

HB 2795

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

HOUSE BILL No. 2795

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



Passed \_\_\_\_\_ April 12, \_\_\_\_\_ 1997

In Effect \_\_\_\_\_ Ninety Days From \_\_\_\_\_ Passage

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 2795

(BY DELEGATES LAIRD, STATON, STEMPLE AND THOMAS)

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[Passed April 12, 1997; in effect ninety days from passage.]

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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 FIRE-FIGHTERS; PROCEDURE FOR INVESTIGATION.**

**§8-14A-1. Definitions.**

- 1 Unless the context clearly indicates otherwise, as used
- 2 in this article:

3 (1) "Accused officer" means any police officer or  
4 firefighter who is the subject of an investigation or  
5 interrogation which results in a recommendation of  
6 punitive action against him or her.

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

13 (3) "Hearing" means any meeting in the course of an  
14 investigatory proceeding, other than an interrogation at  
15 which no testimony is taken under oath, conducted by a  
16 hearing board for the purpose of taking or inducing  
17 testimony or receiving evidence.

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

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

38 (1) No member shall have had any part in the  
39 investigation or interrogation of the accused officer;

40 (2) Each member shall be a police officer or  
41 firefighter within the accused officer's department, or,  
42 with the department chief's approval, a law-enforcement  
43 officer or firefighter from another law-enforcement  
44 agency or fire department;

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

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

53 (b) For noncivil service police departments, the  
54 hearing board shall be a standing hearing board. The  
55 department chief shall appoint the first member, the local  
56 fraternal order of police shall appoint the second member,  
57 and the local chamber of commerce or local  
58 businessman's association shall appoint the third member.  
59 If there is no local fraternal order of police, the state  
60 fraternal order of police shall appoint the second member.  
61 If there is no local chamber of commerce or local  
62 businessmen's association, the first and second members  
63 shall appoint the third member by agreement. Of the  
64 three original appointments in each police department, the  
65 first member shall serve for six years from the date of his  
66 or her appointment; the second member shall serve four  
67 years from the date of his or her appointment; and the  
68 third member shall serve for two years from the date of his  
69 or her appointment. After the original appointments, all  
70 appointments shall be made for periods of four years each  
71 by the designated appointing authority. In the event that  
72 any member shall cease to be a member due to death,  
73 resignation, final removal or other cause, a new member  
74 shall be appointed within thirty days of the date the ex-  
75 member ceased to be a member. This appointment shall  
76 be made by the officer or body who in the first instance  
77 appointed the member who is no longer a member. When  
78 the hearing board is appointed, the three members shall  
79 elect one of their number to act as president of the board,

80 who shall serve as president for one year. In the event that  
81 a member has had a part in the investigation or  
82 interrogation of an accused officer or is related by  
83 consanguinity or affinity to an accused officer, that  
84 member shall be recused from participation in the accused  
85 officer's hearing. In such an instance, the officer or body  
86 who in the first instance appointed the recused member  
87 shall appoint another person for sole purpose of the  
88 accused's officer hearing. No member shall hold any  
89 other office (other than the office of notary public) under  
90 the United States, this state, or any municipality, county or  
91 other political subdivision thereof; nor shall any member  
92 serve on any political committee or take any active part in  
93 the management of any political campaign.

94 (c) For noncivil service fire departments, the hearing  
95 board shall be a standing hearing board. The department  
96 chief shall appoint the first member, the local international  
97 association of firefighters shall appoint the second  
98 member, and the local chamber of commerce or local  
99 businessman's association shall appoint the third member.  
100 If there is no local international association of firefighters  
101 in the municipality, the local central body of the West  
102 Virginia Federation of Labor AFL-CIO shall appoint the  
103 second member. If there is no local central body of the  
104 West Virginia Federation of Labor AFL-CIO in the  
105 municipality, the West Virginia Federation of Labor AFL-  
106 CIO shall appoint the second member. If there is no local  
107 chamber of commerce or local businessmen's association,  
108 the first and second members shall appoint the third  
109 member by agreement. Of the three original  
110 appointments in each fire department, the first member  
111 shall serve for six years from the date of his or her  
112 appointment; the second member shall serve four years  
113 from the date of his or her appointment; and the third  
114 member shall serve for two years from the date of his or  
115 her appointment. After the original appointments, all  
116 appointments shall be made for periods of four years each  
117 by the designated appointing authority. In the event that  
118 any member shall cease to be a member due to death,  
119 resignation, final removal or other cause, a new member  
120 shall be appointed within thirty days of the date the ex-

121 member ceased to be a member. This appointment shall  
122 be made by the officer or body who in the first instance  
123 appointed the member who is no longer a member. Each  
124 of the three members shall elect one of their number to act  
125 as president of the board, who shall serve as president for  
126 one year. In the event that a member has had a part in the  
127 investigation or interrogation of an accused officer or is  
128 related by consanguinity or affinity to an accused officer,  
129 that member shall be recused from participation in the  
130 accused officer's hearing. In such an instance, the officer  
131 or body who in the first instance appointed the recused  
132 member shall appoint another person for sole purpose of  
133 the accused's officer hearing. No member shall hold any  
134 other office (other than the office of notary public) under  
135 the United States, this state, or any municipality, county or  
136 other political subdivision thereof; nor shall any member  
137 serve on any political committee or take any active part in  
138 the management of any political campaign.

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

142 The mayor of the municipality may, at any time,  
143 remove any hearing board member for good cause, which  
144 shall be stated in writing and made a part of the records of  
145 the hearing board. However, within ten days of removing  
146 any member, the mayor shall file in the circuit clerk's  
147 office of the county in which the municipality is located a  
148 petition setting forth in full the reason for the removal and  
149 seeking the circuit court's confirmation of the mayor's  
150 removal of the member. The mayor shall file a copy of  
151 the petition with the removed member at the same time it  
152 is filed with the circuit clerk. The petition shall have  
153 precedence on the circuit court's docket and shall be  
154 heard as soon as practicable on the request of the removed  
155 member. All rights vested in a circuit court by this  
156 subsection may be exercised by the judge thereof in  
157 vacation. In the event that no term of the circuit court is  
158 being held at the time the petition is filed, and the judge  
159 thereof cannot be reached in the county in which the  
160 petition was filed, the petition shall be heard at the next  
161 succeeding circuit court term, whether regular or special,

162 and the removed member shall remain removed until a  
163 hearing is held on the petition. The court or the judge  
164 thereof in vacation shall hear and decide the issues  
165 presented by the petition. The party affected adversely by  
166 the court's or judge's decision shall have the right to  
167 petition the supreme court of appeals for a review of the  
168 decision as in other civil cases. If the mayor fails to file  
169 the petition with the circuit clerk's office within ten days  
170 as provided above, the removed member shall immediately  
171 resume his or her position as a hearing board member.

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

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

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

199 (7) "Punitive action" means any action which may  
200 lead to dismissal, demotion, suspension, reduction in

201 salary, written reprimand or transfer for purposes of  
202 punishment.

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

**§8-14A-3. Hearing.**

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

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

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

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

29 (1) The hearing board shall keep an official record of  
30 each hearing it conducts. The official record shall include



31 the testimony offered and exhibits introduced at the  
32 hearing.

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

37 (3) The hearing board may subpoena witnesses and  
38 administer oaths or affirmations and examine any  
39 individual under oath, and may require and compel the  
40 production of records, books, papers, contracts and other  
41 documents, in connection with any issue raised at the  
42 hearing.

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

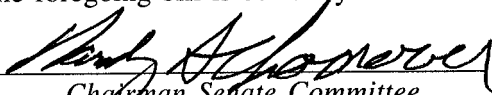
51 (e) A hearing board's order is binding on all parties  
52 involved unless it is overturned in the appeal process  
53 described in section five of this article.

**§8-14A-5. Appeal.**

1 (a) For civil service departments, a hearing board's  
2 decision rendered under subsections (b) or (c), section  
3 three of this article may be appealed by the police officer  
4 or firefighter adversely affected by the order or by the  
5 department chief if he or she believes that the department  
6 would be adversely affected by the hearing board's order.  
7 An appeal under this subsection shall be made to the  
8 applicable civil service commission. Any party aggrieved  
9 by the civil service commission's ruling on the appeal  
10 may further appeal the civil service commission's ruling  
11 pursuant to the provisions of subsection (b), section  
12 twenty, article fourteen of this chapter or subsection (b),  
13 section twenty-five, article fifteen of this chapter.

14 (b) For noncivil service departments, a hearing  
15 board's decision rendered under subsection (c), section  
16 three of this article may be appealed by the police officer  
17 or firefighter adversely affected by the order or by the  
18 department chief if he or she believes that the department  
19 would be adversely affected by the hearing board's order.  
20 An appeal under this subsection shall be made to the  
21 circuit court of the county in which the police officer or  
22 firefighter resides.

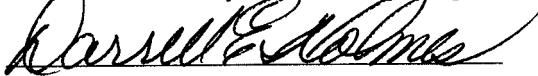
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

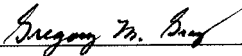
  
Chairman Senate Committee

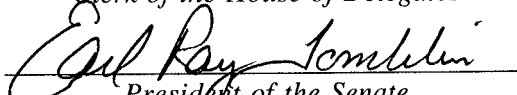
  
Chairman House Committee

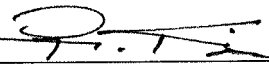
Originating in the House.

Takes effect ninety days from passage.

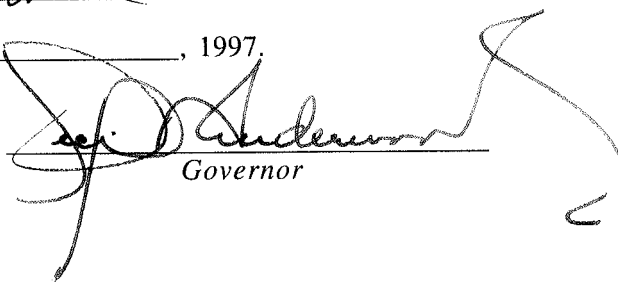
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within assessoral this the 5th  
day of May, 1997.

  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/29/97

Time

3:01 pm