

SB 422

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

96 APR - 1 PM 4:45

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SENATE BILL NO. 422

(By Senator BOWMAN, ET AL)

PASSED MARCH 9, 1996

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA
STATE

ENROLLED

Senate Bill No. 422

(BY SENATORS BOWMAN, WIEDEBUSCH, SCHOONOVER,
BUCKALEW, MILLER, DITTMAR, BAILEY,
WAGNER AND BLATNIK)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seventeen, article fourteen-b of said chapter; to amend and reenact section twenty, article fourteen, chapter eight of said code; and to amend and reenact section twenty-five, article fifteen of said chapter, all relating to the recovery of reasonable attorney fees by a deputy sheriff, police officer, firefighter or correctional officer in a civil service proceeding and a subsequent appeal therefrom where the applicable civil service commission or a court has determined that the deputy sheriff, police officer, firefighter or correctional officer has been unlawfully removed, discharged, suspended or reduced in rank or pay.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one as amended, be amended and reenacted; that section seventeen, article fourteen-b of said chapter be amended and reenacted; that section twenty, article fourteen, chapter eight of said code be amended and reenacted; and that section twenty-five, article fifteen of said chapter be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in force; mandatory retirement age.

1 (a) No deputy sheriff of any county subject to the
2 provisions of this article may be removed, discharged,
3 suspended or reduced in rank or pay except for just
4 cause, which may not be religious or political, except as
5 provided in section fifteen of this article; and no such
6 deputy may be removed, discharged, suspended or
7 reduced in rank or pay except as provided in this article
8 and in no event until the deputy has been furnished with
9 a written statement of the reasons for the action. In
10 every case of such removal, discharge, suspension or
11 reduction, a copy of the statement of reasons therefor
12 and of the written answer thereto, if the deputy desires
13 to file such written answer, shall be furnished to the civil
14 service commission and entered upon its records. If the
15 deputy demands it, the civil service commission shall
16 grant a public hearing, which hearing shall be held
17 within a period of ten days from the filing of the charges
18 in writing or the written answer thereto, whichever shall
19 last occur. At the hearing, the burden shall be upon the
20 sheriff to justify his or her action, and in the event the
21 sheriff fails to justify the action before the commission,
22 then the deputy shall be reinstated with full pay, forth-
23 with and without any additional order, for the entire
24 period during which the deputy may have been pre-
25 vented from performing his or her usual employment,

26 and no charges may be officially recorded against the
27 deputy's record. The deputy, if reinstated or exonerated,
28 shall, if represented by legal counsel, be awarded reason-
29 able attorney fees to be determined by the commission
30 and paid by the sheriff from county funds. A written
31 record of all testimony taken at the hearing shall be kept
32 and preserved by the civil service commission, which
33 record shall be sealed and not be open to public inspec-
34 tion unless an appeal is taken from the action of the
35 commission.

36 (b) In the event the civil service commission sustains
37 the action of the sheriff, the deputy has an immediate
38 right of appeal to the circuit court of the county. In the
39 event that the commission reinstates the deputy, the
40 sheriff has an immediate right of appeal to the circuit
41 court. In the event either the sheriff or the deputy
42 objects to the amount of the attorney fees awarded to the
43 deputy, the objecting party has an immediate right of
44 appeal to the circuit court. Any appeal must be taken
45 within ninety days from the date of entry by the civil
46 service commission of its final order. Upon an appeal
47 being taken and docketed with the clerk of the circuit
48 court of the county, the circuit court shall proceed to
49 hear the appeal upon the original record made before the
50 commission and no additional proof may be permitted to
51 be introduced. The circuit court's decision is final, but
52 the deputy or sheriff, as the case may be, against whom
53 the decision of the circuit court is rendered has the right
54 to petition the supreme court of appeals for a review of
55 the circuit court's decision as in other civil cases. The
56 deputy or sheriff also has the right, where appropriate,
57 to seek, in lieu of an appeal, a writ of mandamus. The
58 deputy, if reinstated or exonerated by the circuit court or
59 by the supreme court of appeals, shall, if represented by
60 legal counsel, be awarded reasonable attorney fees as
61 approved by the court and the fees shall be paid by the
62 sheriff from county funds.

63 (c) The removing sheriff and the deputy shall at all
64 times, both before the civil service commission and upon

65 appeal, be given the right to employ counsel to represent
66 them.

67 (d) If for reasons of economy or other reasons it is
68 deemed necessary by any appointing sheriff to reduce
69 the number of his or her deputies, the sheriff shall follow
70 the procedure set forth in this subsection. The reduction
71 in the numbers of the deputy sheriffs of the county shall
72 be effected by suspending the last person or persons,
73 including probationers, who have been appointed as
74 deputies. The removal shall be accomplished by sus-
75 pending the number desired in the inverse order of their
76 appointment: *Provided*, That in the event the number of
77 deputies is increased in numbers to the strength existing
78 prior to the reduction of deputies, the deputies sus-
79 pended under the terms of this subsection shall be
80 reinstated in the inverse order of their suspension before
81 any new appointments of deputy sheriffs in the county
82 are made.

83 (e) Notwithstanding any other provision of this article
84 to the contrary, no deputy sheriff in any county subject
85 to the provisions of this article may serve as a deputy
86 sheriff in any county subject to the provisions of this
87 article after attaining the age of sixty-five years.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

**§7-14B-17. Removal, discharge, suspension or reduction in
rank or pay; appeal; reduction in force;
mandatory retirement age.**

1 (a) No correctional officer of any county subject to the
2 provisions of this article, may be removed, discharged,
3 suspended or reduced in rank or pay except for just
4 cause, which may not be religious or political, except as
5 provided in section fifteen of this article; and no such
6 correctional officer may be removed, discharged, sus-
7 pended or reduced in rank or pay except as provided in
8 this article and in no event until the correctional officer
9 has been furnished with a written statement of the
10 reasons for the action. In every case of such removal,
11 discharge, suspension or reduction, a copy of the state-

12 ment of reasons therefor and of the written answer
13 thereto, if the correctional officer desires to file such
14 written answer, shall be furnished to the civil service
15 commission and entered upon its records. If the correc-
16 tional officer demands it, the civil service commission
17 shall grant him a public hearing, which hearing shall be
18 held within a period of ten days from the filing of the
19 charges in writing or the written answer thereto, which-
20 ever shall last occur. At the hearing, the burden shall be
21 upon the sheriff to justify his or her action, and in the
22 event the sheriff fails to justify the action before the
23 commission, then the correctional officer shall be
24 reinstated with full pay, forthwith and without any
25 additional order, for the entire period during which the
26 officer may have been prevented from performing his or
27 her usual employment, and no charges may be officially
28 recorded against the officer's record. The correctional
29 officer, if reinstated or exonerated, shall, if represented
30 by legal counsel, be awarded reasonable attorney fees to
31 be determined by the commission and paid by the sheriff
32 from county funds. A written record of all testimony
33 taken at the hearing shall be kept and preserved by the
34 civil service commission, which record shall be sealed
35 and not be open to public inspection, unless an appeal is
36 taken from the action of the commission.

37 (b) In the event the civil service commission sustains
38 the action of the sheriff, the correctional officer has an
39 immediate right of appeal to the circuit court of the
40 county. In the event that the commission reinstates the
41 correctional officer, the sheriff has an immediate right of
42 appeal to the circuit court. In the event either the sheriff
43 or the correctional officer objects to the amount of the
44 attorneys fees awarded to the correctional officer, the
45 objecting party has an immediate right of appeal to the
46 circuit court. Any appeal must be taken within ninety
47 days from the date of entry by the civil service commis-
48 sion of its final order. Upon an appeal being taken and
49 docketed with the clerk of the circuit court of the county,
50 the circuit court shall proceed to hear the appeal upon

51 the original record made before the commission and no
52 additional proof may be permitted to be introduced. The
53 circuit court's decision is final, but the correctional
54 officer or sheriff, as the case may be, against whom the
55 decision of the circuit court is rendered has the right to
56 petition the supreme court of appeals for a review of the
57 circuit court's decision as in other civil cases. The
58 correctional officer or sheriff also has the right, where
59 appropriate, to seek in lieu of an appeal, a writ of
60 mandamus. The correctional officer, if reinstated or
61 exonerated by the circuit court or the supreme court of
62 appeals, shall, if represented by legal counsel, be
63 awarded reasonable attorney fees as approved by the
64 court and the fees shall be paid by the sheriff from
65 county funds.

66 (c) The removing sheriff and the correctional officer
67 shall at all times, both before the civil service commis-
68 sion and upon appeal, be given the right to employ
69 counsel to represent them.

70 (d) If for reasons of economy or other reasons it is
71 deemed necessary by any appointing sheriff to reduce
72 the number of his or her correctional officers, the sheriff
73 shall follow the procedure set forth in this subsection.
74 The reduction in the numbers of the correctional officers
75 of the county shall be effected by suspending the last
76 person or persons, including probationers, who have
77 been appointed as correctional officers: *Provided*, That
78 in the event the number of correctional officers is
79 increased in numbers to the strength existing prior to the
80 reduction of correctional officers, the correctional
81 officers suspended under the terms of this subsection
82 shall be reinstated in the inverse order of their suspen-
83 sion before any new appointments of correctional
84 officers in the county are made.

85 (e) Notwithstanding any other provision of this article
86 to the contrary, no correctional officer in any county
87 subject to the provisions of this article may serve as a
88 correctional officer in any county subject to the provi-

89 sions of this article after attaining the age of sixty-five
90 years.

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS;
POWERS, AUTHORITY AND DUTIES OF LAW-EN-
FORCEMENT 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; hearing; attorney fees; appeal;
reduction in number of members.**

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

29 or her usual employment, and no charges may be offi-
30 cially recorded against the member's record. The
31 member, if reinstated or exonerated, shall, if represented
32 by legal counsel, be awarded reasonable attorney fees to
33 be determined by the commission and paid by the
34 governing body. A written record of all testimony taken
35 at the hearing shall be kept and preserved by the com-
36 mission, which record shall be sealed and not be open to
37 public inspection unless an appeal is taken from the
38 action of the commission.

39 (b) In the event the commission sustains the action of
40 the removing officer, the member has an immediate right
41 of appeal to the circuit court of the county wherein the
42 city or the major portion of the territory thereof is
43 located. In the event that the commission reinstates the
44 member, the removing officer has an immediate right of
45 appeal to the circuit court. In the event either the
46 removing officer or the member objects to the amount of
47 the attorney fees awarded to the member, the objecting
48 party has an immediate right of appeal to the circuit
49 court. Any appeal must be taken within ninety days
50 from the date of entry by the commission of its final
51 order. Upon an appeal being taken and docketed with
52 the clerk of the circuit court of the county, the circuit
53 court shall proceed to hear the appeal upon the original
54 record made before the commission and no additional
55 proof may be permitted to be introduced. The circuit
56 court's decision is final, but the member or removing
57 officer, as the case may be, against whom the decision of
58 the circuit court is rendered has the right to petition the
59 supreme court of appeals for a review of the circuit
60 court's decision as in other civil cases. The member or
61 removing officer also has the right, where appropriate,
62 to seek, in lieu of an appeal, a writ of mandamus. The
63 member, if reinstated or exonerated by the circuit court
64 or by the supreme court of appeals, shall, if represented
65 by legal counsel, be awarded reasonable attorney fees as
66 approved by the court and the fees shall be paid by the
67 governing body.

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

71 (d) If for reasons of economy or other reasons it is
 72 deemed necessary by any Class I or Class II city to
 73 reduce the number of paid members of its paid police
 74 department, the city shall follow the procedure set forth
 75 in this subsection. The reduction in members of the paid
 76 police department of the city shall be effected by sus-
 77 pending the last person or persons, including probation-
 78 ers, who have been appointed to the paid police depart-
 79 ment. The removal shall be accomplished by suspending
 80 the number desired in the inverse order of their appoint-
 81 ment: *Provided*, That in the event the said paid police
 82 department is increased in numbers to the strength
 83 existing prior to the reduction of members, the members
 84 suspended under the terms of this subsection shall be
 85 reinstated in the inverse order of their suspension before
 86 any new appointments to said paid police department
 87 are made.

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS;
 CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-25. Removal, discharge, suspension or reduction in
 rank or pay; hearing; attorney fees; appeal;
 reduction in number of members.**

1 (a) No member of any paid fire department subject to
 2 the civil service provisions of this article may be re-
 3 moved, discharged, suspended or reduced in rank or pay
 4 except for just cause, which may not be religious or
 5 political, except as provided in section twenty-four of
 6 this article; and no such member may be removed,
 7 discharged, suspended or reduced in rank or pay except
 8 as provided by the civil service provisions of this article,
 9 and in no event until the member has been furnished
 10 with a written statement of the reasons for the action. In
 11 every case of such removal, discharge, suspension or
 12 reduction, a copy of the statement of reasons therefor
 13 and of the written answer thereto, if the member desires

14 to file such written answer, shall be furnished to the
15 firemen's civil service commission and entered upon its
16 records. If the member demands it, the commission shall
17 grant a public hearing, which hearing shall be held
18 within a period of ten days from the filing of the charges
19 in writing or the written answer thereto, whichever shall
20 last occur. At the hearing, the burden shall be upon the
21 removing, discharging, suspending or reducing officer,
22 hereinafter in this section referred to as "removing
23 officer," to show just cause for his or her action, and in
24 the event the removing officer fails to show just cause for
25 the action before the commission, then the member shall
26 be reinstated with full pay, forthwith and without any
27 additional order, for the entire period during which the
28 member may have been prevented from performing his
29 or her usual employment, and no charges may be offi-
30 cially recorded against the member's record. The
31 member, if reinstated or exonerated, shall, if represented
32 by legal counsel, be awarded reasonable attorney fees to
33 be determined by the commission and paid by the
34 governing body. A written record of all testimony taken
35 at the hearing shall be kept and preserved by this
36 commission, which record shall be sealed and not be
37 open to public inspection unless an appeal is taken from
38 the action of the commission.

39 (b) In the event the commission sustains the action of
40 the removing officer, the member has an immediate right
41 of appeal to the circuit court of the county wherein the
42 municipality or the major portion of the territory thereof
43 is located. In the event that the commission reinstates
44 the member, the removing officer has an immediate right
45 of appeal to the circuit court. In the event either the
46 removing officer or the member objects to the amount of
47 the attorney fees awarded to the member, the objecting
48 party has an immediate right of appeal to the circuit
49 court. Any appeal must be taken within ninety days
50 from the date of entry by the commission of its final
51 order. Upon an appeal being taken and docketed with
52 the clerk of the circuit court of the county, the circuit

53 court shall proceed to hear the appeal upon the original
54 record made before the commission and no additional
55 proof may be permitted to be introduced. The circuit
56 court's decision is final, but the member or removing
57 officer, as the case may be, against whom the decision of
58 the circuit court is rendered has the right to petition the
59 supreme court of appeals for a review of the circuit
60 court's decision, as in other civil cases. The member or
61 removing officer also has the right, where appropriate,
62 to seek, in lieu of an appeal, a writ of mandamus. The
63 member, if reinstated or exonerated by the circuit court
64 or by the supreme court of appeals, shall, if represented
65 by legal counsel, be awarded reasonable attorney fees as
66 approved by the court and the fees shall be paid by the
67 governing body.

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

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

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

Rory Schoover
.....
Chairman Senate Committee

Rudy DeLoach
.....
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

David E. Kelly
.....
Clerk of the Senate

Bryony M. Bray
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Carl Albert
.....
Speaker House of Delegates

The within *is approved* this the *1st*.....
day of *April*....., 1996.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 9:47am