APPROVED AND SIGNED BY THE GOVERNOR

Date  3-24-80
Time  11:45 a.m.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

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ENROLLED

HOUSE BILL No. 1026

(By Mr. Tompkins)

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Passed  March 8, 1980
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 the removal, discharge, suspension or reduction in rank or pay of members of police and fire departments; appeals; attorney fees; reduction in number of members.

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 or 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 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 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. The member, if reinstated or exonerated, shall, if represented by legal counsel, be awarded an attorney fee of no more than two hundred fifty dollars and such fee shall be determined by the commission and paid by the governing body. 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 where in the city 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. The member, if reinstated or exonerated by the circuit court, shall, if represented by legal counsel, be awarded an attorney fee not to exceed five hundred dollars, and if reinstated or exonerated by the supreme court of appeals, shall be awarded an attorney fee not to exceed five hundred dollars, and such fees shall be paid by the governing body: Provided, That the aggregate amount of attorney fees awarded by the commission, the circuit court, and the supreme court of appeals, shall not exceed one thousand dollars for any member litigant.

(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 DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.

§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, dis-
charged, suspended or reduced in rank or pay except for just
cause, which shall not be religious or political, except as here-
inbefore 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, discharg-
ed, 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 be-
fore the commission, then the member removed, discharged,
suspended or reduced shall be reinstated with full pay, forth-
with 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. The member, if reinstated or exonerated,
shall, if represented by legal counsel, be awarded an attorney
fee of no more than two hundred fifty dollars and such fee shall
be determined by the commission and paid by the governing
body. 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 ap­
peal 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, dis­
charged, suspended or reduced shall have an immediate right
of appeal to the circuit court of the county wherein the munici­
pality or the major portion of the territory thereof is located. In
the event that the commission shall reinstate the member re­
moved, 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 addi­
tional proof shall be permitted to be introduced. The circuit
court's decision shall be final, but the member or removing of­
c­icer, as the case may be, against whom the decision of the cir­
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. The member, if
reinstated or exonerated by the circuit court, shall, if repre­
sented by legal counsel, be awarded an attorney fee not to ex­
ceed five hundred dollars, and if reinstated or exonerated by
the supreme court of appeals, shall be awarded an attorney fee
not to exceed five hundred dollars, and such fees shall be paid
by the governing body: Provided, That the aggregate amount
of attorney fees awarded by the commission, the circuit court,
and the supreme court of appeals shall not exceed one thou­
sand dollars for any member litigant.
(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.

James L. Davis  
Chairman Senate Committee

Chas. E. Christopherson  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Wilkerson  
Clerk of the Senate

Charles E. Raker  
Clerk of the House of Delegates

W. T. Bethel  
President of the Senate

J. Millard Tawes  
Speaker House of Delegates

The within __________ this the __________ day of __________, 1980.

John R. Robb  
Governor
RECEIVED
MAR 20 10 04 AM '80
OFFICE OF THE GOVERNOR