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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 471

(By Senators *Burdette, Mr. President, and
Baley, By Request of the Executive*)

PASSED April 9 1993

In Effect from Passage

E N R O L L E D

Senate Bill No. 471

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
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
2 nine hundred ninety-three, the superintendent shall
3 establish a grievance procedure recommendation
4 board which shall be composed of seven members of
5 the division of public safety. Two members of the
6 board shall be selected by the superintendent. Three
7 members of the board shall be elected at large by all
8 the membership of the division of public safety, and
9 two members of the board shall be chosen by the trade

10 or professional organization which has the largest
11 number of members of the division within its mem-
12 bership. The grievance procedure recommendation
13 board shall meet as directed by the superintendent for
14 the purpose of recommending proposed changes or
15 amendments, if any, to existing procedures and other
16 guidelines for the administration of grievances
17 brought by members of the division of public safety as
18 set forth in subsection (b) of this section. Any changes
19 or amendments recommended by the grievance proce-
20 dure recommendation board shall be reviewed by the
21 superintendent and, after the superintendent's
22 approval, shall be promulgated as legislative rules in
23 accordance with the provisions of article one, chapter
24 twenty-nine-a of this code. After the effective date of
25 said legislative rules, the procedures outlined in
26 subsection (b) of this section shall cease to be of any
27 force or effect and shall be void: *Provided*, That
28 following promulgation of the rules as contemplated in
29 this section, the board will continue to exist for one
30 full year and shall meet at the direction of the
31 superintendent to assess or make recommendations
32 regarding the division's grievance procedure.

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

44 The members of a board shall be one member of the
45 department who is of the rank of trooper and six
46 members of the department who are of one of each of
47 the six consecutive ranks above trooper, all of whom
48 shall be chosen by lot by the superintendent with each
49 member to be so chosen from among all members of
50 each of the seven ranks. No department member may

51 serve on an appeals board if he is a member of the
52 same detachment as the member making the appeal.
53 Within ten days after he has been notified of his
54 selection and assignment to serve on a board, a
55 member may for cause request to be relieved of such
56 assignment. The superintendent shall determine
57 whether the reasons alleged by the member are
58 sufficient cause to relieve the member of such assign-
59 ment. If such request is granted by the superinten-
60 dent, a new board member shall be selected by lot from
61 the same rank to replace the member who has been
62 relieved of such assignment.

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

69 Within fifteen days after a member of the depart-
70 ment has received a notice of transfer or a statement
71 of charges and an order of suspension, demotion in
72 rank or discharge by the superintendent, he may
73 appeal the transfer or order to an appeals board by
74 filing a written notice of appeal with the superintend-
75 ent. The superintendent shall promptly record and file
76 each appeal, select a board, notify each new board
77 member of his selection, and furnish to each board
78 member a copy of the notice or order appealed from
79 and the notice of appeal. A hearing by a board of
80 appeals shall be held within thirty days after the
81 superintendent has received a member's notice of
82 appeal. At least fifteen days prior to the hearing date,
83 the board shall notify the superintendent and the
84 member making the appeal of the date, time and place
85 of the hearing.

86 Any member of the department who makes such an
87 appeal, as aforesaid, may be represented by an attor-
88 ney or by any member of the department or retired
89 member who is receiving benefits from the death,
90 disability and retirement fund. The superintendent
91 may be represented by counsel of his choice. In the

92 appeal of a transfer, the superintendent has the
93 burden of proof that the transfer is for the purpose of
94 the operational needs of the department. In any other
95 appeal the superintendent has the burden of proof as
96 to the charges alleged. The procedure in any hearing
97 before the board shall be informal and without adher-
98 ence to the technical rules of evidence required in
99 proceedings in courts of record. All evidence submit-
100 ted to the board shall be submitted under oath. The
101 chairman, or any member of the board, shall have
102 authority to administer oaths to witnesses, subpoena
103 witnesses and compel the production of books and
104 papers pertinent to any appeal or hearing authorized
105 by this section.

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

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

129 The superintendent shall provide reasonable space
130 for the conduct of hearings. The charges of the
131 reporter shall be paid by the superintendent from
132 available appropriations. At the conclusion of the

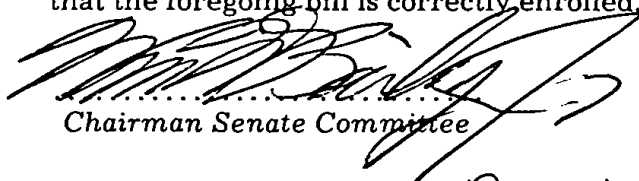
133 hearing, the board shall determine whether or not the
134 superintendent's order shall be sustained. The board's
135 decision shall be issued in writing, with copies thereof
136 being sent by the board to the superintendent and to
137 the appealing member by certified mail, return receipt
138 requested. A hearing shall be conducted by at least
139 five members of the board and the decision of the
140 board shall be made by a majority vote of all the
141 members of the board.

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

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

148 In the event any decision sustaining the superin-
149 tendent's order or notice is reversed upon judicial
150 review, which reversal is final, the superintendent
151 shall return the member to his status prior to the
152 superintendent's order or notice without any acts or
153 action of reprisal or reprimand, with full payment of
154 any compensation withheld and with full credit for
155 service between the date the superintendent issued his
156 order or notice and the date of the final judicial
157 decision reversing the decision of the board.

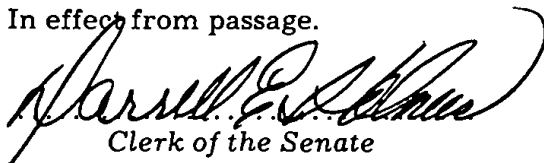
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee


Originated in the Senate.

In effect from passage.

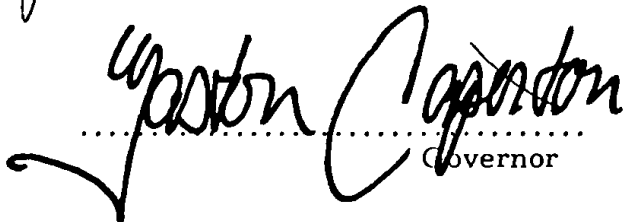

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within... is approved this the 22nd
day of April, 1993.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/16/93

Time 9:32 am