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OFFICE OF THE GOVERNOR

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

— ● —

# ENROLLED

*Conv. Sub. for*  
HOUSE BILL No. *1985*

(By *Del. Blatnik*)

— ● —

Passed *March 10,* 1984

In Effect *Thirty Days from* ~~Passage~~  
*July 1, 1984*



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1985**

(By DELEGATE BLATNIK)

\_\_\_\_\_  
[Passed March 10, 1984; in effect ~~ninety days from passage.~~ *July 1, 1984*]

*OK  
EX.  
D.K.*

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 changing the appeal board composition; including one trooper and one member of each of the six ranks above trooper on the board; removing the provision that a member of the board may not be of the same rank as the person bringing the appeal; and placing the burden upon the superintendent to prove a transfer is for the purpose of the operational needs of the department.

*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 board; 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 con-  
5 stitute a quorum. A new board shall be convened to hear

6 and determine each new appeal filed by a member of the  
7 department. There may be more than one board in existence  
8 at the same time meeting on different appeals. A member of  
9 the retirement board is eligible to serve on an appeals board.

10 The members of a board shall be one member of the de-  
11 partment who is of the rank of trooper and six members of  
12 the department who are of one of each of the six consecutive  
13 ranks above trooper, all of whom shall be chosen by lot by  
14 the superintendent with each member to be so chosen from  
15 among all the members of each of the seven ranks. No  
16 department member may serve on an appeals board if he is  
17 a member of the same detachment as the member making  
18 the appeal. Within ten days after he has been notified of  
19 his selection and assignment to serve on a board, a member  
20 may for cause request to be relieved of such assignment. The  
21 superintendent shall determine whether the reasons alleged  
22 by the member are sufficient cause to relieve the member of  
23 such assignment. If such request is granted by the superin-  
24 tendent, a new board member shall be selected by lot from  
25 the same rank to replace the member who has been relieved  
26 of such assignment.

27 A chairman shall be selected by the members of the board.  
28 Each member of a board shall be reimbursed for all reason-  
29 able and necessary expenses actually incurred in attending  
30 meetings of a board. All expenses of a board shall be paid  
31 from appropriations to the department.

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

45 and the member making the appeal of the date, time and place  
46 of the hearing.

47 Any member of the department who makes such an appeal,  
48 as aforesaid, may be represented by an attorney or by any  
49 member of the department or retired member who is re-  
50 ceiving benefits from the death, disability and retirement fund.  
51 The superintendent may be represented by counsel of his  
52 choice. In the appeal of a transfer, the superintendent has  
53 the burden of proof that the transfer is for the purpose of the  
54 operational needs of the department. In any other appeal  
55 the superintendent has the burden of proof as to the charges  
56 alleged. The procedure in any hearing before the board  
57 shall be informal and without adherence to the technical  
58 rules of evidence required in proceedings in courts of record.  
59 All evidence submitted to the board shall be submitted under  
60 oath. The chairman, or any member of the board, shall have  
61 authority to administer oaths to witnesses, subpoena witnesses  
62 and compel the production of books and papers pertinent to  
63 any appeal or hearing authorized by this section.

64 If any person subpoenaed to appear at any appeal or hear-  
65 ing shall refuse to appear, or shall refuse to answer inquiries  
66 propounded at the appeal or hearing or shall fail or refuse  
67 to produce books and papers which have been subpoenaed  
68 which are pertinent to any appeal or hearing authorized by  
69 this section, the board shall report the facts to the circuit  
70 court of Kanawha County or the circuit court of any county  
71 in which the hearing is being conducted and such court may  
72 compel obedience to the subpoena as through such subpoena  
73 had been issued by such court in the first instance. A person  
74 giving testimony at an appeal or hearing authorized by this  
75 section shall not be liable for such testimony given in good  
76 faith and without malicious intent.

77 The board shall designate a reporter for any such hearing  
78 who shall record and transcribe all of the proceedings. Upon  
79 his demand, the member making the appeal shall have a  
80 public hearing on the charges and in the absence of such  
81 demand, the board may determine whether or not the hearing  
82 should be public. Any hearing may be continued, recessed or  
83 adjourned by the board.

84 The superintendent shall provide reasonable space for the  
85 conduct of hearings. The charges of the reporter shall be  
86 paid by the superintendent from available appropriations.  
87 At the conclusion of the hearing, the board shall determine  
88 whether or not the superintendent's order shall be sustained.  
89 The board's decision shall be issued in writing, with copies  
90 thereof being sent by the board to the superintendent and to  
91 the appealing member by certified mail, return receipt re-  
92 quested. A hearing shall be conducted by at least five  
93 members of the board and the decision of the board shall be  
94 made by a majority vote of all the members of the board.

95 Either party aggrieved by a decision of a board of appeals  
96 may appeal the decision to the circuit court of Kanawha  
97 County within sixty days of receipt of a copy of the board's  
98 decision.

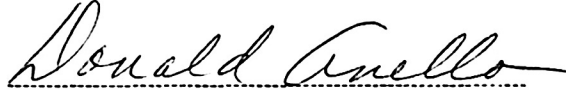
99 The court shall hear the appeal upon the record and de-  
100 termine all questions submitted to it on appeal.

101 In the event any decision sustaining the superintendent's  
102 order or notice is reversed upon judicial review, which reversal  
103 is final, the superintendent shall return the member to his  
104 status prior to the superintendent's order or notice without  
105 any acts or action of reprisal or reprimand, with full payment  
106 of any compensation withheld and with full credit for service  
107 between the date the superintendent issued his order or  
108 notice and the date of the final judicial decision reversing the  
109 decision of the board.

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

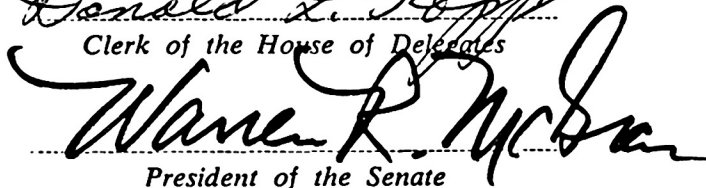
Takes effect ninety days from passage.



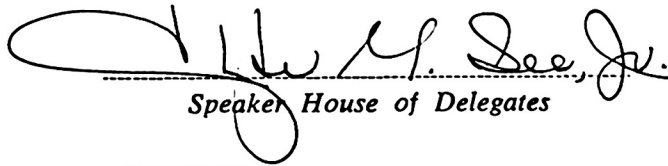
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within is approved this the 30  
day of March, 1984.



Governor



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