WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 471

(By Senators
(Boly, By Request of the Executive)

PASSED April 9, 1993
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 division of public safety; and creating a grievance procedure recommendation board and its duties.

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. DIVISION OF PUBLIC SAFETY.
§15-2-6. Division appeals boards; appeal procedures.

1 (a) On or before the first day of July, one thousand nine hundred ninety-three, the superintendent shall establish a grievance procedure recommendation board which shall be composed of seven members of the division of public safety. Two members of the board shall be selected by the superintendent. Three members of the board shall be elected at large by all the membership of the division of public safety, and two members of the board shall be chosen by the trade
or professional organization which has the largest number of members of the division within its membership. The grievance procedure recommendation board shall meet as directed by the superintendent for the purpose of recommending proposed changes or amendments, if any, to existing procedures and other guidelines for the administration of grievances brought by members of the division of public safety as set forth in subsection (b) of this section. Any changes or amendments recommended by the grievance procedure recommendation board shall be reviewed by the superintendent and, after the superintendent’s approval, shall be promulgated as legislative rules in accordance with the provisions of article one, chapter twenty-nine-a of this code. After the effective date of said legislative rules, the procedures outlined in subsection (b) of this section shall cease to be of any force or effect and shall be void: Provided, That following promulgation of the rules as contemplated in this section, the board will continue to exist for one full year and shall meet at the direction of the superintendent to assess or make recommendations regarding the division’s grievance procedure.

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

The members of a board shall be one member of the department who is of the rank of trooper and six members of the department who are of one of each of the six consecutive ranks above trooper, all of whom shall be chosen by lot by the superintendent with each member to be so chosen from among all members of each of the seven ranks. No department member may
serve on an appeals board if he is a member of the same detachment as the member making the appeal. Within ten days after he has been notified of his selection and assignment to serve on a board, a member may for cause request to be relieved of such assignment. The superintendent shall determine whether the reasons alleged by the member are sufficient cause to relieve the member of such assignment. If such request is granted by the superintendent, a new board member shall be selected by lot from the same rank to replace the member who has been relieved of such assignment.

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

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

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

If any person subpoenaed to appear at any appeal or hearing shall refuse to appear, or shall refuse to answer inquiries propounded at the appeal or hearing or shall fail or refuse to produce books and papers which have been subpoenaed which are pertinent to any appeal or hearing authorized by this section, the board shall report the facts to the circuit court of Kanawha county or the circuit court of any county in which the hearing is being conducted and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance. A person giving testimony at an appeal or hearing authorized by this section shall not be liable for such testimony given in good faith and without malicious intent.

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

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

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

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

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

Originated in the Senate.

In effect 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 23rd day of April, 1993.

Governor