

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2070**

**2015 Carryover**

(BY DELEGATE CAPUTO)

[Introduced January 13, 2016; referred to the  
Committee on Political Subdivisions then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §8-15B-1, §8-15B-2, §8-15B-3, §8-15B-4 and §8-15B-5, all relating to meeting  
 3 and conference rights for members of fire departments employed by political subdivisions;  
 4 providing for the right of self-organization; allowing designation of an exclusive  
 5 representative agent; imposing a duty to meet and confer with employees; allowing  
 6 deduction of employee organization dues and assessments; providing for compulsory  
 7 arbitration of disputes; listing prohibited acts; allowing hearing before Civil Service  
 8 Commission; providing judicial review; specifying powers and duties of the Civil Service  
 9 Commission; and allowing injunctive relief.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §8-15B-1, §8-15B-2, §8-15B-3, §8-15B-4 and §8-15B-5, all to read as follows:

**ARTICLE 15B. MEETING AND CONFERENCE RIGHTS FOR MEMBERS OF FIRE DEPARTMENTS.**

**§8-15B-1. Definitions.**

1 As used in this article:

2 "Commission" means the firemen's Civil Service Commission provided in article fourteen  
 3 or fifteen of this chapter.

4 "Employee organization" means any association, organization, federation or council  
 5 composed of firefighters having as one of its purposes the representation of its members in  
 6 negotiations with a political subdivision.

7 "Firefighter" means any person, other than a fire chief, employed as a fireman on a  
 8 full-time basis by a political subdivision if the person is covered by the civil service provisions of  
 9 article fifteen of this chapter.

10 "Political subdivision" means, and is limited to, any municipality within the state.

11 "Strike" means the failure to report for duty as a result of concerted action with an  
12 employee organization, the willful absence from one's position, the stoppage of work or the  
13 abstinence, in whole or in part, from the full, faithful and proper performance of the duties of  
14 employment or any manner of interference with the operation of any fire department of a political  
15 subdivision for the purpose of inducing, influencing or coercing a change in the conditions or  
16 compensation or the rights, privileges or obligations of employment.

**§8-15B-2. Right to self-organization and exclusive representation; dues.**

1 (a) Firefighters have, and are protected in the exercise of, the right of self-organization to  
2 form and join any employee organization, to meet and confer with their employers through  
3 representatives of their own choosing on questions of wages, hours and other conditions of  
4 employment, except to strike, for the purpose of contracting for rights, free from actual  
5 interference, restraint or coercion. An employee organization duly designated to represent the  
6 firefighters employed by a political subdivision shall be the exclusive contracting agent for all  
7 firefighters so employed. The organization shall act, negotiate agreements and contract for rights  
8 for all firefighters and is responsible for representing the interests of all firefighters.

9 (b) An employee organization claiming to represent a majority of the firefighters of a  
10 political subdivision shall be recognized as the exclusive contracting agent by the political  
11 subdivision upon the presentation of a petition or other document in which a majority of the  
12 firefighters employed by the political subdivision designates the employee organization as their  
13 exclusive contracting agent. If a political subdivision has a good faith doubt as to the majority  
14 status of the employee organization it shall, within thirty days of the receipt of the petition or  
15 document, request its Civil Service Commission to conduct a secret ballot election within thirty  
16 days of the receipt of the request. The commission shall certify the results of the election within

17 three days after the election. Following recognition or certification, and upon the written  
18 authorization of any firefighter, the political subdivision shall deduct from the payroll of the  
19 firefighter the monthly amount of dues or assessments of the employee organization as certified  
20 by the secretary of the employee organization and shall deliver the same to the employee  
21 organization's treasurer no later than the last day of the month following the deduction.

**§8-15B-3. Board of arbitration; duty to meet and confer with employees and arbitrate; procedures.**

1 (a) The political subdivision and the employee organization recognized or certified as the  
2 exclusive contracting agent shall contract for all employees' rights. Representatives of the political  
3 subdivision and the employee organization shall meet at reasonable times, including meetings  
4 appropriately related to the budget making process, and shall confer in good faith with respect to  
5 wages, hours and other conditions of employment, or the negotiation of an agreement or any  
6 questions arising thereunder, and shall execute a written contract incorporating any agreement  
7 reached. Neither party may be compelled to agree to a proposal or make a concession.

8 (b) If, after a reasonable period of negotiations concerning wages, hours and other  
9 conditions of employment, a dispute exists between the political subdivision and the employee  
10 organization, or if no agreement has been reached on wages, hours and other conditions of  
11 employment sixty days prior to the final date for the setting of the budget of the political  
12 subdivision, either party or the parties jointly may request arbitration of the issue or issues in  
13 dispute by a board of arbitration. The board of arbitration shall be composed of three persons,  
14 one appointed by the political subdivision, one appointed by the employee organization and a  
15 third member to be agreed upon by the parties. The members of the board representing the  
16 political subdivision and the employee organization shall be named within five days from the date  
17 of the request for the appointment of the board. If, after a period of five days from the date of the

18 appointment of the two arbitrators appointed by the political subdivision and the employee  
19 organization, the third arbitrator has not been mutually agreed upon, then either arbitrator may  
20 request the federal mediation and conciliation service to furnish a list of five members from its list  
21 of arbitrators. Within five days after the receipt of the list, the representative of the political  
22 subdivision and the employee organization shall each strike two names from the list. The  
23 individual whose name remains on the list is the third arbitrator. The third arbitrator is the chair  
24 of the board of arbitration.

25 (c) The chair of the board of arbitration shall establish reasonable dates and places of  
26 hearing. Any hearings involved shall be conducted in accordance with the rules established for  
27 arbitration by the American Arbitration Association. The rules of evidence promulgated by the  
28 Supreme Court of Appeals do not apply. The chair may issue subpoenas and administer oaths.  
29 Upon completion of the hearings and within fifteen days, the board of arbitration shall make  
30 findings of fact and render a decision. The decision is final and binding upon both parties, except  
31 as provided in subsection (d) of this section. The compensation, if any, for the appointed  
32 arbitrators will be paid by the political subdivision. The compensation and expenses of the third  
33 arbitrator, as well as all stenographic and other expenses incurred by the arbitration board in  
34 connection with arbitration proceedings, shall be paid equally by the parties.

35 (d) Prior to invoking the arbitration procedure provided in this article, the political  
36 subdivision and the employee organization shall submit to each other a final settlement offer on  
37 all unresolved issues. The arbitration panel is limited, after hearing, to resolving the dispute by  
38 adopting, on an issue-by-issue basis, the final offer of either the political subdivision or the  
39 employee organization. In making its decision, the panel shall consider the following:

40 (1) Prior agreements, if any, between the political subdivision and the employee  
41 organization;

42           (2) Comparison of the issues submitted to final offer settlement relative to the employees  
 43 in the contracting unit involved with those issues related to other public and private employees  
 44 doing comparable work, giving consideration to factors peculiar to the area and classification  
 45 involved;

46           (3) The interests and welfare of the public, the ability of the public employer to finance and  
 47 administer the issues proposed and the effect of the adjustments on the normal standard of public  
 48 service;

49           (4) The lawful authority of the public employer;

50           (5) Any stipulations of the political subdivision and the employee organization;

51           (6) Any other factors, not confined to those listed in this section, which are normally or  
 52 traditionally taken into consideration in the determination of issues submitted to final offer  
 53 settlement through voluntary conference, mediation, fact-finding or other impasse resolution  
 54 procedures in public service or in private employment.

55           (e) Any arbitration decision as well as any written agreement between a political  
 56 subdivision and an employee organization determining the terms and conditions of employment  
 57 of firefighters shall contain the following notice:

58           "It is agreed by the parties that any provision contained herein requiring legislative action  
 59 to permit its implementation by amendment of law or by providing the additional funds therefor,  
 60 will not become effective until the appropriate legislative body has given approval."

**§8-15B-4. Prohibited acts; hearings.**

1           (a) Political subdivisions are prohibited from:

2           (1) Interfering with, restraining or coercing firefighters in the exercise of their rights  
 3 guaranteed by this article;

4           (2) Dominating or interfering with the formation or administration of any employee

5 organization;

6 (3) Discharging or otherwise discriminating against a firefighter because he or she has  
7 signed or filed any petition, affidavit or complaint or given information or testimony pursuant to  
8 this article;

9 (4) Refusing to meet and confer in good faith with any employee organization which has  
10 been recognized or certified as the exclusive contracting agent of the firefighters;

11 (5) Refusing to discuss grievances with the agent of the firefighters; or

12 (6) Refusing to abide by a valid arbitration decision.

13 (b) Employee organizations are prohibited from:

14 (1) Restraining or coercing a firefighter in the exercise of his or her rights guaranteed under  
15 this article;

16 (2) Causing or attempting to cause a political subdivision to discriminate against a  
17 firefighter in violation of subsection (a) of this section;

18 (3) Refusing to meet and confer in good faith with a political subdivision;

19 (4) Striking against or withholding their members' services from a political subdivision.

20 Firefighters who are absent from work without permission are presumed to have engaged in a  
21 strike unless evidence of illness or other good cause is presented by each firefighter for each  
22 absence; or

23 (5) Refusing to abide by a valid arbitration decision.

24 (c) Any firefighter who engages in a concerted strike against a political subdivision or  
25 withholds services from a political subdivision shall be suspended from duty for a period not to  
26 exceed six months without pay and the employee organization to which any striking firefighter  
27 belongs shall lose its right for six months to have the monthly amount of dues withheld for all of  
28 its members' pay by the employer. The treasurer or chief financial officer of the political

29 subdivision may not issue any warrant or check to any suspended firefighter for the payment of  
30 wages which might otherwise be payable during that period nor may the treasurer or chief financial  
31 officer issue any warrant or check for the monthly amount of dues of members of the employee  
32 organization to that organization as required by subsection (b), section two of this article.

33 (d) Any private citizen of a political subdivision against which a prohibited act has been  
34 committed may seek a writ of mandamus or any other remedy which is authorized by law to  
35 enforce compliance with this subdivision by any treasurer or chief financial officer.

36 (e) (1) Any firefighter, employee organization or political subdivision which has reasonable  
37 cause to believe that a violation of this section has occurred may file a complaint with the  
38 commission and serve a copy on each person, employee organization or political subdivision  
39 involved.

40 (2) The commission may make and enter an order dismissing the complaint or may  
41 conduct an investigation or hold a hearing on the complaint. The firefighter, employee  
42 organization or political subdivision complained of has the right to file an answer to the complaint  
43 or any amended complaints within twenty days after the service of the complaint. If a hearing is  
44 ordered, the commission shall set the time and place for the hearing, which time and place may  
45 be changed by the commission at the request of one of the parties for good cause shown.

46 (3) The firefighter, employee organization or political subdivision may appear in person or  
47 otherwise defend against the complaint. In the discretion of the commission any other person  
48 may be allowed to intervene in the proceedings.

49 (4) The commission is not bound by the rules of evidence promulgated by the Supreme  
50 Court of Appeals and the commissioner has the power of subpoena and to administer oaths. A  
51 transcript of the testimony taken at any hearing before the commission shall be filed in the office  
52 of the commission and be opened for inspection by either of the parties or their authorized



53 representatives. The commission shall bear the cost of producing the transcript.

54 (f) (1) If, upon all the testimony and evidence, the commission determines that a prohibited  
55 practice has been committed, it shall state its findings of fact in writing and shall issue and cause  
56 to be served on the party committing the prohibited practice an order requiring the employee  
57 organization or the political subdivision to cease and desist from the prohibited practice. The  
58 commission may take any further affirmative action as will comply with the provisions of this  
59 section including, but not limited to, the withdrawal of certification of an employee organization  
60 established by or assisted in its establishment by any prohibited practice.

61 (2) If, upon all the testimony and evidence, the commission determines that a prohibited  
62 practice has not been or is not being committed, it shall state its findings of fact and conclusions  
63 of law and shall issue an order dismissing the complaint.

64 (g) If a firefighter, employee organization or political subdivision refuses to comply with an  
65 order from the commission and fails to appeal the order as hereinafter provided, the commission  
66 shall request the Attorney General of West Virginia to seek injunctive relief in the circuit court of  
67 the county where the prohibited act was or is being committed.

**§8-15B-5. Judicial review.**

1 (a) Except as otherwise provided in subsection (b) of this section, any party adversely  
2 affected by an order of the commission is entitled to appeal a decision of the commission to circuit  
3 court as provided in article five, chapter twenty-nine-a of this code.

4 (b) An action appealing a decision of the commission may only be initiated in the circuit  
5 court where the political subdivision is located. The appeal must be filed within ninety days from  
6 the date of the entry by the commission of its final order. Upon an appeal being taken and  
7 docketed with the clerk of the circuit court, the circuit court shall proceed to hear the appeal upon  
8 the original record made before the commission. Any party adversely affected by a decision and

- 9 final order of the circuit court has the right to petition the Supreme Court of Appeals for a review  
10 of the decision of the circuit court, as in other civil cases.

NOTE: The purpose of this bill is to provide meetings and conference rights for members of municipal fire departments. The bill also creates duties for the firefighters' Civil Service Commissions.

This article is new; therefore, it has been completely underscored.