

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-24-80

Time 11:45 a.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980



ENROLLED

HOUSE BILL No. 1026

(By Mr. Tompkins)



Passed March 8, 1980

In Effect Ninety Days From Passage



No: 1026

ENROLLED

H. B. 1026

(By MR. TOMPKINS)

[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
- 2 the civil service provisions of this article shall be removed,
- 3 discharged, suspended or reduced in rank or pay except for

4 just cause, which shall not be religious or political, except as
5 hereinbefore provided in section nineteen of this article; and
6 no such member shall be removed, discharged, suspended or
7 reduced except as provided by the civil service provisions of
8 this article, and in no event until he shall have been furnished
9 with a written statement of the reasons for such action. In
10 every case of such removal, discharge, suspension or reduction,
11 a copy of the statement of reasons therefor and of the
12 written answer thereto, if the member sought to be removed,
13 discharged, suspended or reduced desires to file such written
14 answer, shall be furnished to the policemen's civil service
15 commission and entered upon its records. If the member
16 sought to be removed, discharged, suspended or reduced shall
17 demand it, the commission shall grant him a public hearing,
18 which hearing shall be held within a period of ten days from
19 the filing of the charges in writing or the written answer
20 thereto, whichever shall last occur. At such hearing the
21 burden shall be upon the removing, discharging, suspending
22 or reducing officer, hereinafter in this section referred to
23 as "removing officer," to show just cause for his action,
24 and in the event the removing officer fails to show just
25 cause for his action before the commission, then the member
26 removed, discharged, suspended or reduced shall be reinstated
27 with full pay, forthwith and without any additional order,
28 for the entire period during which he may have been pre-
29 vented from performing his usual employment, and no charges
30 shall be officially recorded against his record. The member, if
31 reinstated or exonerated, shall, if represented by legal counsel,
32 be awarded an attorney fee of no more than two hundred fifty
33 dollars and such fee shall be determined by the commission
34 and paid by the governing body. A written record of all testi-
35 mony taken at such hearing shall be kept and preserved by the
36 commission, which record shall be sealed and not be open
37 to public inspection, if no appeal be taken from the action
38 of the commission.

39 (b) In the event that the commission shall sustain the ac-
40 tion of the removing officer, the member removed, discharged,
41 suspended or reduced shall have an immediate right of appeal
42 to the circuit court of the county where in the city or the
43 major portion of the territory thereof is located. In the event

44 that the commission shall reinstate the member removed,
45 discharged, suspended or reduced, the removing officer shall
46 have an immediate right of appeal to said circuit court. Any
47 appeal must be taken within ninety days from the date of
48 entry by the commission of its final order; upon an appeal
49 being taken and docketed with the clerk of the circuit court
50 of said county, the circuit court shall proceed to hear the
51 appeal upon the original record made before the commission
52 and no additional proof shall be permitted to be introduced
53 The circuit court's decision shall be final, but the member or
54 removing officer, as the case may be, against whom the
55 decision of the circuit court is rendered shall have the right
56 to petition the supreme court of appeals for a review of the
57 circuit court's decision, as in other civil cases. Such member
58 or removing officer shall also have the right, where appro-
59 priate, to seek in lieu of an appeal, a writ of mandamus. The
60 member, if reinstated or exonerated by the circuit court, shall,
60 if represented by legal counsel, be awarded an attorney fee not
61 to exceed five hundred dollars, and if reinstated or exonerated
62 by the supreme court of appeals, shall be awarded an attorney
63 fee not to exceed five hundred dollars, and such fees shall be
64 paid by the governing body: *Provided*, That the aggregate
65 amount of attorney fees awarded by the commission, the cir-
66 cuit court, and the supreme court of appeals, shall not exceed
67 one thousand dollars for any member litigant.

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

72 (d) If for reasons of economy or other reasons it shall
73 be deemed necessary by any Class I or Class II city to re-
74 duce the number of paid members of its paid police depart-
75 ment, said city shall follow the procedure set forth in this
76 subsection (d). The reduction in members of the said paid
77 police department of said city shall be effected by suspending
78 the last man or men, including probationers, who have been
79 appointed to said paid police department. Such removal shall
80 be accomplished by suspending the number desired in the
81 inverse order of their appointment: *Provided*, That in the

82 event the said paid police department shall again be increased
83 in numbers to the strength existing prior to such reduction
84 of members the said members suspended under the terms of
85 this subsection shall be reinstated in the inverse order of
86 their suspension before any new appointment to said paid
87 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.**

1 (a) No member of any paid fire department subject to the
2 civil service provisions of this article shall be removed, dis-
3 charged, suspended or reduced in rank or pay except for just
4 cause, which shall not be religious or political, except as here-
5 inbefore provided in section twenty-four of this article; and
6 no such member shall be removed, discharged, suspended or
7 reduced except as provided by the civil service provisions of
8 this article, and in no event until he shall have been furnished
9 with a written statement of the reasons for such action. In
10 every case of such removal, discharge, suspension or reduction,
11 a copy of the statement of reasons therefor and of the written
12 answer thereto, if the member sought to be removed, discharg-
13 ed, suspended or reduced desires to file such written answer,
14 shall be furnished to the firemen's civil service commission
15 and entered upon its records. If the member sought to be
16 removed, discharged, suspended or reduced shall demand it,
17 the commission shall grant him a public hearing, which
18 hearing shall be held within a period of ten days from the
19 filing of the charges in writing or the written answer thereto,
20 whichever shall last occur. At such hearing the burden shall
21 be upon the removing, discharging, suspending or reducing
22 officer, hereinafter in this section referred to as "removing
23 officer" to show just cause for his action, and in the event the
24 removing officer fails to show just cause for his action be-
25 fore the commission, then the member removed, discharged,
26 suspended or reduced shall be reinstated with full pay, forth-
27 with and without any additional order, for the entire period
28 during which he may have been prevented from performing his

29 usual employment, and no charges shall be officially recorded
30 against his record. The member, if reinstated or exonerated,
31 shall, if represented by legal counsel, be awarded an attorney
32 fee of no more than two hundred fifty dollars and such fee shall
33 be determined by the commission and paid by the governing
34 body. A written record of all testimony taken at such hearing
35 shall be kept and preserved by ~~the~~^{the} commission, which record
36 shall be sealed and not be open to public inspection, if no ap-
37 peal be taken from the action of the commission.

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38 (b) In the event that the commission shall sustain the
39 action of the removing officer the member removed, dis-
40 charged, suspended or reduced shall have an immediate right
41 of appeal to the circuit court of the county wherein the munici-
42 pality or the major portion of the territory thereof is located. In
43 the event that the commission shall reinstate the member re-
44 moved, discharged, suspended or reduced, the removing officer
45 shall have an immediate right of appeal to said circuit court.
46 Any appeal must be taken within ninety days from the date of
47 entry by the commission of its final order; upon an appeal being
48 taken and docketed with the clerk of the circuit court of said
49 county, the circuit court shall proceed to hear the appeal upon
50 the original record made before the commission and no addi-
51 tional proof shall be permitted to be introduced. The circuit
52 court's decision shall be final, but the member or removing of-
53 ficer, as the case may be, against whom the decision of the cir-
54 cuit court is rendered shall have the right to petition the
55 supreme court of appeals for a review of the circuit court's
56 decision, as in other civil cases. Such member or removing
57 officer shall also have the right, where appropriate, to seek
58 in lieu of an appeal, a writ of mandamus. The member, if
59 reinstated or exonerated by the circuit court, shall, if repre-
60 sented by legal counsel, be awarded an attorney fee not to ex-
61 ceed five hundred dollars, and if reinstated or exonerated by
62 the supreme court of appeals, shall be awarded an attorney fee
63 not to exceed five hundred dollars, and such fees shall be paid
64 by the governing body: *Provided*, That the aggregate amount
65 of attorney fees awarded by the commission, the circuit court,
66 and the supreme court of appeals shall not exceed one thou-
67 sand dollars for any member litigant.

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

72 (d) If for reasons of economy or other reasons it shall
73 be deemed necessary by any such municipality to reduce the
74 number of paid members of its paid fire department, said
75 municipality shall follow the procedure set forth in this
76 subsection (d). The reduction in members of the said paid
77 fire department of said municipality shall be effected by
78 suspending the last man or men, including probationers who
79 have been appointed to said paid fire department. Such
80 removal shall be accomplished by suspending the number de-
81 sired in the inverse order of their appointment: *Provided,*
82 That in the event the said paid fire department shall again
83 be increased in numbers to the strength existing prior to such
84 reduction of members the said members suspended under the
85 terms of this subsection shall be reinstated in the inverse order
86 of their suspension before any new appointment to said paid
87 fire department shall be made.

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

James L. Davis
Chairman Senate Committee

Clarence C. Christensen
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Todd C. Mills
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W.P. Bohannon Jr.
President of the Senate

Clayton M. Lee Jr.
Speaker House of Delegates

The within is approved this the 24
day of March, 1980.

John D. Ralston
Governor

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OFFICE OF THE GOVERNOR

DEPT. OF STATE

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