

1 **Senate Bill No. 567**

2 (By Senators Yost and Klempa)

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4 [Introduced February 10, 2012; referred to the Committee on
5 Labor; and then to the Committee on the Judiciary.]

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7 **FISCAL**
8 **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 hearings 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:*

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 POLICE**
5 **OR FIRE DEPARTMENTS.**

6 **§8-15B-1. Definitions.**

7 As used in this article:

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

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

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

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

23 (e) "Political subdivision" means, and is limited to, any

1 municipality within the state.

2 (f) "Strike" means the failure to report for duty as a result
3 of concerted action with an employee organization, the willful
4 absence from one's position, the stoppage of work or the
5 abstinence, in whole or in part, from the full, faithful and proper
6 performance of the duties of employment or any manner of
7 interference with the operation of any police or fire department of
8 a political subdivision for the purpose of inducing, influencing or
9 coercing a change in the conditions or compensation or the rights,
10 privileges or obligations of employment.

11 **§8-15B-2. Right to self-organization and exclusive representation;**
12 **dues.**

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

1 contract for rights for all firefighters or policemen and is
2 responsible for representing the interests of all firefighters or
3 policemen.

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

1 **§8-15B-3. Board of arbitration; duty to meet and confer with**
2 **employees and arbitrate; procedures.**

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

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

1 member to be agreed upon by the parties. The members of the board
2 representing the political subdivision and the employee
3 organization shall be named within five days from the date of the
4 request for the appointment of the board. If, after a period of
5 five days from the date of the appointment of the two arbitrators
6 appointed by the political subdivision and the employee
7 organization, the third arbitrator has not been mutually agreed
8 upon, then either arbitrator may request the federal mediation and
9 conciliation service to furnish a list of five members from its
10 list of arbitrators. Within five days after the receipt of the
11 list, the representative of the political subdivision and the
12 employee organization shall each strike two names from the list.
13 The individual whose name remains on the list is the third
14 arbitrator. The third arbitrator is the chairman of the board of
15 arbitration.

16 (c) The chairman of the board of arbitration shall establish
17 reasonable dates and places of hearing. Any hearings involved
18 shall be conducted in accordance with the rules established for
19 arbitration by the American Arbitration Association. The rules of
20 evidence promulgated by the Supreme Court of Appeals do not apply.
21 The chairman may issue subpoenas and administer oaths. Upon
22 completion of the hearings and within fifteen days, the board of
23 arbitration shall make findings of fact and render a decision. The

1 decision is final and binding upon both parties, except as provided
2 in subsection (d) of this section. The compensation, if any, for
3 the appointed arbitrator will be paid by the political subdivision.
4 The compensation and expenses of the third arbitrator, as well as
5 all stenographic and other expenses incurred by the arbitration
6 board in connection with arbitration proceedings, shall be paid
7 equally by the parties.

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

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

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

23 (3) The interests and welfare of the public, the ability of

1 the public employer to finance and administer the issues proposed
2 and the effect of the adjustments on the normal standard of public
3 service;

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

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

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

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

22 **§8-15B-4. Prohibited acts; hearings.**

23 (a) Political subdivisions are prohibited from:

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

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

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

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

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

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

16 (b) Employee organizations are prohibited from:

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

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

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

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

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

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

22 (d) Any private citizen of a political subdivision against
23 which a prohibited act has been committed may seek a writ of

1 mandamus or any other remedy which is authorized by law to enforce
2 compliance with subdivision (c) by any treasurer or chief financial
3 officer.

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

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

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

22 (4) The commission is not bound by the rules of evidence
23 promulgated by the Supreme Court of Appeals and the commissioner

1 has the power of subpoena and to administer oaths. A transcript of
2 the testimony taken at any hearing before the commission shall be
3 filed in the office of the commission, and be opened for inspection
4 by either of the parties or their authorized representatives. The
5 commission shall bear the cost of producing the transcript.

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

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

20 (g) In the event that a firefighter or policeman, employee
21 organization or political subdivision refuses to comply with an
22 order from the commission and fails to appeal the order as
23 hereinafter provided, the commission shall request the Attorney

1 General of West Virginia to seek injunctive relief in the circuit
2 court of the county where the prohibited act was or is being
3 committed.

4 **§8-15B-5. Judicial review.**

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

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