha County or the circuit
76 court of any county in which the hearing is being con-
77 ducted and such court may compel obedience to the sub-
78 poena as though such subpoena had been issued by such
79 court in the first instance. A person giving testimony at
80 an appeal or hearing authorized by this section shall not
81 be liable for such testimony given in good faith and with-
82 out malicious intent.

83 The board shall designate a reporter for any such hear-
84 ing who shall record and transcribe all the proceedings.
85 Upon his demand, the member making the appeal shall
86 have a public hearing on the charges and in the absence
87 of such demand, the board may determine whether or not
88 the hearing should be public. Any hearing may be con-
89 tinued, recessed or adjourned by the board.

90 The superintendent shall provide reasonable space for

91 the conduct of hearings. The charges of the reporter shall
92 be paid by the superintendent from available appropria-
93 tions. At the conclusion of the hearing, the board shall
94 determine whether or not the superintendent's order shall
95 be sustained. The board's decision shall be issued in writ-
96 ing, with copies thereof being sent by the board to the
97 superintendent and to the appealing member by certified
98 mail, return receipt requested. A hearing shall be con-
99 ducted by at least five members of the board and the de-
100 cision of the board shall be made by the majority vote of
101 all the members of the board.

102 Either party aggrieved by a decision of a board of
103 appeals may appeal the decision to the circuit court of
104 Kanawha County within sixty days of receipt of a copy
105 of the board's decision.

106 The court shall hear the appeal upon the record and
107 determine all questions submitted to it on appeal.

108 In the event any decision sustaining the superintend-
109 ent's order or notice is reversed upon judicial review,
110 which reversal is final, the superintendent shall return
111 the member to his status prior to the superintendent's
112 order or notice, with full payment of any compensation
113 withheld and with full credit for service between the date
114 the superintendent issued his order or notice and the date
115 of the final judicial decision reversing the decision of the
116 board.

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

James L. Davis
Chairman Senate Committee

Lawrence C. Christman
Chairman House Committee

Originated in the Senate.

To take effect from passage.

John McLaughlin
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. T. Bullock
President of the Senate

Clayton M. Lee
Speaker House of Delegates

The within approved this the 15
day of March, 1979

John D. Roper
Governor

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