WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2795

Laird, Staton, Stemple
(By Delegate Laird, and Thomas)

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Passed April 12, 1997

In Effect Ninety Days From Passage
AN ACT to amend and reenact sections one, three and five, article fourteen-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investigation and interrogation rights of police officers and firefighters; defining certain terms, including “accused officer,” for purposes of the article; providing for composition of hearing board in civil service and noncivil service jurisdictions; and providing for appeal rights both for officers and department chiefs.

Be it enacted by the Legislature of West Virginia:

That sections one, three and five, article fourteen-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

§8-14A-1. Definitions.

1 Unless the context clearly indicates otherwise, as used in this article:
(1) "Accused officer" means any police officer or firefighter who is the subject of an investigation or interrogation which results in a recommendation of punitive action against him or her.

(2) "Civil service," when followed by the terms "department," "officer" or "accused officer," means any department, officer or accused officer who is subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(3) "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.

(4) "Hearing board" means a board appointed to hold a hearing on a complaint against an accused officer. The hearing board shall consist of three members to be appointed pursuant to paragraphs (a), (b) or (c) of this subdivision. Hearing board members appointed under paragraphs (b) or (c) of this subdivision may be removed from office as provided under paragraph (d) of this subdivision.

(a) For civil service departments, the department chief shall appoint the first member, the members of the accused officer's department shall appoint the second member, and the first and second members shall appoint the third member by agreement. Should the first and second members fail to agree on the appointment of the third member within five days, they shall submit to the department's civil service commission a list of four qualified candidates from which list the commission shall appoint the third member. The appointment of members under this paragraph shall be subject to the following qualifications and limitations:

(1) No member shall have had any part in the investigation or interrogation of the accused officer;
Each member shall be a police officer or firefighter within the accused officer’s department, or, with the department chief’s approval, a law-enforcement officer or firefighter from another law-enforcement agency or fire department;

(3) At least one member shall be of the same rank as the accused officer; and

(4) If there are fewer than three persons who meet the qualifications described in subparagraphs (1), (2) and (3) of this paragraph, then the department’s civil service commission shall appoint as many citizens of the municipality in which the department is located as may be necessary to constitute the board.

(b) For noncivil service police departments, the hearing board shall be a standing hearing board. The department chief shall appoint the first member, the local fraternal order of police shall appoint the second member, and the local chamber of commerce or local businessman’s association shall appoint the third member. If there is no local fraternal order of police, the state fraternal order of police shall appoint the second member. If there is no local chamber of commerce or local businessmen’s association, the first and second members shall appoint the third member by agreement. Of the three original appointments in each police department, the first member shall serve for six years from the date of his or her appointment; the second member shall serve four years from the date of his or her appointment; and the third member shall serve for two years from the date of his or her appointment. After the original appointments, all appointments shall be made for periods of four years each by the designated appointing authority. In the event that any member shall cease to be a member due to death, resignation, final removal or other cause, a new member shall be appointed within thirty days of the date the ex-member ceased to be a member. This appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. When the hearing board is appointed, the three members shall elect one of their number to act as president of the board,
who shall serve as president for one year. In the event that
a member has had a part in the investigation or
interrogation of an accused officer or is related by
consanguinity or affinity to an accused officer, that
member shall be recused from participation in the accused
officer's hearing. In such an instance, the officer or body
who in the first instance appointed the recused member
shall appoint another person for sole purpose of the
accused's officer hearing. No member shall hold any
other office (other than the office of notary public) under
the United States, this state, or any municipality, county or
other political subdivision thereof; nor shall any member
serve on any political committee or take any active part in
the management of any political campaign.

(c) For noncivil service fire departments, the hearing
board shall be a standing hearing board. The department
chief shall appoint the first member, the local international
association of firefighters shall appoint the second
member, and the local chamber of commerce or local
businessman's association shall appoint the third member.
If there is no local international association of firefighters
in the municipality, the local central body of the West
Virginia Federation of Labor AFL-CIO shall appoint the
second member. If there is no local central body of the
West Virginia Federation of Labor AFL-CIO in the
municipality, the West Virginia Federation of Labor AFL-
CIO shall appoint the second member. If there is no local
chamber of commerce or local businessmen's association,
the first and second members shall appoint the third
member by agreement. Of the three original
appointments in each fire department, the first member
shall serve for six years from the date of his or her
appointment; the second member shall serve four years
from the date of his or her appointment; and the third
member shall serve for two years from the date of his or
her appointment. After the original appointments, all
appointments shall be made for periods of four years each
by the designated appointing authority. In the event that
any member shall cease to be a member due to death,
resignation, final removal or other cause, a new member
shall be appointed within thirty days of the date the ex-
member ceased to be a member. This appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. Each of the three members shall elect one of their number to act as president of the board, who shall serve as president for one year. In the event that a member has had a part in the investigation or interrogation of an accused officer or is related by consanguinity or affinity to an accused officer, that member shall be recused from participation in the accused officer’s hearing. In such an instance, the officer or body who in the first instance appointed the recused member shall appoint another person for sole purpose of the accused’s officer hearing. No member shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any member serve on any political committee or take any active part in the management of any political campaign.

(d) Any member of a hearing board appointed under paragraphs (b) or (c) of this subdivision may be removed as provided in this paragraph.

The mayor of the municipality may, at any time, remove any hearing board member for good cause, which shall be stated in writing and made a part of the records of the hearing board. However, within ten days of removing any member, the mayor shall file in the circuit clerk’s office of the county in which the municipality is located a petition setting forth in full the reason for the removal and seeking the circuit court’s confirmation of the mayor’s removal of the member. The mayor shall file a copy of the petition with the removed member at the same time it is filed with the circuit clerk. The petition shall have precedence on the circuit court’s docket and shall be heard as soon as practicable on the request of the removed member. All rights vested in a circuit court by this subsection may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time the petition is filed, and the judge thereof cannot be reached in the county in which the petition was filed, the petition shall be heard at the next succeeding circuit court term, whether regular or special,
and the removed member shall remain removed until a hearing is held on the petition. The court or the judge thereof in vacation shall hear and decide the issues presented by the petition. The party affected adversely by the court's or judge's decision shall have the right to petition the supreme court of appeals for a review of the decision as in other civil cases. If the mayor fails to file the petition with the circuit clerk's office within ten days as provided above, the removed member shall immediately resume his or her position as a hearing board member.

Any resident of the municipality shall have the right at any time to seek the removal of any hearing board member. To do so, the resident shall file a petition in the circuit clerk's office of the county where the municipality is located. The resident shall also serve a copy of the petition on the member sought to be removed. The petition shall be matured for hearing and heard by the circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard. Any party adversely affected by the circuit court's or judge's decision shall have the right to petition the supreme court of appeals for a review of the decision as in other civil cases.

(5) "Noncivil service," when followed by the terms "department," "officer" or "accused officer," means any department, officer or accused officer who is not subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(6) "Police officer or firefighter" or "officer" means any police officer or firefighter of a police or fire department employed by the city or municipality, but shall not include (a) the highest ranking officer of the police or fire department or (b) any noncivil service officer who has not completed the probationary period established by the department by which he or she is employed.

(7) "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in
salary, written reprimand or transfer for purposes of punishment.

(8) "Under investigation" or "under interrogation" means any situation in which any police officer or firefighter becomes the focus of inquiry regarding any matter which may result in punitive action.


(a) Before taking any punitive action against an accused officer, the police or fire department shall give notice to the accused officer that he or she is entitled to a hearing on the issues by a hearing board or the applicable civil service commission. The notice shall state the time and place of the hearing and the issues involved and shall be delivered to the accused officer no later than ten days prior to the hearing.

(b) When a civil service accused officer faces a recommended punitive action of discharge, suspension or reduction in rank or pay, but before such punitive action is taken, a hearing board must be appointed and must afford the accused civil service officer a hearing conducted pursuant to the provisions of article fourteen, section twenty, or article fifteen, section twenty-five of this chapter: Provided, That the punitive action may be taken before the hearing board conducts the hearing if exigent circumstances exist which require it.

(c) When a civil service accused officer faces a recommended punitive action of written reprimand or transfer for the purpose of punishment, or when a non-civil service accused officer faces any recommended punitive action, the applicable hearing board shall conduct hearing pursuant to the provisions of subsection (d) of this section.

(d) The following requirements shall govern the operation conduct of a hearing board under subsection (c) of this section:

(1) The hearing board shall keep an official record of each hearing it conducts. The official record shall include
the testimony offered and exhibits introduced at the hearing.

(2) Both the police or fire department and the accused officer shall be given ample opportunity to present evidence and argument with respect to any issue raised at the hearing.

(3) 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, in connection with any issue raised at the hearing.

(4) The hearing board shall prepare a written order detailing any decision or action it takes as a result of the hearing. The written order shall include written findings of fact setting forth a concise statement of the hearing board’s factual findings and conclusions on each issue raised at the hearing. The hearing board shall hand-deliver or promptly mail a copy of the written order to the accused officer or his attorney of record.

(e) A hearing board’s order is binding on all parties involved unless it is overturned in the appeal process described in section five of this article.

§8-14A-5. Appeal.

(a) For civil service departments, a hearing board’s decision rendered under subsections (b) or (c), section three of this article may be appealed by the police officer or firefighter adversely affected by the order or by the department chief if he or she believes that the department would be adversely affected by the hearing board’s order. An appeal under this subsection shall be made to the applicable civil service commission. Any party aggrieved by the civil service commission’s ruling on the appeal may further appeal the civil service commission’s ruling pursuant to the provisions of subsection (b), section twenty, article fourteen of this chapter or subsection (b), section twenty-five, article fifteen of this chapter.
(b) For noncivil service departments, a hearing board's decision rendered under subsection (c), section three of this article may be appealed by the police officer or firefighter adversely affected by the order or by the department chief if he or she believes that the department would be adversely affected by the hearing board’s order. An appeal under this subsection shall be made to the circuit court of the county in which the police officer or firefighter resides.
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 of the House of Delegates

The within is approved this the day of , 1997.

Governor