

1 **H. B. 2546**

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3 (By Delegates Howell (By Request) and Hamrick)
4 [Introduced February 19, 2013; referred to the
5 Committee on Political Subdivisions then the Judiciary.]
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10 A BILL to amend and reenact §8-14A-1 of the Code of West Virginia,
11 1931, as amended, relating to exempting nondisciplinary
12 letters of recommendations or counseling from the definition
13 of punitive action contained within the civil service
14 provisions for municipal police officers and firefighters.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §8-14A-1 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

20 **§8-14A-1. Definitions.**

21 Unless the context clearly indicates otherwise, as used in
22 this article:

23 (1) "Accused officer" means any police officer or firefighter

1 who is the subject of an investigation or interrogation which
2 results in a recommendation of punitive action against him or her.

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

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

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

18 (a) For civil service departments, the department chief shall
19 appoint the first member, the members of the accused officer's
20 department shall appoint the second member, and the first and
21 second members shall appoint the third member by agreement. Should
22 the first and second members fail to agree on the appointment of
23 the third member within five days, they shall submit to the
24 department's civil service commission a list of four qualified

1 candidates from which list the commission shall appoint the third
2 member. The appointment of members under this paragraph shall be
3 subject to the following qualifications and limitations:

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

6 (2) Each member shall be a police officer or firefighter
7 within the accused officer's department, or, with the department
8 chief's approval, a law-enforcement officer or firefighter from
9 another law-enforcement agency or fire department;

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

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

17 (b) For noncivil service police departments, the hearing board
18 shall be a standing hearing board. The department chief shall
19 appoint the first member, the local fraternal order of police shall
20 appoint the second member, and the local chamber of commerce or
21 local businessmen's association shall appoint the third member. If
22 there is no local fraternal order of police, the state fraternal
23 order of police shall appoint the second member. If there is no
24 local chamber of commerce or local businessmen's association, the

1 first and second members shall appoint the third member by
2 agreement. Of the three original appointments in each police
3 department, the first member shall serve for six years from the
4 date of his or her appointment; the second member shall serve four
5 years from the date of his or her appointment; and the third member
6 shall serve for two years from the date of his or her appointment.
7 After the original appointments, all appointments shall be made for
8 periods of four years each by the designated appointing authority.
9 In the event that any member shall cease to be a member due to
10 death, resignation, final removal or other cause, a new member
11 shall be appointed within thirty days of the date the ex-member
12 ceased to be a member. This appointment shall be made by the
13 officer or body who in the first instance appointed the member who
14 is no longer a member. When the hearing board is appointed, the
15 three members shall elect one of their number to act as president
16 of the board, who shall serve as president for one year. In the
17 event that a member has had a part in the investigation or
18 interrogation of an accused officer or is related by consanguinity
19 or affinity to an accused officer, that member shall be recused
20 from participation in the accused officer's hearing. In such an
21 instance, the officer or body who in the first instance appointed
22 the recused member shall appoint another person for sole purpose of
23 the accused officer's hearing. No member shall hold any other
24 office (other than the office of notary public) under the United

1 States, this state, or any municipality, county or other political
2 subdivision thereof; nor shall any member serve on any political
3 committee or take any active part in the management of any
4 political campaign.

5 (c) For noncivil service fire departments, the hearing board
6 shall be a standing hearing board. The department chief shall
7 appoint the first member, the local international association of
8 firefighters shall appoint the second member, and the local chamber
9 of commerce or local businessmen's association shall appoint the
10 third member. If there is no local international association of
11 firefighters in the municipality, the local central body of the
12 West Virginia Federation of Labor AFL-CIO shall appoint the second
13 member. If there is no local central body of the West Virginia
14 Federation of Labor AFL-CIO in the municipality, the West Virginia
15 Federation of Labor AFL-CIO shall appoint the second member. If
16 there is no local chamber of commerce or local businessmen's
17 association, the first and second members shall appoint the third
18 member by agreement. Of the three original appointments in each
19 fire department, the first member shall serve for six years from
20 the date of his or her appointment; the second member shall serve
21 four years from the date of his or her appointment; and the third
22 member shall serve for two years from the date of his or her
23 appointment. After the original appointments, all appointments
24 shall be made for periods of four years each by the designated

1 appointing authority. In the event that any member shall cease to
2 be a member due to death, resignation, final removal or other
3 cause, a new member shall be appointed within thirty days of the
4 date the ex-member ceased to be a member. This appointment shall
5 be made by the officer or body who in the first instance appointed
6 the member who is no longer a member. Each of the three members
7 shall elect one of their number to act as president of the board,
8 who shall serve as president for one year. In the event that a
9 member has had a part in the investigation or interrogation of an
10 accused officer or is related by consanguinity or affinity to an
11 accused officer, that member shall be recused from participation in
12 the accused officer's hearing. In such an instance, the officer or
13 body who in the first instance appointed the recused member shall
14 appoint another person for the sole purpose of the accused
15 officer's hearing. No member shall hold any other office (other
16 than the office of notary public) under the United States, this
17 state, or any municipality, county or other political subdivision
18 thereof; nor shall any member serve on any political committee or
19 take any active part in the management of any political campaign.

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

23 The mayor of the municipality may, at any time, remove any
24 hearing board member for good cause, which shall be stated in

1 writing and made a part of the records of the hearing board.
2 However, within ten days of removing any member, the mayor shall
3 file in the circuit clerk's office of the county in which the
4 municipality is located a petition setting forth in full the reason
5 for the removal and seeking the circuit court's confirmation of the
6 mayor's removal of the member. The mayor shall file a copy of the
7 petition with the removed member at the same time it is filed with
8 the circuit clerk. The petition shall have precedence on the
9 circuit court's docket and shall be heard as soon as practicable on
10 the request of the removed member. All rights vested in a circuit
11 court by this subsection may be exercised by the judge thereof in
12 vacation. In the event that no term of the circuit court is being
13 held at the time the petition is filed, and the judge thereof
14 cannot be reached in the county in which the petition was filed,
15 the petition shall be heard at the next succeeding circuit court
16 term, whether regular or special, and the removed member shall
17 remain removed until a hearing is held on the petition. The court
18 or the judge thereof in vacation shall hear and decide the issues
19 presented by the petition. The party affected adversely by the
20 court's or judge's decision shall have the right to petition the
21 Supreme Court of Appeals for a review of the decision as in other
22 civil cases. If the mayor fails to file the petition with the
23 circuit clerk's office within ten days as provided above, the
24 removed member shall immediately resume his or her position as a

1 hearing board member.

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

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

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

1 (7) "Punitive action" means any action which may lead to
2 dismissal, demotion, suspension, reduction in salary, written
3 reprimand or transfer for purposes of punishment: Provided, That
4 the placement in an officer's personnel file of a nondisciplinary
5 letter memorializing recommendations or counseling provided to that
6 officer regarding his or her employment does not constitute
7 punitive action.

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

NOTE: The purpose of this bill is to exempt the placement of nondisciplinary letters of recommendations or counseling in an officer's file from the definition of punitive action contained within the civil service provisions for municipal police officers and firefighters.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.