

Senate Bill No. 542

(By Senators Yost, Fanning, Klempa and Kessler (Acting
President))

[Introduced February 17, 2011; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

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

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

6 **§8-15B-1. Definitions.**

7 As used in this article:

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

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

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

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

20 "Strike" means the failure to report for duty as a result of
21 concerted action with an employee organization, the willful absence
22 from one's position, the stoppage of work or the abstinence, in
23 whole or in part, from the full, faithful and proper performance of
24 the duties of employment or any manner of interference with the
25 operation of any fire department of a political subdivision for the

1 purpose of inducing, influencing or coercing a change in the
2 conditions or compensation or the rights, privileges or obligations
3 of employment.

4 **§8-15B-2. Right to self-organization and exclusive representation;**
5 **dues.**

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

18 (b) An employee organization claiming to represent a majority
19 of the firefighters of a political subdivision shall be recognized
20 as the exclusive contracting agent by the political subdivision
21 upon the presentation of a petition or other document in which a
22 majority of the firefighters employed by the political subdivision
23 designates the employee organization as their exclusive contracting
24 agent. If a political subdivision has a good faith doubt as to the
25 majority status of the employee organization it shall, within

1 thirty days of the receipt of the petition or document, request its
2 Civil Service Commission to conduct a secret ballot election within
3 thirty days of the receipt of the request. The commission shall
4 certify the results of the election within three days after the
5 election. Following recognition or certification and, upon the
6 written authorization of any firefighter, the political subdivision
7 shall deduct from the payroll of the firefighter the monthly amount
8 of dues or assessments of the employee organization as certified by
9 the secretary of the employee organization and shall deliver the
10 same to the employee organization's treasurer no later than the
11 last day of the month following the deduction.

12 **§8-15B-3. Board of arbitration; duty to meet and confer with**
13 **employees and arbitrate; procedures.**

14 (a) The political subdivision and the employee organization
15 recognized or certified as the exclusive contracting agent shall
16 contract for all employees' rights. Representatives of the
17 political subdivision and the employee organization shall meet at
18 reasonable times, including meetings appropriately related to the
19 budget making process, and shall confer in good faith with respect
20 to wages, hours and other conditions of employment, or the
21 negotiation of an agreement or any questions arising thereunder,
22 and shall execute a written contract incorporating any agreement
23 reached, and neither party may be compelled to agree to a proposal
24 or make a concession.

25 (b) If, after a reasonable period of negotiations concerning

1 wages, hours and other conditions of employment, a dispute exists
2 between the political subdivision and the employee organization, or
3 if no agreement has been reached on wages, hours and other
4 conditions of employment sixty days prior to the final date for the
5 setting of the budget of the political subdivision, either party or
6 the parties jointly may request arbitration of the issue or issues
7 in dispute by a board of arbitration. The board of arbitration
8 shall be composed of three persons, one appointed by the political
9 subdivision, one appointed by the employee organization and a third
10 member to be agreed upon by the parties. The members of the board
11 representing the political subdivision and the employee
12 organization shall be named within five days from the date of the
13 request for the appointment of the board. If, after a period of
14 five days from the date of the appointment of the two arbitrators
15 appointed by the political subdivision and the employee
16 organization, the third arbitrator has not been mutually agreed
17 upon, then either arbitrator may request the federal mediation and
18 conciliation service to furnish a list of five members from its
19 list of arbitrators. Within five days after the receipt of the
20 list, the representative of the political subdivision and the
21 employee organization shall each strike two names from the list.
22 The individual whose name remains on the list is the third
23 arbitrator. The third arbitrator is the chairman of the board of
24 arbitration.

25 (c) The chairman of the board of arbitration shall establish

1 reasonable dates and places of hearing. Any hearings involved
2 shall be conducted in accordance with the rules established for
3 arbitration by the American Arbitration Association. The rules of
4 evidence promulgated by the Supreme Court of Appeals do not apply.
5 The chairman may issue subpoenas and administer oaths. Upon
6 completion of the hearings and within fifteen days, the board of
7 arbitration shall make findings of fact and render a decision. The
8 decision is final and binding upon both parties, except as provided
9 in subsection (d) of this section. The compensation, if any, for
10 the appointed arbitrator will be paid by the political subdivision.
11 The compensation and expenses of the third arbitrator, as well as
12 all stenographic and other expenses incurred by the arbitration
13 board in connection with arbitration proceedings, shall be paid
14 equally by the parties.

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

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

25 (2) Comparison of the issues submitted to final offer

1 settlement relative to the employees in the contracting unit
2 involved with those issues related to other public and private
3 employees doing comparable work, giving consideration to factors
4 peculiar to the area and classification involved;

5 (3) The interests and welfare of the public, the ability of
6 the public employer to finance and administer the issues proposed
7 and the effect of the adjustments on the normal standard of public
8 service;

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

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

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

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

22 "It is agreed by the parties that any provision contained
23 herein requiring legislative action to permit its implementation by
24 amendment of law or by providing the additional funds therefor,
25 will not become effective until the appropriate legislative body

1 has given approval."

2 **§8-15B-4. Prohibited acts; hearings.**

3 (a) Political subdivisions are prohibited from:

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

6 (2) Dominating or interfering with the formation or
7 administration of any employee organization;

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

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

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

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

18 (b) Employee organizations are prohibited from:

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

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

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

1 (4) Striking against or withholding their members' services
2 from a political subdivision. Firefighters who are absent from
3 work without permission are presumed to have engaged in a strike
4 unless evidence of illness or other good cause is presented by each
5 firefighter for each absence; or

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

7 (c) Any firefighter who engages in a concerted strike against
8 a political subdivision or withholds services from a political
9 subdivision shall be suspended from duty for a period not to exceed
10 six months without pay, and the employee organization to which any
11 striking firefighter belongs shall lose its right for six months to
12 have the monthly amount of dues withheld for all of its members'
13 pay by the employer. The treasurer or chief financial officer of
14 the political subdivision may not issue any warrant or check to any
15 suspended firefighter for the payment of wages which might
16 otherwise be payable during that period, nor may the treasurer or
17 chief financial officer issue any warrant or check for the monthly
18 amount of dues of members of the employee organization to that
19 organization as required by subsection (b), section two of this
20 article.

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

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

6 (2) The commission may make and enter an order dismissing the
7 complaint or may conduct an investigation or hold a hearing on the
8 complaint. The firefighter, employee organization or political
9 subdivision so complained of has the right to file an answer to the
10 complaint, or any amended complaints, within twenty days after the
11 service of the complaint. If a hearing is ordered, the commission
12 shall set the time and place for the hearing, which time and place
13 may be changed by the commission at the request of one of the
14 parties for good cause shown.

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

19 (4) The commission is not bound by the rules of evidence
20 promulgated by the Supreme Court of Appeals and the commissioner
21 has the power of subpoena and to administer oaths. A transcript of
22 the testimony taken at any hearing before the commission shall be
23 filed in the office of the commission, and be opened for inspection
24 by either of the parties or their authorized representatives. The
25 commission shall bear the cost of producing the transcript.

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

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

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

22 **§8-15B-5. Judicial review.**

23 (a) Except as otherwise provided in subsection (b) of this
24 section, any party adversely affected by an order of the commission
25 is entitled to appeal a decision of the commission to circuit

1 court, as provided in article five, chapter twenty-nine-a of this
2 code.

3 (b) An action appealing a decision of the commission may only
4 be initiated in the circuit court where the political subdivision
5 is located. The appeal must be filed within ninety days from the
6 date of the entry by the commission of its final order. Upon an
7 appeal being taken and docketed with the clerk of the circuit
8 court, the circuit court shall proceed to hear the appeal upon the
9 original record made before the commission. Any party adversely
10 affected by a decision and final order of the circuit court has the
11 right to petition the Supreme Court of Appeals for a review of the
12 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, strike-throughs and
underscoring have been omitted.