

1 **H. B. 2341**

2
3 (By Delegates Fleischauer, Manypenny, Marshall,
4 Martin, Barker, Longstreth and D. Poling)

5
6 [Introduced January 12, 2011; referred to the
7 Committee on Political Subdivisions then the Judiciary.]

8 **FISCAL**
NOTE

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §8-15B-1, §8-15B-2,
12 §8-15B-3, §8-15B-4 and §8-15B-5, all relating to meeting and
13 conference rights for members of police or fire departments
14 employed by political subdivisions; providing for the right of
15 these members to self-organization; allowing designation of an
16 exclusive representative agent; imposing a duty to meet and
17 confer with employees; allowing deduction of employee
18 organization dues and assessments; providing for compulsory
19 arbitration of disputes; listing prohibited acts; allowing
20 hearing before Civil Service Commission; providing judicial
21 review; specifying powers and duties of the Civil Service
22 Commission; and allowing injunctive relief.

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

24 That the Code of West Virginia, 1931, as amended, be amended
25 by adding thereto a new article, designated §8-15B-1, §8-15B-2, §8-

1 15B-3, §8-15B-4 and §8-15B-5, all to read as follows:

2 **ARTICLE 15B. MEETING AND CONFERENCE RIGHTS FOR MEMBERS OF POLICE**
3 **OR FIRE DEPARTMENTS.**

4 **§8-15B-1. Definitions.**

5 As used in this article:

6 (a) "Commission" means the policemen's or firemen's Civil
7 Service Commission provided in article fourteen or fifteen of this
8 chapter.

9 (b) "Employee organization" means any association,
10 organization, federation or council composed of police officers or
11 firefighters having as one of its purposes the representation of
12 its members in negotiations with a political subdivision.

13 (c) "Firefighter" means any person, other than a fire chief,
14 employed as a fireman on a full-time basis by a political
15 subdivision if the person is covered by the civil service
16 provisions of article fifteen of this chapter.

17 (d) "Policeman" means any person, other than a police chief,
18 employed as a police officer on a full-time basis by a political
19 subdivision if the person is covered by the civil service
20 provisions of article fourteen of this chapter.

21 (e) "Political subdivision" means, and is limited to, any
22 municipality within the state.

23 (f) "Strike" means the failure to report for duty as a result
24 of concerted action with an employee organization, the willful

1 absence from one's position, the stoppage of work or the
2 abstinence, in whole or in part, from the full, faithful and proper
3 performance of the duties of employment or any manner of
4 interference with the operation of any police or fire department of
5 a political subdivision for the purpose of inducing, influencing or
6 coercing a change in the conditions or compensation or the rights,
7 privileges or obligations of employment.

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

10 (a) Firefighters and policemen have, and are protected in the
11 exercise of, the right of self-organization to form and join any
12 employee organization, to meet and confer with their employers
13 through representatives of their own choosing on questions of
14 wages, hours and other conditions of employment, except to strike,
15 for the purpose of contracting for rights, free from actual
16 interference, restraint or coercion: *Provided,* That an employee
17 organization duly designated to represent the firefighters or
18 policemen employed by a political subdivision shall be the
19 exclusive contracting agent for all firefighters or policemen so
20 employed. The organization shall act, negotiate agreements and
21 contract for rights for all firefighters or policemen and is
22 responsible for representing the interests of all firefighters or
23 policemen.

24 (b) An employee organization claiming to represent a majority

1 of the firefighters or policemen of a political subdivision shall
2 be recognized as the exclusive contracting agent by the political
3 subdivision upon the presentation of a petition or other document
4 in which a majority of the firefighters or policemen employed by
5 the political subdivision designates the employee organization as
6 their exclusive contracting agent. In the event that a political
7 subdivision has a good faith doubt as to the majority status of the
8 employee organization it shall, within thirty days of the receipt
9 of the petition or document, request its Civil Service Commission
10 to conduct a secret ballot election within thirty days of the
11 receipt of the request. The commission shall certify the results
12 of the election within three days after the election. Following
13 recognition or certification and, upon the written authorization of
14 any firefighter or policeman, the political subdivision shall
15 deduct from the payroll of the firefighter or policeman the monthly
16 amount of dues or assessments of the employee organization as
17 certified by the secretary of the employee organization and shall
18 deliver the same to the employee organization's treasurer no later
19 than the last day of the month following the deduction.

20 **§8-15B-3. Board of arbitration; duty to meet and confer with**
21 **employees and arbitrate; procedures.**

22 (a) The political subdivision and the employee organization
23 recognized or certified as the exclusive contracting agent shall
24 contract for all employees' rights. Representatives of the

1 political subdivision and the employee organization shall meet at
2 reasonable times, including meetings appropriately related to the
3 budget making process, and shall confer in good faith with respect
4 to wages, hours and other conditions of employment, or the
5 negotiation of an agreement or any questions arising thereunder,
6 and shall execute a written contract incorporating any agreement
7 reached, and neither party may be compelled to agree to a proposal
8 or make a concession.

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

1 organization, the third arbitrator has not been mutually agreed
2 upon, then either arbitrator may request the federal mediation and
3 conciliation service to furnish a list of five members from its
4 list of arbitrators. Within five days after the receipt of the
5 list, the representative of the political subdivision and the
6 employee organization shall each strike two names from the list.
7 The individual whose name remains on the list is the third
8 arbitrator. The third arbitrator is the chairman of the board of
9 arbitration.

10 (c) The chairman of the board of arbitration shall establish
11 reasonable dates and places of hearing. Any hearings involved
12 shall be conducted in accordance with the rules established for
13 arbitration by the American arbitration association. The rules of
14 evidence promulgated by the Supreme Court of Appeals do not apply.
15 The chairman may issue subpoenas and administer oaths. Upon
16 completion of the hearings and within fifteen days, the board of
17 arbitration shall make findings of fact and render a decision. The
18 decision is final and binding upon both parties, except as provided
19 in subsection (d) of this section. The compensation, if any, for
20 the appointed arbitrator will be paid by the political subdivision.
21 The compensation and expenses of the third arbitrator, as well as
22 all stenographic and other expenses incurred by the arbitration
23 board in connection with arbitration proceedings, shall be paid
24 equally by the parties.

1 (d) Prior to invoking the arbitration procedure provided in
2 this article, the political subdivision and the employee
3 organization shall submit to each other a final settlement offer on
4 all unresolved issues. The arbitration panel is limited, after
5 hearing, to resolving the dispute by adopting, on an issue by issue
6 basis, the final offer of either the political subdivision or the
7 employee organization. In making its decision, the panel shall
8 consider the following:

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

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

16 (3) The interests and welfare of the public, the ability of
17 the public employer to finance and administer the issues proposed
18 and the effect of the adjustments on the normal standard of public
19 service;

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

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

23 (6) Any other factors, not confined to those listed in this
24 section, which are normally or traditionally taken into

1 consideration in the determination of issues submitted to final
2 offer settlement through voluntary conference, mediation, fact-
3 finding or other impasse resolution procedures in public service or
4 in private employment.

5 (e) Any arbitration decision as well as any written agreement
6 between a political subdivision and an employee organization
7 determining the terms and conditions of employment of firefighters
8 and policemen shall contain the following notice: "It is agreed by
9 the parties that any provision contained herein requiring
10 legislative action to permit its implementation by amendment of law
11 or by providing the additional funds therefor, will not become
12 effective until the appropriate legislative body has given
13 approval."

14 **§8-15B-4. Prohibited acts; hearings.**

15 (a) Political subdivisions are prohibited from:

16 (1) Interfering with, restraining or coercing firefighters or
17 policemen in the exercise of their rights guaranteed by this
18 article;

19 (2) Dominating or interfering with the formation or
20 administration of any employee organization;

21 (3) Discharging or otherwise discriminating against a
22 firefighter or policeman because he or she has signed or filed any
23 petition, affidavit or complaint or given information or testimony
24 pursuant to this article;

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

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

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

7 (b) Employee organizations are prohibited from:

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

10 (2) Causing or attempting to cause a political subdivision to
11 discriminate against a firefighter or policeman in violation of
12 subsection (a) of this section;

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

15 (4) Striking against or withholding their members' services
16 from a political subdivision: *Provided, That* firefighters or
17 policemen who are absent from work without permission are presumed
18 to have engaged in a strike unless evidence of illness or other
19 good cause is presented by each firefighter or policeman for each
20 absence; or

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

22 (c) Any firefighter or policeman who engages in a concerted
23 strike against a political subdivision or withholds services from
24 a political subdivision shall be suspended from duty for a period

1 not to exceed six months without pay, and the employee organization
2 to which any striking firefighter or policeman belongs shall lose
3 its right for six months to have the monthly amount of dues
4 withheld for all of its members' pay by the employer. The
5 treasurer or chief financial officer of the political subdivision
6 may not issue any warrant or check to any suspended firefighter or
7 policeman for the payment of wages which might otherwise be payable
8 during that period, nor may the treasurer or chief financial
9 officer issue any warrant or check for the monthly amount of dues
10 of members of the employee organization to that organization as
11 required by subsection (b), section two of this article.

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

17 (e) (1) Any firefighter or policeman, employee organization or
18 political subdivision which has reasonable cause to believe that a
19 violation of this section has occurred may file a complaint with
20 the commission and serve a copy on each person, employee
21 organization or political subdivision involved.

22 (2) The commission may make and enter an order dismissing the
23 complaint or may conduct an investigation or hold a hearing on the
24 complaint. The firefighter or policeman, employee organization or

1 political subdivision so complained of have the right to file an
2 answer to the complaint, or any amended complaints, within twenty
3 days after the service of the complaint. If a hearing is ordered,
4 the commission shall set the time and place for the hearing, which
5 time and place may be changed by the commission at the request of
6 one of the parties for good cause shown.

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

11 (4) The commission is not bound by the rules of evidence
12 promulgated by the Supreme Court of Appeals and the commissioner
13 has the power of subpoena and to administer oaths. A transcript of
14 the testimony taken at any hearing before the commission shall be
15 filed in the office of the commission, and be opened for inspection
16 by either of the parties or their authorized representatives. The
17 commission shall bear the cost of producing the transcript.

18 (f) (1) If, upon all the testimony and evidence, the commission
19 determines that a prohibited practice has been committed, it shall
20 state its findings of fact in writing and shall issue and cause to
21 be served on the party committing the prohibited practice an order
22 requiring the employee organization or the political subdivision to
23 cease and desist from the prohibited practice. The commission may
24 take any further affirmative action as will comply with the

1 provisions of this section, including, but not limited to, the
2 withdrawal of certification of an employee organization established
3 by or assisted in its establishment by any prohibited practice.

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

8 (g) In the event that a firefighter or policeman, employee
9 organization or political subdivision refuses to comply with an
10 order from the commission and fails to appeal the order as
11 hereinafter provided, the commission shall request the Attorney
12 General of West Virginia to seek injunctive relief in the circuit
13 court of the county where the prohibited act was or is being
14 committed.

15 **§8-15B-5. Judicial review.**

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

21 (b) An action appealing a decision of the commission may only
22 be initiated in the circuit court where the political subdivision
23 is located. The appeal must be filed within ninety days from the
24 date of the entry by the commission of its final order. Upon an

1 appeal being taken and docketed with the clerk of the circuit
2 court, the circuit court shall proceed to hear the appeal upon the
3 original record made before the commission. Any party adversely
4 affected by a decision and final order of the circuit court has the
5 right to petition the Supreme Court of Appeals for a review of the
6 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 police and fire departments. The bill also creates duties for the policemen and firefighters' Civil Service Commissions.

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