

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 556

Session of
1975

INTRODUCED BY MESSRS. ZORD, ECKENBERGER, ZELLER AND FISHER,
FEBRUARY 24, 1975

AS REPORTED FROM COMMITTEE ON LAW AND JUSTICE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 27, 1976

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," further providing for the
21 Pennsylvania State Police.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Subsection (e) of section 205, act of April 9,
25 1929 (P.L.177, No. 175), known as "The Administrative Code of
26 1929," added July 25, 1963 (P.L.278, No.148), is amended to
27 read:

1 Section 205. Pennsylvania State Police.--* * *

2 (e) No [enlisted] member of the Pennsylvania State Police
3 except a probationary cadet or trooper shall be dismissed from
4 service or reduced in rank and/or pay grade except by action of
5 [a court martial board held upon the recommendation of the
6 Commissioner of the Pennsylvania State Police and the Governor.]
7 an Internal Board of Inquiry.

8 * * *

9 Section 2. Subsection (f) of section 205 of the act, added
10 December 5, 1967 (P.L.673, No.313), is amended to read:

11 Section 205. Pennsylvania State Police.--* * *

12 (f) All new cadets and troopers shall serve a probationary
13 period of eighteen months from date of original enlistment,
14 during which time they may be dismissed by the commissioner for
15 violation of rules and regulations, incompetency, and
16 inefficiency without action of [a court-martial board] an
17 Internal Board of Inquiry or the right of appeal to a civil
18 court.

19 Section 3. Subsection (b) of section 711 of the act, amended
20 December 5, 1967 (P.L.671, No.312), is amended to read:

21 Section 711. Commissioner of Pennsylvania State
22 Police.--* * *

23 (b) (1) Before any [enlisted] member who has not reached
24 mandatory retirement age is dismissed or [refused reenlistment]
25 reduced in rank and/or pay grade by [the commissioner] order of
26 an Internal Board of Inquiry, the commissioner shall furnish
27 such [enlisted] member with a detailed written statement of the
28 charges [upon which his dismissal or refusal of reenlistment is
29 based] which form the basis for such action, together with a
30 written notice, signed by the commissioner or the proper

1 authority, of a time and place where such [enlisted] member will
2 be given an opportunity to be heard either in person or by
3 counsel, or both, before [a Court-martial Board appointed by the
4 commissioner] an Internal Board of Inquiry. The board shall
5 consist of three [commissioned officers] PERSONS. THOSE MEMBERS <—
6 OF THE BOARD WHO ARE ALSO members of the Pennsylvania State
7 Police ~~or~~ SHALL BE OF equal or higher rank than the charged <—
8 member, except that a next lower ranking member shall be
9 appointed in those instances where an insufficient number of
10 equal or higher ranking members are available for appointment to
11 the board. The charged member shall have the right to name one
12 member of the board and the commissioner shall have the right to <—
13 name the remaining two members. WHO SHALL BE A MEMBER OF THE <—
14 PENNSYLVANIA STATE POLICE. THE COMMISSIONER SHALL HAVE THE RIGHT
15 TO NAME ONE MEMBER OF THE BOARD WHO SHALL BE A MEMBER OF THE
16 PENNSYLVANIA STATE POLICE. THE TWO NAMED MEMBERS SO SELECTED
17 SHALL NAME THE THIRD MEMBER OF THE BOARD WHO SHALL BE CHAIRMAN
18 BUT WHO SHALL NOT BE A MEMBER OF THE PENNSYLVANIA STATE POLICE.
19 IF THE TWO NAMED MEMBERS FAIL TO SELECT THE THIRD BOARD MEMBER
20 WITHIN FIVE DAYS AFTER THEIR SELECTION, THE THIRD BOARD MEMBER
21 SHALL BE CHOSEN FROM A LIST OF FIVE NAMES PRESENTED BY THE
22 AMERICAN ARBITRATION ASSOCIATION. NONE OF THE PERSONS LISTED
23 SHALL BE MEMBERS OF THE PENNSYLVANIA STATE POLICE. THE ACCUSOR
24 SHALL HAVE THE RIGHT TO STRIKE THE FIRST NAME FROM THE LIST OF
25 FIVE NAMES. THE ACCUSED SHALL THEN STRIKE ONE NAME. THE ACCUSOR
26 SHALL STRIKE ANOTHER NAME, AND THE ACCUSED ANOTHER NAME SO THAT
27 ONLY ONE NAME REMAINS. THAT PERSON SHALL BE THE THIRD BOARD
28 MEMBER AND CHAIRMAN OF THE BOARD. The hearing shall not be
29 sooner than ten days nor later than thirty days after such
30 written notice. The hearing shall be held private. At such

1 hearing all testimony offered, including that of complainants
2 and their witnesses as well as that of the accused [enlisted]
3 member and his witnesses, shall be recorded by a competent
4 stenographer whose services shall be furnished by the
5 Pennsylvania State Police at its expense. Any such hearing may
6 be postponed, continued or adjourned, by agreement of the person
7 charged and the [Court-martial Board with approval of the
8 commissioner] Internal Board of Inquiry. If such hearing is
9 postponed, continued or adjourned and any testimony has been
10 taken, then a free copy of a transcript of such testimony shall
11 be given to the accused, if he makes a request therefor.

12 (2) The [Court-martial Board] Internal Board of Inquiry
13 shall have the power to issue subpoenas requiring the attendance
14 of witnesses at any hearing and shall do so at the request of
15 the party against whom a complaint is made. If any person shall
16 refuse to appear and testify in answer to any subpoena issued by
17 the board, any party interested may petition [the court of
18 common pleas of the county wherein the hearing is to be held]
19 Commonwealth Court, setting forth the facts. [The court]
20 Commonwealth Court shall thereupon issue its subpoena commanding
21 such person to appear before the [Court-martial Board] Internal
22 Board of Inquiry, there to testify as to the matters being
23 inquired into. Any person refusing to testify before the [Court-
24 martial Board] Internal Board of Inquiry may be held for
25 contempt by [the court of common pleas] Commonwealth Court. All
26 testimony at any hearing shall be taken under oath and any
27 member of the [Court-martial Board] Internal Board of Inquiry
28 shall have power to administer oaths to such witnesses.

29 After fully hearing the charges or complaints and hearing all
30 witnesses and/or evidence produced by the [Court-martial Board]

1 Pennsylvania State Police and the person against whom the
2 charges are pending, [and] the Internal Board of Inquiry, after
3 a full, impartial and unbiased consideration thereof [the Court-
4 martial Board] shall by a [two-thirds] majority vote of all
5 members thereof taken by a closed-secret vote [and] with the
6 total results thereof to be recorded, determine whether or not
7 such charges or complaints have been sustained and whether the
8 evidence substantiates such charges and complaints. [, and in]
9 In accordance with such determination, the Internal Board of
10 Inquiry shall [recommend the discharge, demotion or refusal of
11 reenlistment of such enlisted member to the commissioner] make
12 findings of fact and conclusions of law and adjudge such member
13 guilty or not guilty as charged, all of which shall be recorded.
14 [If one member of the Court-martial Board shall dissent from the
15 findings of the other members, he may state his reason for
16 disagreement which shall be made part of the record.] Any member
17 of the board may dissent from the majority decision and submit
18 for the record a dissenting opinion.

19 In addition to determining the guilt or innocence of the
20 member, it shall be the duty of the board to prescribe a fair
21 and just punishment, in accordance with this statute. All
22 decisions rendered by the Internal Board of Inquiry shall be
23 final. All reports, findings, and decisions of the board shall
24 be submitted to the commissioner and shall not be made public
25 unless authorized by the commissioner.

26 [Reports of findings of the Court-martial Board shall not be
27 made public before acted upon by the commissioner. The Court-
28 martial Board shall submit all records of the trial to the
29 commissioner for review.]

30 A written notice of [any] the board decision and a copy of

1 the [commissioner] commissioner's order discharging, [demoting
2 or refusing reenlistment of] or reducing in rank and/or pay
3 grade any member, together with a free copy of a transcript of
4 the notes of testimony, shall be sent by registered mail to the
5 [enlisted] member at his last known address within thirty days
6 after the hearing is actually concluded. The commissioner [may,
7 in his discretion] shall follow [or disregard the
8 recommendations of the Court-martial Board] the decision of the
9 Internal Board of Inquiry.

10 In all cases where the final decision is in favor of the
11 [enlisted] member, the records in the files of the Pennsylvania
12 State Police shall show accordingly.

13 (3) In case the [enlisted] member concerned considers
14 himself aggrieved by the action of the [commissioner] Internal
15 Board of Inquiry, an appeal may be taken by him to [the Court of
16 Common Pleas of Dauphin County] Commonwealth Court, in
17 accordance with the provisions of the act of June 4, 1945 (P.L.
18 1388, No.442) and its amendments, known as the "Administrative
19 Agency Law."

20 (4) For the purpose of this [subsection (b)] SECTION, the <—
21 term ["enlisted member"] "member" shall [not] include all sworn
22 personnel of the Pennsylvania State Police, except a cadet or
23 trooper [of the Pennsylvania State Police] with less than
24 eighteen months of service.