

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2107

BY DELEGATE CAPUTO

[Introduced January 9, 2019; 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
 3 meeting and conference rights for members of fire departments employed by political
 4 subdivisions; providing for the right of self-organization; allowing designation of an
 5 exclusive representative agent; imposing a duty to meet and confer with employees;
 6 allowing deduction of employee organization dues and assessments; providing for
 7 compulsory arbitration of disputes; listing prohibited acts; allowing hearing before Civil
 8 Service Commission; providing judicial review; specifying powers and duties of the Civil
 9 Service Commission; and allowing injunctive relief.

Be it enacted by the Legislature of West Virginia:

**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 §8-15-1 et seq.
 3 of this code.

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 full-
 8 time basis by a political subdivision if the person is covered by the civil service provisions of §8-
 9 15-1 et seq. of this code.

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 30 days of the receipt of the petition or
15 document, request its Civil Service Commission to conduct a secret ballot election within 30 days
16 of the receipt of the request. The commission shall certify the results of the election within three
17 days after the election. Following recognition or certification, and upon the written authorization
18 of any firefighter, the political subdivision shall deduct from the payroll of the firefighter the monthly
19 amount of dues or assessments of the employee organization as certified by the secretary of the
20 employee organization and shall deliver the same to the employee organization's treasurer no
21 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 60 days prior to the final date for the setting of the budget of the political subdivision,
12 either party or the parties jointly may request arbitration of the issue or issues in dispute by a
13 board of arbitration. The board of arbitration shall be composed of three persons, one appointed
14 by the political subdivision, one appointed by the employee organization and a third member to
15 be agreed upon by the parties. The members of the board representing the political subdivision
16 and the employee organization shall be named within five days from the date of the request for
17 the appointment of the board. If, after a period of five days from the date of the appointment of
18 the two arbitrators appointed by the political subdivision and the employee organization, the third
19 arbitrator has not been mutually agreed upon, then either arbitrator may request the federal
20 mediation and conciliation service to furnish a list of five members from its list of arbitrators. Within
21 five days after the receipt of the list, the representative of the political subdivision and the
22 employee organization shall each strike two names from the list. The individual whose name
23 remains on the list is the third arbitrator. The third arbitrator is the chair of the board of arbitration.

24 (c) The chair of the board of arbitration shall establish reasonable dates and places of
25 hearing. Any hearings involved shall be conducted in accordance with the rules established for
26 arbitration by the American Arbitration Association. The rules of evidence promulgated by the

27 Supreme Court of Appeals do not apply. The chair may issue subpoenas and administer oaths.
28 Upon completion of the hearings and within 15 days, the board of arbitration shall make findings
29 of fact and render a decision. The decision is final and binding upon both parties, except as
30 provided in §8-15B-3 (d) of this code. The compensation, if any, for the appointed arbitrators will
31 be paid by the political subdivision. The compensation and expenses of the third arbitrator, as
32 well as all stenographic and other expenses incurred by the arbitration board in connection with
33 arbitration proceedings, shall be paid equally by the parties.

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

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

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

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

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

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

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

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

57 “It is agreed by the parties that any provision contained herein requiring legislative action
 58 to permit its implementation by amendment of law or by providing the additional funds therefor,
 59 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 §8-15B-4(a) of this code;

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 §8-15b-2(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 20 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
47 or 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
65 an order from the commission and fails to appeal the order as hereinafter provided, the
66 commission shall request the Attorney General of West Virginia to seek injunctive relief in the
67 circuit court of 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 §29A-5-1 et seq. 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 90 days from the
6 date of the entry by the commission of its final order. Upon an appeal being taken and docketed

7 with the clerk of the circuit court, the circuit court shall proceed to hear the appeal upon the original
8 record made before the commission. Any party adversely affected by a decision and final order
9 of the circuit court has the right to petition the Supreme Court of Appeals for a review of the
10 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.

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