

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2703**

4 (By Delegates Hamilton, Lane, D. Campbell, L. Phillips, Crosier,
5 Andes, M. Poling, Ireland, Ellem, Sigler and D. Poling)

6 (Originating in the Committee on the Judiciary)

7
8 [February 23, 2011]

9
10 A BILL to amend and reenact §7-14-3 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §8-14-7 of said code;
12 and to amend and reenact §8-15-12 of said code, all relating
13 to qualifications of members of the Policemen's Civil Service
14 Commission, the Firemen's Civil Service Commission and the
15 Civil Service Commissions of the counties; restrictions from
16 service; and disqualifications from service.

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

18 That §7-14-3 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; that §8-14-7 of said code be amended and
20 reenacted; and that §8-15-12 of said code be amended and reenacted,
21 all to read as follows:

22 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

23 **ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.**

24 **§7-14-3. Civil Service Commission.**

25 There shall be continued a Civil Service Commission in each
26 county. ~~and the state. Each such~~ A civil service commission shall
27 consist of three commissioners:

28 (1) One commissioner ~~of whom shall be~~ appointed by the county

1 bar association; ~~of such county~~

2 (2) One commissioner ~~of whom shall be~~ appointed by the county
3 deputy sheriff's association; ~~of such county,~~ and

4 (3) One commissioner ~~of whom shall be~~ appointed by the county
5 commission. ~~of such county.~~

6 ~~In the event~~ If the bar association or deputy sheriff's
7 association fails to make an appointment within the prescribed time
8 ~~prescribed in this section therefor,~~ then ~~such appointment shall be~~
9 ~~made by the county commission~~ the county commission shall make the
10 appointment.

11 A person may not be appointed if that person is a relative, as
12 defined in section three, article one, chapter sixty, to: a county
13 commissioner of the county from which the appointment is made; the
14 president or chairman or similarly situated official of the deputy
15 sheriff's association or the bar association.

16 A person is not eligible for appointment or reappointment if
17 her or she has been convicted of a felony or any misdemeanor
18 involving moral turpitude.

19 A commissioner shall be a qualified voter of the county during
20 the appointment term.

21 A commissioner may not hold any other office (other than the
22 office of notary public) under the United States, this state, or
23 any municipality, county or other political subdivision thereof;
24 nor shall any commissioner serve on any political committee or take
25 any active part in the management of any political campaign.

26 ~~The persons appointed commissioners shall be qualified voters~~
27 ~~of the county for which they are appointed, and at least two of the~~
28 ~~commissioners shall be persons in full sympathy with the purposes~~

~~1 of this article. Not more than two of the commissioners, at any
2 one time, shall be members of the same political party.~~

3 Only two commissioners may be of the same political party.

~~4 The commissioners in each county shall be appointed as
5 follows: Within sixty days from the effective date of this
6 article, the authorities having the power to appoint members to the
7 Civil Service Commission shall appoint the three commissioners, the
8 first to be appointed by the bar association of the county shall
9 serve for six years from the date of appointment, the second to be
10 appointed by the deputy sheriff's association of the county shall
11 serve for four years from the date of appointment, and the third to
12 be appointed by the county commission of the county shall serve for
13 a term of two years from the date of appointment. All subsequent
14 appointments shall be made for terms of four years.~~

15 After the original appointments, all appointments shall be
16 made for periods of four years.

~~17 In the event that If any commissioner of the civil service
18 commission ceases to be a member, thereof by virtue of death, final
19 removal or other cause, a new commissioner shall be appointed to
20 fill the unexpired term of that commissioner within ten days. after
21 said ex-commissioner ceased to be a member of the commission. Such
22 The appointment shall be made by the authority entity who appointed
23 the commissioner who is no longer a member. of the commission.~~

24 Each year ~~the three members of the commission~~ commissioners
25 shall ~~together,~~ elect one of their number to act as a president. of
26 the commission for a term of one year.

27 The county commission may ~~at any time~~ remove a commissioner
28 for good cause, which shall be stated in writing and made a part of

1 the records of the commission.

2 Once the county commission has removed any commissioner, ~~such~~
3 the county commission shall within ten days ~~thereafter~~ file in the
4 office of the clerk of the circuit court of the county a petition
5 setting forth in full the reason for the removal and ~~praying for~~
6 requesting the confirmation of the circuit court of the action. ~~of~~
7 ~~the county commission in removing the said commissioner.~~ A copy of
8 the petition shall be served upon the commissioner so removed
9 simultaneously with its filing in the office of the clerk of the
10 circuit court and has precedence on the docket of the circuit court
11 and shall be heard by the court as soon as practicable. ~~upon the~~
12 ~~request of the removed commissioner.~~ All rights hereby vested in
13 ~~the circuit court may be exercised by the judge thereof in~~
14 ~~vacation. In the event that~~

15 If no term of the circuit court is being held at the time of
16 the filing of the petition, ~~and the judge thereof cannot be reached~~
17 ~~in the county wherein the petition was filed,~~ the petition shall be
18 heard at the next succeeding term of the circuit court, ~~whether~~
19 ~~regular or special,~~ and the commissioner ~~so removed~~ shall remain
20 removed until a hearing is had upon the petition. ~~of the county~~
21 ~~commission.~~ The circuit court ~~or the judge thereof in vacation,~~
22 shall hear and decide the issues presented by the petition. The
23 county commission or commissioner ~~as the case may be,~~ against whom
24 the decisions of the circuit court ~~or judge thereof in vacation~~ is
25 rendered ~~has the right to~~ may petition the Supreme Court of Appeals
26 for a review of the decision ~~of the circuit court or the judge~~
27 ~~thereof in vacation~~ as in other civil cases. ~~In the event that~~

28 If the county commission fails to file its petition in the

1 office of the clerk of the circuit court, ~~as hereinbefore provided,~~
2 within ten days after the removal of the commissioner, ~~such the~~
3 commissioner immediately resumes his or her position as a member of
4 the civil service commission.

5 Any resident of the county ~~has the right at any time to~~ may
6 file charges against and seek the removal of any member of the
7 civil service commission. The charges shall be filed in the form
8 of a petition in the office of the clerk of the circuit court of
9 the county. A copy of the petition shall be served upon the
10 commissioner sought to be removed. The petition shall be ~~matured~~
11 ~~for hearing and~~ heard as a civil action by the circuit court of the
12 county for which the commissioner serves. ~~as a member of the civil~~
13 ~~service commission or by the judge thereof in vacation.~~ The party
14 against whom the decision of the circuit court ~~or judge thereof in~~
15 ~~vacation~~ is rendered ~~has the right to~~ may petition the Supreme
16 Court of Appeals for a review of the decision of the circuit court
17 ~~or judge thereof in vacation~~ as in other civil cases.

18 ~~No commissioner may hold any other office (other than the~~
19 ~~office of notary public) under the United States, this state or any~~
20 ~~municipality, county or other political subdivision thereof; nor~~
21 ~~may any commissioner serve on any political party committee or take~~
22 ~~any active part in the management of any political campaign.~~

23 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

24 **ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS,**
25 **AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND**
26 **POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT**
27 **OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN**
28 **POLICE DEPARTMENTS.**

1 **§8-14-7. Policemen's civil service commission generally.**

2 ~~In every~~ A Class I and Class II city municipality having a
3 paid police department, ~~there shall be a~~ create a "Policemen's
4 Civil Service Commission." The commission ~~shall consist~~ consists
5 of three commissioners:

6 (1) One commissioner ~~of whom shall be~~ appointed by the mayor
7 of the ~~city~~ municipality;

8 (2) One commissioner ~~of whom shall be~~ appointed by the local
9 fraternal order of police; and

10 (3) One commissioner ~~the third shall be~~ appointed by the local
11 chamber of commerce, or if there be none, by a local businessmen's
12 association.

13 A commissioner may not be a relative, as defined in section
14 three, article one, chapter sixty, to: the mayor of the
15 municipality; the President, Chairman or similarly situated
16 official of the local fraternal order of police or the local
17 chamber of commerce or businessmen's association.

18 A person is not eligible for appointment or reappointment if
19 convicted of a felony or any misdemeanor involving moral turpitude.

20 A commissioner shall be a qualified voters voter of the city.
21 ~~for which they are appointed; and at least two of said~~
22 ~~commissioners shall be individuals in full sympathy with the~~
23 ~~purposes of the civil service provisions of this article.~~

24 Only two commissioners may be of the same political party.

25 ~~Not more than two of the said commissioners, at any one time,~~
26 ~~shall be adherents of the same political party. Of th three~~
27 ~~original appointments in each city, the first commissioner shall be~~
28 ~~appointed by the mayor; and shall serve for six years from the date~~

1 ~~of his or her~~ appointment; ~~the second commissioner shall be~~
2 ~~appointed by the local fraternal order of police; and shall serve~~
3 ~~for four years from the date of his appointment; and the third~~
4 ~~commissioner shall be appointed by the local chamber of commerce or~~
5 ~~local businessmen's association. and shall serve for two years from~~
6 ~~the date of his appointment. In the event~~

7 If there is no local chamber of commerce or local
8 businessmen's association at the time any appointment is to be made
9 by it, ~~such~~ the appointment shall be made by the other two
10 commissioners by mutual agreement. After the original
11 appointments, all appointments shall be made for periods of four
12 years. ~~each by the appointing authority hereinbefore designated.~~
13 ~~In the event that~~

14 If any commissioner of said civil service commission shall
15 cease to be a member, ~~thereof by virtue of death, final removal or~~
16 ~~other cause,~~ a new commissioner shall be appointed to fill the
17 unexpired term ~~of said commissioner~~ within ten days. ~~after said~~
18 ~~excommissioner shall have ceased to be a member of said commission.~~

19 ~~Such~~ The appointment shall be made by the officer or body who
20 in the first instance appointed the commissioner. ~~who is no longer~~
21 ~~a member of the commission, except that in the case of a vacancy in~~
22 ~~an appointment made by the Governor, which vacancy occurs after the~~
23 ~~effective date of this article, the appointment for the unexpired~~
24 ~~term shall be made by the mayor.~~

25 Each year the ~~three members of the commission~~ the
26 commissioners shall together, ~~elect one of their number to act as~~
27 a president. ~~of the commission, who shall serve as president for~~
28 ~~one year.~~

1 The mayor may, ~~at any time,~~ remove any commissioner or
2 ~~commissioners~~ for good cause, which shall be stated in writing and
3 made a part of the records of the commission. ~~Provided, That~~

4 Once the mayor has removed any commissioner, the mayor shall
5 within ten days thereafter file in the office of the clerk of the
6 circuit court of the county in which the city or the major portion
7 ~~of the territory~~ thereof is located a petition setting forth in
8 full the reason for ~~said the~~ removal and praying requesting for the
9 confirmation by ~~said the~~ circuit court. ~~of the action of the Mayor~~
10 ~~in so removing the said commissioner.~~ A copy of said petition
11 shall be served upon the commissioner so removed simultaneously
12 with its filing in the office of the clerk of the circuit court and
13 shall have precedence on the docket of ~~said the~~ court and shall be
14 heard by ~~said the~~ court as soon as practicable. ~~upon the request of~~
15 ~~the removed commissioner. or commissioners.~~ All rights herein
16 ~~vested in said circuit court may be exercised by the judge thereof~~
17 ~~in vacation. In the event~~

18 If that no term of the circuit court is being held at the time
19 of the filing of ~~said the~~ petition, and the judge thereof cannot be
20 ~~reached in the county wherein the petition was filed, said the~~
21 petition shall be heard at the next succeeding term of ~~said the~~
22 circuit court, ~~whether regular or special,~~ and the commissioner or
23 ~~commissioners~~ so removed shall remain removed until a hearing is
24 had upon the said petition. ~~of the Mayor.~~ The court ~~or the judge~~
25 ~~thereof in vacation~~ shall hear and decide the issues presented by
26 ~~said the~~ petition.

27 The mayor or commissioner ~~or commissioners,~~ as the case may
28 ~~be,~~ against whom the decision of the court or the judge thereof in

1 ~~vacation shall be~~ is rendered, ~~shall have the right to~~ may petition
2 the Supreme Court of Appeals for a review of the decision of the
3 circuit court ~~or the judge thereof in vacation~~ as in other civil
4 cases.

5 ~~In the event that~~ If the mayor ~~shall~~ fails to file his or her
6 petition in the office of the clerk of the circuit court, ~~as~~
7 ~~hereinbefore provided,~~ within ten days after the removal of ~~said~~
8 the commissioner, ~~or commissioners, such~~ the commissioner ~~or~~
9 ~~commissioners~~ shall immediately resume his or her ~~or their~~
10 position. ~~or positions as a member or members of the policemen's~~
11 ~~Civil Service Commission.~~

12 Any resident of the city ~~shall have the right at any time to~~
13 may file charges against and seek the removal of any member of the
14 policemen's civil service commission. ~~of such city. Such~~ The
15 charges shall be filed in the form of a petition in the office of
16 the clerk of the circuit court of the county in which the city or
17 the major portion ~~of the territory~~ thereof is located, and a copy
18 of ~~said~~ the petition shall be served upon the commissioner ~~or~~
19 ~~commissioners~~ sought to be removed. ~~Said~~ The petition shall be
20 ~~matured for hearing and heard by~~ ~~said~~ the circuit court ~~or the judge~~
21 ~~thereof in vacation~~ in the same manner as civil proceedings ~~in the~~
22 ~~circuit courts of this state~~ are heard, and the party against whom
23 the circuit court's decision is rendered ~~shall have the right to~~ may
24 petition the Supreme Court of Appeals for a review of the action of
25 the circuit court, as in other civil cases.

26 ~~No commissioner shall hold any other office (other than the~~
27 ~~office of notary public) under the United States, this state, or any~~
28 ~~municipality, county or other political subdivision thereof; nor~~

1 ~~shall any commissioner serve on any political committee or take any~~
2 ~~active part in the management of any political campaign.~~

3 **ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL**
4 **SERVICE FOR PAID FIRE DEPARTMENTS.**

5 **§8-15-12. Firemen's Civil Service Commission generally.**

6 ~~In every~~ A municipality having a paid fire department, ~~there~~
7 shall create ~~be~~ a "Firemen's Civil Service Commission." The
8 commission shall consist of three commissioners:

9 (1) One commissioner ~~of whom shall be~~ appointed by the Mayor
10 of the municipality;

11 (2) One commissioner ~~of whom shall be~~ appointed by the local
12 international association of fire fighters in the event that said
13 local exists in the municipality, or in case no such local exists
14 in the municipality, then by the local central body of the West
15 Virginia Federation of Labor AFL-CIO in the event that said central
16 body exists in the municipality, or in case that no such central
17 body exists in the municipality, then by the West Virginia
18 Federation of Labor AFL-CIO;

19 (3) One commissioner ~~and the third shall be~~ appointed by the
20 local chamber of commerce, or if there be none, by a local
21 businessmen's association.

22 A commissioner may not be a relative, as defined in section
23 three, article one, chapter sixty, to the mayor of the municipality,
24 the president, chairman or similarly situated official of the local
25 international association of fire fighters or the appropriate West
26 Virginia Federation of Labor AFL-CIO as appropriate, or the local
27 chamber of commerce or businessmen's association.

28 A commissioner may not be convicted of a felony or any

1 misdemeanor involving moral turpitude.

2 A commissioner shall be a resident of the municipality.

3 A commissioner shall be a qualified ~~voters~~ voter of the
4 municipality. ~~for which they are appointed; and at least two of said~~
5 ~~commissioners shall be individuals in full sympathy with the~~
6 ~~purposes of the civil service provisions of this article.~~

7 A commissioner may not hold any other office (other than the
8 office of notary public) under the United States, this state or any
9 municipality, county or other political subdivision thereof; nor
10 shall any commissioner serve on any political committee or take any
11 active part in the management of any political campaign.

12 Only two commissioners may be of the same political party.

13 ~~Not more than two of the said commissioners, at any one time,~~
14 ~~shall be adherents of the same political party. Of the three~~
15 ~~original appointments in each municipality, the first commissioner~~
16 ~~shall be appointed by the mayor and shall serve for six years from~~
17 ~~the date of his appointment; the second commissioner shall be~~
18 ~~appointed by the local trades board, or in the absence of such~~
19 ~~board, by the international association of fire fighters, and shall~~
20 ~~serve for four years from the date of his appointment; and the third~~
21 ~~commissioner shall be appointed by the local chamber of commerce or~~
22 ~~local businessmen's association and shall serve for two years from~~
23 ~~the date of his appointment. In the event~~

24 If there is no local chamber of commerce or local businessmen's
25 association at the time any appointment is to be made by it, ~~such~~
26 the appointment shall be made by the other two commissioners by
27 mutual agreement.

28 After the original appointments, all appointments shall be made

1 for periods of four years. ~~each by the appointing authority~~
2 ~~hereinbefore designated.~~

3 ~~In the event that~~ If any commissioner of ~~said Civil Service~~
4 ~~Commission shall~~ cease to be a member, ~~thereof by virtue of death,~~
5 ~~final removal or other cause,~~ a new commissioner shall be appointed
6 to fill the unexpired term of said commissioner within ten days.
7 ~~after said ex-commissioner shall have ceased to be a member of said~~
8 ~~commission.~~

9 ~~Such~~ The appointment shall be made by the officer or body who
10 in the first instance appointed the commissioner who is no longer
11 a member of the commission.

12 Each year the ~~three members of the commission~~ the commissioners
13 ~~shall together,~~ elect one of their number to act as a president. ~~of~~
14 ~~the commission, who shall serve as president for one year.~~

15 The mayor may, at any time, remove any commissioner ~~or~~
16 ~~commissioners~~ for good cause, which shall be stated in writing and
17 made a part of the records of the commission.

18 ~~Provided, That~~ Once the mayor has removed any commissioner, the
19 mayor shall within ten days ~~thereafter~~ file in the office of the
20 clerk of the circuit court of the county in which the municipality
21 or the major portion ~~of the territory~~ thereof is located a petition
22 setting forth in full the reason for ~~said~~ the removal and ~~praying~~
23 ~~for~~ requesting the confirmation by ~~said~~ the circuit court of the
24 action of the mayor in so removing the ~~said~~ commissioner. A copy
25 of ~~said~~ the petition shall be served upon the commissioner so
26 removed simultaneously with its filing in the office of the clerk
27 of the circuit court and shall have precedence on the docket of
28 ~~said~~ the court and shall be heard by ~~said~~ the court as soon as

1 practicable. ~~upon the request of the removed commissioner or~~
2 ~~commissioners. All rights herein vested in said circuit court may~~
3 ~~be exercised by the judge thereof in vacation. In the event that~~

4 If no term of the circuit court is being held at the time of
5 the filing of ~~said~~ the petition, ~~and the judge thereof cannot be~~
6 ~~reached in the county wherein the petition was filed, said~~ the
7 petition shall be heard at the next succeeding term of ~~said~~ the
8 circuit court, ~~whether regular or special,~~ and the commissioner ~~or~~
9 ~~commissioners~~ so removed shall remain removed until a hearing is had
10 upon the petition. ~~of the mayor. The court or the judge thereof in~~
11 ~~vacation~~ shall hear and decide the issues presented by ~~said~~ the
12 petition. The mayor or commissioner ~~or commissioners,~~ as the case
13 ~~may be,~~ against whom the decision of the court or the judge thereof
14 ~~in vacation shall be~~ is rendered, shall have the right to petition
15 the Supreme Court of Appeals for a review of the decision of the
16 circuit court. ~~or the judge thereof in vacation as in other civil~~
17 ~~cases.~~

18 ~~In the event that~~ If the mayor ~~shall fail~~ fails to file his ~~or~~
19 her petition in the office of the clerk of the circuit court, ~~as~~
20 ~~hereinbefore provided,~~ within ten days after the removal of ~~said~~ the
21 commissioner ~~or commissioners,~~ such the commissioner ~~or~~
22 ~~commissioners~~ shall immediately resume his or her ~~or their~~ position.
23 ~~or positions as a member or members of the firemen's civil service~~
24 ~~commission.~~

25 Any resident of the municipality ~~shall have the right at any~~
26 ~~time to~~ may file charges against and seek the removal of ~~any member~~
27 a commissioner ~~of the firemen's Civil Service Commission. of such~~
28 ~~municipality. Such~~ The charges shall be filed in the form of a

1 petition in the office of the clerk of the circuit court of the
2 county in which the municipality or the major portion ~~of the~~
3 ~~territory~~ thereof is located, and a copy of ~~said~~ the petition shall
4 be served upon the commissioner ~~or commissioners~~ sought to be
5 removed. ~~Said~~ The petition shall be ~~matured for hearing and heard~~
6 by ~~said~~ the circuit court ~~or the judge thereof in vacation~~ in the
7 same manner as civil proceedings, ~~in the circuit courts of this~~
8 ~~state are heard,~~ and the party against whom the circuit court's
9 decision is rendered ~~shall have the right to~~ may petition the
10 Supreme Court of Appeals for a review of the action of the circuit
11 court, as in other civil cases.

12 ~~No commissioner shall hold any other office (other than the~~
13 ~~office of notary public) under the United States, this state or any~~
14 ~~municipality, county or other political subdivision thereof; nor~~
15 ~~shall any commissioner serve on any political committee or take any~~
16 ~~active part in the management of any political campaign.~~