WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 1

(By Mr. Boettner)

PASSED April 3, 1982
In Effect ninety days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 1
(BY MR. BOETTNER, original sponsor)

[Passed April 3, 1982; in effect ninety days from passage.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-a, relating to municipal police officers and firemen generally; providing for a procedure concerning punitive actions; providing for appointment of a hearing board; providing for the duties of the circuit judge with respect thereto; defining certain terms relative to the investigation of a police officer or fireman; requiring an interrogation of a police officer or fireman be conducted at a reasonable hour; stipulating that a police officer or fireman must be informed of the nature of any investigation against him; prohibiting the act of subjecting an officer or fireman under interrogation to offensive language; requiring all interrogations of police officers or firemen to be recorded; granting a police officer or fireman the right to counsel when upon filing formal written charges against him or when an interrogation may lead to punitive action; providing a hearing procedure for police officers or firemen if punitive action is recommended from an interrogation or investigation; requiring notification by the police department or fire department to the police officer or fireman that he is entitled to a hearing; granting the hearing board power of subpoena; granting police officers or firemen the right to refuse to disclose personal finances, exceptions thereto; granting any police officer or fireman adversely affected by any action as a result of a hearing the right to appeal said adverse action to the
policemen's or firemen's civil service commission; and
exempting suspension of police officers and firemen under the
influence of alcohol or controlled substances or for apparent
emotional or mental disturbances.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended by adding
thereto a new article designated article fourteen-a, to read as
follows:

ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREMEN;
PROCEDURE FOR INVESTIGATION.

§8-14A-1. Definitions.
1 Unless the context clearly indicates otherwise, as used in
this article:
3 (1) "Police officer" or "fireman" means any police officer
or fireman of a police or fire department employed by the city
or municipality but shall not include the highest ranking
officer of such police or fire department.
7 (2) "Under investigation" or "under interrogation" means
any situation in which any police officer or fireman becomes
the focus of inquiry regarding any matter which may result in
punitive action.
11 (3) "Punitive action" means any action which may lead to
dismissal, demotion, suspension, reduction in salary, written
reprimand or transfer for purposes of punishment.
14 (4) "Hearing board" means a board which is authorized by
the chief of police or chief of the fire department to hold a
hearing on a complaint against a law-enforcement officer or
fireman and which consists of three members, all to be
selected from law-enforcement officers or firemen within that
agency, or law-enforcement officers or firemen of another
agency with the approval of the chief of police or chief of the
fire department of the other agency and who have had no part
in the investigation or interrogation of the law-enforcement
officer or fireman under investigation. One of the members of
the board shall be appointed by the chief of police or chief of
the fire department, one shall be appointed by the police
officers or firemen of that agency, and these two members of
the board shall, by mutual agreement, appoint the third
member of the board: Provided, That should the first two
members of the board fail to agree upon the appointment of
the third member of the board within five days they shall submit to the policemen's civil service commission or to the firemen's civil service commission, as may be appropriate, or if there be no civil service commission, to the chief judge of the circuit court of the county, a list of four qualified candidates from which list the commission or chief judge shall appoint the third member of the board: Provided, however, That in the event one or more members of the board cannot be appointed as otherwise provided in this section, then the chief judge shall appoint a sufficient number of the citizens of the municipality as may be necessary to constitute the board. At least one member of the hearing board shall be of the same rank as the law-enforcement officer or fireman against whom the complaint has been filed.

(5) “Hearing” means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

§8-14A-2. Investigation and interrogation of a police officer or fireman.
1 When any police officer or fireman is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing police or fire department, which could lead to punitive action, such interrogation shall be conducted under the following conditions:
2 (1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the police officer or fireman is on duty, or during his normal working hours, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the police officer or fireman being interrogated at any place other than his residence, such officer or fireman shall be compensated for such off-duty time in accordance with regular department procedure. If the interrogation of the police officer or fireman occurs during his regular duty hours, such officer or fireman shall not be released from employment for any work missed due to interrogation.
3 (2) Any police officer or fireman under investigation shall be informed of the nature of the investigation prior to any interrogation. Such officer shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons
to be present during the interrogation. No more than three
interrogators at one time shall question the officer or fireman
under investigation.
(3) No police officer or fireman under interrogation shall
be subjected to offensive language or threatened with
punitive action. No promise of reward shall be made as an
inducement to answering questions.
(4) The complete interrogation of any police officer or
fireman shall be recorded, either written, taped or
transcribed. Upon request of the law-enforcement officer or
fireman under investigation or his counsel, and upon advance
payment of the reasonable cost thereof a copy of the record
shall be made available to him not less than ten days prior to
any hearing.
(5) Upon the filing of a formal written statement of
charges or whenever an interrogation focuses on matters
which are likely to result in punitive action against any police
officer or fireman, then that officer or fireman shall have the
right to be represented by counsel who may be present at all
times during such interrogation.
Nothing herein shall prohibit the immediate temporary
suspension, pending an investigation, from duty of any police
officer or fireman who reports for duty under the influence of
alcohol or controlled substances which would prevent the
officer or fireman from performing his duties as defined in
chapter sixty-a of this code, or under the influence of an
apparent mental or emotional disorder.

(a) If the investigation or interrogation of a police officer
or fireman results in the recommendation of some punitive
action, then, before taking such action the police or fire
department shall give notice to the police officer or fireman
that he is entitled to a hearing on the issues by a hearing
board. The notice shall state the time and place of the hearing
and the issues involved and be delivered to the police officer
no later than ten days prior to the hearing. An official record,
including testimony and exhibits, shall be kept of the
hearing.
(b) The hearing shall be conducted by the hearing board of
the police or fire department except that in the event the
recommended punitive action is discharge, suspension or
reduction in rank or pay, and such action has been taken the
hearing shall be pursuant to the provisions of article fourteen, section twenty, and article fifteen, section twenty-five of this chapter, if applicable. Both the police or fire department and the police officer or fireman shall be given ample opportunity to present evidence and argument with respect to the issues involved.

(c) With respect to the subject of any investigation or hearing conducted pursuant to this section, the hearing board may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, and may require and compel the production of records, books, papers, contracts and other documents.

(d) Any decision, order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the police officer or fireman, or to his attorney of record.

§8-14A-4. Right to refuse to disclose personal finances; exceptions.

No police officer or fireman shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the police officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered.

§8-14A-5. Appeal.

Any police officer or fireman adversely affected by any decision, order or action taken as a result of a hearing as herein provided shall have the right to appeal the same to the policemen’s or firemen’s civil service commission, if applicable, in the manner provided for in section nineteen, article fourteen and section twenty-five, article fifteen of this chapter, or if there be no civil service commission, to the circuit court of the county wherein said police officer or fireman resides.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baxley
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Jared C. Weltz
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. R. Mckean
President of the Senate

Michael C. Jeane, Jr.
Speaker House of Delegates

The within is approved this the 14

day of April, 1982.

John D. Baylee
Governor