

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 377

BY SENATORS BOSO AND CLINE

[Introduced January 25, 2018; Referred
to the Committee on Government Organization; and then
to the Committee on the Judiciary]

1 A BILL to amend and reenact §8-14A-1, §8-14A-2, §8-14A-3, §8-14A-4, and §8-14A-5 of the Code
 2 of West Virginia, 1931, as amended, all relating to removing firefighters from municipal
 3 procedures for the investigation and hearing of allegations of misconduct that may result
 4 in punitive action.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREMEN; PROCEDURE FOR
 INVESTIGATION.**

§8-14A-1. Definitions.

1 Unless the context clearly indicates otherwise, as used in this article:

2 (1) "Accused officer" means any police officer ~~or firefighter~~ who is the subject of an
 3 investigation or interrogation which results in a recommendation of punitive action against him or
 4 her.

5 (2) "Civil service," when followed by the terms "department," "officer", or "accused officer",
 6 means any department, officer, or accused officer who is subject to the civil service provisions of
 7 §8-14-1 *et seq.* of this code. ~~or §8-15-1 et seq. of this code~~

8 (3) "Hearing" means any meeting in the course of an investigatory proceeding, other than
 9 an interrogation at which no testimony is taken under oath, conducted by a hearing board for the
 10 purpose of taking or inducing testimony or receiving evidence.

11 (4) "Hearing board" means a board appointed to hold a hearing on a complaint against an
 12 accused officer. The hearing board shall consist of three members to be appointed pursuant to
 13 paragraph ~~(a), (b) or (c)~~ (A) or (B) of this subdivision. Hearing board members appointed under
 14 paragraph ~~(b) or (c)~~ (B) of this subdivision may be removed from office as provided under
 15 paragraph ~~(d)~~ (C) of this subdivision.

16 ~~(a)~~ (A) For civil service departments, the department chief shall appoint the first member,
 17 the members of the accused officer's department shall appoint the second member, and the first

18 and second members shall appoint the third member by agreement. Should the first and second
19 members fail to agree on the appointment of the third member within five days, they shall submit
20 to the department's Civil Service Commission a list of four qualified candidates from which list the
21 commission shall appoint the third member. The appointment of members under this paragraph
22 shall be subject to the following qualifications and limitations:

23 (1) No member shall have had any part in the investigation or interrogation of the accused
24 officer;

25 (2) Each member shall be a police officer ~~or firefighter~~ within the accused officer's
26 department, or, with the department chief's approval, a law-enforcement officer ~~or firefighter~~ from
27 another law-enforcement agency ~~or fire department~~;

28 (3) At least one member shall be of the same rank as the accused officer; and

29 (4) If there are fewer than three persons who meet the qualifications described in
30 subparagraphs (1), (2) and (3) of this paragraph, then the department's civil service commission
31 shall appoint as many citizens of the municipality in which the department is located as may be
32 necessary to constitute the board.

33 ~~(b)~~ (B) For noncivil service police departments, the hearing board shall be a standing
34 hearing board. The department chief shall appoint the first member, the local fraternal order of
35 police shall appoint the second member, and the local chamber of commerce or local
36 businessmen's association shall appoint the third member. If there is no local fraternal order of
37 police, the state fraternal order of police shall appoint the second member. If there is no local
38 chamber of commerce or local businessmen's association, the first and second members shall
39 appoint the third member by agreement. Of the three original appointments in each police
40 department, the first member shall serve for six years from the date of his or her appointment; the
41 second member shall serve four years from the date of his or her appointment; and the third
42 member shall serve for two years from the date of his or her appointment. After the original
43 appointments, all appointments shall be made for periods of four years each by the designated

44 appointing authority. In the event that any member shall cease to be a member due to death,
45 resignation, final removal or other cause, a new member shall be appointed within 30 days of the
46 date the ex-member ceased to be a member. This appointment shall be made by the officer or
47 body who in the first instance appointed the member who is no longer a member. When the
48 hearing board is appointed, the three members shall elect one of their number to act as president
49 of the board, who shall serve as president for one year. In the event that a member has had a
50 part in the investigation or interrogation of an accused officer or is related by consanguinity or
51 affinity to an accused officer, that member shall be recused from participation in the accused
52 officer's hearing. In such an instance, the officer or body who in the first instance appointed the
53 recused member shall appoint another person for sole purpose of the accused officer's hearing.
54 No member shall hold any other office (other than the office of notary public) under the United
55 States, this state, or any municipality, county or other political subdivision thereof; nor shall any
56 member serve on any political committee or take any active part in the management of any
57 political campaign.

58 ~~(c) For noncivil service fire departments, the hearing board shall be a standing hearing~~
59 ~~board. The department chief shall appoint the first member, the local international association of~~
60 ~~firefighters shall appoint the second member, and the local chamber of commerce or local~~
61 ~~businessmen's association shall appoint the third member. If there is no local international~~
62 ~~association of firefighters in the municipality, the local central body of the West Virginia Federation~~
63 ~~of Labor AFL-CIO shall appoint the second member. If there is no local central body of the West~~
64 ~~Virginia Federation of Labor AFL-CIO in the municipality, the West Virginia Federation of Labor~~
65 ~~AFL-CIO shall appoint the second member. If there is no local chamber of commerce or local~~
66 ~~businessmen's association, the first and second members shall appoint the third member by~~
67 ~~agreement. Of the three original appointments in each fire department, the first member shall~~
68 ~~serve for six years from the date of his or her appointment; the second member shall serve four~~
69 ~~years from the date of his or her appointment; and the third member shall serve for two years~~

70 from the date of his or her appointment. After the original appointments, all appointments shall be
71 made for periods of four years each by the designated appointing authority. In the event that any
72 member shall cease to be a member due to death, resignation, final removal or other cause, a
73 new member shall be appointed within thirty days of the date the ex-member ceased to be a
74 member. This appointment shall be made by the officer or body who in the first instance appointed
75 the member who is no longer a member. Each of the three members shall elect one of their
76 number to act as president of the board, who shall serve as president for one year. In the event
77 that a member has had a part in the investigation or interrogation of an accused officer or is related
78 by consanguinity or affinity to an accused officer, that member shall be recused from participation
79 in the accused officer's hearing. In such an instance, the officer or body who in the first instance
80 appointed the recused member shall appoint another person for the sole purpose of the accused
81 officer's hearing. No member shall hold any other office (other than the office of notary public)
82 under the United States, this state, or any municipality, county or other political subdivision
83 thereof; nor shall any member serve on any political committee or take any active part in the
84 management of any political campaign

85 (d) (C) Any member of a hearing board appointed under paragraph (b) or (c) of this
86 subdivision may be removed as provided in this paragraph:

87 The mayor of the municipality may, at any time, remove any hearing board member for
88 good cause, which shall be stated in writing and made a part of the records of the hearing board.
89 However, within 10 days of removing any member, the mayor shall file in the circuit clerk's office
90 of the county in which the municipality is located a petition setting forth in full the reason for the
91 removal and seeking the circuit court's confirmation of the mayor's removal of the member. The
92 mayor shall file a copy of the petition with the removed member at the same time it is filed with
93 the circuit clerk. The petition shall have precedence on the circuit court's docket and shall be
94 heard as soon as practicable on the request of the removed member. All rights vested in a circuit
95 court by this subsection may be exercised by the judge thereof in vacation. In the event that no

96 term of the circuit court is being held at the time the petition is filed, and the judge thereof cannot
97 be reached in the county in which the petition was filed, the petition shall be heard at the next
98 succeeding circuit court term, whether regular or special, and the removed member shall remain
99 removed until a hearing is held on the petition. The court or the judge thereof in vacation shall
100 hear and decide the issues presented by the petition. The party affected adversely by the court's
101 or judge's decision shall have the right to petition the Supreme Court of Appeals for a review of
102 the decision as in other civil cases. If the mayor fails to file the petition with the circuit clerk's office
103 within ten days as provided above, the removed member shall immediately resume his or her
104 position as a hearing board member.

105 Any resident of the municipality shall have the right at any time to seek the removal of any
106 hearing board member. To do so, the resident shall file a petition in the circuit clerk's office of the
107 county where the municipality is located. The resident shall also serve a copy of the petition on
108 the member sought to be removed. The petition shall be matured for hearing and heard by the
109 circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit
110 courts of this state are heard. Any party adversely affected by the circuit court's or judge's decision
111 shall have the right to petition the Supreme Court of Appeals for a review of the decision as in
112 other civil cases.

113 (5) "Noncivil service," when followed by the terms "department", "officer", or "accused
114 officer", means any department, officer, or accused officer who is not subject to the civil service
115 provisions of §8-14-1 *et seq.* of this code. ~~or article fifteen, chapter eight of this code~~

116 (6) "Police officer ~~or firefighter~~" or "officer" means any police officer ~~or firefighter~~ of a police
117 ~~or fire~~ department employed by the city or municipality, but shall not include (a) the highest ranking
118 officer of the police ~~or fire~~ department or (b) any noncivil service officer who has not completed
119 the probationary period established by the department by which he or she is employed.

120 (7) "Punitive action" means any action which may lead to dismissal, demotion, suspension,
121 reduction in salary, written reprimand, or transfer for purposes of punishment.

122 (8) "Under investigation" or "under interrogation" means any situation in which any police
123 officer ~~or firefighter~~ becomes the focus of inquiry regarding any matter which may result in punitive
124 action.

§8-14A-2. Investigation and interrogation of a police officer or fireman.

1 When any police officer ~~or fireman~~ is under investigation and subjected to interrogation by
2 his or her commanding officer, or any other member of the employing police ~~or fire~~ department,
3 which could lead to punitive action, such interrogation shall be conducted under the following
4 conditions:

5 (1) The interrogation shall be conducted at a reasonable hour, preferably at a time when
6 the police officer ~~or fireman~~ is on duty, or during his or her normal working hours, unless the
7 seriousness of the investigation requires otherwise. If such interrogation does occur during off-
8 duty time of the police officer ~~or fireman~~ being interrogated at any place other than his or her
9 residence, such officer ~~or fireman~~ shall be compensated for such off-duty time in accordance with
10 regular department procedure. If the interrogation of the police officer ~~or fireman~~ occurs during
11 his or her regular duty hours, such officer ~~or fireman~~ shall not be released from employment for
12 any work missed due to interrogation.

13 (2) Any police officer or fireman under investigation shall be informed of the nature of the
14 investigation prior to any interrogation. Such officer shall also be informed of the name, rank and
15 command of the officer in charge of the interrogation, the interrogating officers, and all other
16 persons to be present during the interrogation. No more than three interrogators at one time shall
17 question the officer ~~or fireman~~ under investigation.

18 (3) No police officer ~~or fireman~~ under interrogation shall be subjected to offensive
19 language or threatened with punitive action. No promise of reward shall be made as an
20 inducement to answering questions.

21 (4) The complete interrogation of any police officer ~~or fireman~~ shall be recorded, either
22 written, taped or transcribed. Upon request of the law-enforcement officer ~~or fireman~~ under

23 investigation or his or her counsel, and upon advance payment of the reasonable cost thereof a
24 copy of the record shall be made available to him or her not less than 10 days prior to any hearing.

25 (5) Upon the filing of a formal written statement of charges or whenever an interrogation
26 focuses on matters which are likely to result in punitive action against any police officer ~~or fireman~~,
27 then that officer ~~or fireman~~ shall have the right to be represented by counsel who may be present
28 at all times during such interrogation.

29 Nothing herein shall prohibit the immediate temporary suspension, pending an
30 investigation, from duty of any police officer ~~or fireman~~ who reports for duty under the influence
31 of alcohol or controlled substances which would prevent the officer ~~or fireman~~ from performing his
32 or her duties as defined in chapter 60A of this code, or under the influence of an apparent mental
33 or emotional disorder.

§8-14A-3. Hearing.

1 (a) Before taking any punitive action against an accused officer, the police ~~or fire~~
2 department shall give notice to the accused officer that he or she is entitled to a hearing on the
3 issues by a hearing board or the applicable civil service commission. The notice shall state the
4 time and place of the hearing and the issues involved and shall be delivered to the accused officer
5 no later than 10 days prior to the hearing.

6 (b) When a civil service accused officer faces a recommended punitive action of
7 discharge, suspension, or reduction in rank or pay, but before such punitive action is taken, a
8 hearing board must be appointed and must afford the accused civil service officer a hearing
9 conducted pursuant to the provisions of §8-14-20 of this code: ~~or article fifteen, section twenty-~~
10 ~~five of this chapter~~ *Provided*, That the punitive action may be taken before the hearing board
11 conducts the hearing if exigent circumstances exist which require it.

12 (c) When a civil service accused officer faces a recommended punitive action of written
13 reprimand or transfer for the purpose of punishment, or when a noncivil service accused officer
14 faces any recommended punitive action, the applicable hearing board shall conduct hearing

15 pursuant to the provisions of subsection (d) of this section.

16 (d) The following requirements shall govern the operation conduct of a hearing board
17 under subsection (c) of this section:

18 (1) The hearing board shall keep an official record of each hearing it conducts. The official
19 record shall include the testimony offered and exhibits introduced at the hearing.

20 (2) Both the police ~~or fire~~ department and the accused officer shall be given ample
21 opportunity to present evidence and argument with respect to any issue raised at the hearing.

22 (3) The hearing board may subpoena witnesses and administer oaths or affirmations and
23 examine any individual under oath, and may require and compel the production of records, books,
24 papers, contracts, and other documents, in connection with any issue raised at the hearing.

25 (4) The hearing board shall prepare a written order detailing any decision or action it takes
26 as a result of the hearing. The written order shall include written findings of fact setting forth a
27 concise statement of the hearing board's factual findings and conclusions on each issue raised
28 at the hearing. The hearing board shall hand-deliver or promptly mail a copy of the written order
29 to the accused officer or his or her attorney of record.

30 (e) A hearing board's order is binding on all parties involved unless it is overturned in the
31 appeal process described in section five of this article.

§8-14A-4. Right to refuse to disclose personal finances; exceptions.

1 No police officer ~~or fireman~~ shall be required or requested for purposes of job assignment
2 or other personnel action to disclose any item of his or her property, income, assets, source of
3 income, debts, or personal or domestic expenditures unless such information is obtained through
4 proper legal procedures or is necessary for the employing agency to ascertain the desirability of
5 assigning the police officer to a specialized unit in which there is a strong possibility that bribes or
6 other improper inducements might be offered.

§8-14A-5. Appeal.

1 (a) For civil service departments, a hearing board's decision rendered under subsection

2 (b) or (c), section three of this article may be appealed by the police officer ~~or firefighter~~ adversely
3 affected by the order or by the department chief if he or she believes that the department would
4 be adversely affected by the hearing board's order. An appeal under this subsection shall be
5 made to the applicable civil service commission. Any party aggrieved by the civil service
6 commission's ruling on the appeal may further appeal the civil service commission's ruling
7 pursuant to the provisions of §8-14-20(b) of this code. ~~or subsection (b), section twenty-five, article~~
8 ~~fifteen of this chapter~~

9 (b) For noncivil service departments, a hearing board's decision rendered under
10 subsection (c), section three of this article may be appealed by the police officer ~~or firefighter~~
11 adversely affected by the order or by the department chief if he or she believes that the
12 department would be adversely affected by the hearing board's order. An appeal under this
13 subsection shall be made to the circuit court of the county in which the police officer ~~or firefighter~~
14 resides.

NOTE: The purpose of this bill is to exempt municipal firefighters from certain procedures for the investigation and hearing of allegations of misconduct.

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