

**Senate Bill No. 107**

(By Senators Laird and Miller)

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[Introduced February 13, 2013; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]  
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**FISCAL  
NOTE**

11 A BILL to amend and reenact §29A-5-1 of the Code of West Virginia,  
12 1931, as amended, relating to providing that hearing examiners  
13 conducting state agency administrative hearings be selected  
14 from a panel of five hearing examiners by a process in which  
15 the state agency first strikes two hearing examiners and the  
16 respondent subsequently strikes two hearing examiners.

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

18 That §29A-5-1 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted to read as follows:

20 **ARTICLE 5. CONTESTED CASES.**

21 **§29A-5-1. Notice required; hearing; subpoenas; witness fees, etc.;**  
22 **depositions; records.**

1           (a) In any contested case all parties shall be afforded an  
2 opportunity for hearing after at least ten days' written notice.  
3 The notice shall contain the date, time and place of the hearing  
4 and a short and plain statement of the matters asserted. If the  
5 agency is unable to state the matters in detail at the time the  
6 notice is served, the initial notice may be limited to a statement  
7 of the issues involved. Thereafter, upon application a more  
8 definite and detailed statement shall be furnished. An opportunity  
9 shall be afforded all parties to present evidence and argument with  
10 respect to the matters and issues involved. The required notice  
11 must be given as specified in section two, article seven of this  
12 chapter. All of the testimony and evidence at any such hearing  
13 shall be reported by stenographic notes and characters or by  
14 mechanical means. All rulings on the admissibility of testimony  
15 and evidence shall also be reported. The agency shall prepare an  
16 official record, which shall include reported testimony and  
17 exhibits in each contested case, and all agency staff memoranda and  
18 data used in consideration of the case, but it ~~shall not be~~ is not  
19 necessary to transcribe the reported testimony unless required for  
20 purposes of rehearing or judicial review. Informal disposition may  
21 also be made of any contested case by stipulation, agreed  
22 settlement, consent order or default. Each agency shall adopt  
23 appropriate rules of procedure for hearing in contested cases.

1 (b) For the purpose of conducting a hearing in any contested  
2 case, any agency which now has or may be hereafter expressly granted  
3 by statute the power to issue subpoenas or subpoenas duces tecum or  
4 any member of the body which comprises ~~such~~ the agency may exercise  
5 ~~such~~ that power in the name of the agency. Any such agency or any  
6 member of the body which comprises any such agency may exercise ~~such~~  
7 that power in the name of the agency for any party upon request.  
8 Under no circumstances ~~shall~~ does this chapter ~~be construed as~~  
9 ~~granting~~ grant the power to issue subpoenas or subpoenas duces  
10 tecum to any agency or to any member of the body of any agency which  
11 does not now by statute expressly have such power. When ~~such~~ that  
12 power exists, the provisions of this section ~~shall~~ apply. Every  
13 ~~such~~ subpoena and subpoena duces tecum shall be served at least five  
14 days before the return date thereof, either by personal service made  
15 by any person over eighteen years of age or by registered or  
16 certified mail, but a return acknowledgment signed by the person to  
17 whom the subpoena or subpoena duces tecum is directed ~~shall be~~ is  
18 required to prove service by registered or certified mail. All  
19 subpoenas and subpoenas duces tecum shall be issued in the name of  
20 the agency, ~~as aforesaid,~~ but any party requesting their issuance  
21 must see that they are properly served. Service of subpoenas and  
22 subpoenas duces tecum issued at the instance of the agency ~~shall be~~  
23 is the responsibility of the agency. Any person who serves any ~~such~~

1 subpoena or subpoena duces tecum ~~shall be~~ is entitled to the same  
2 fee as sheriffs who serve witness subpoenas for the circuit courts  
3 of this state; and fees for the attendance and travel of witnesses  
4 shall be the same as for witnesses before the circuit courts of this  
5 state. All ~~such~~ fees shall be paid by the agency if the subpoena or  
6 subpoena duces tecum were issued, without the request of an  
7 interested party, at the instance of the agency. All ~~such~~ fees  
8 related to any subpoena or subpoena duces tecum issued at the  
9 instance of an interested party shall be paid by the party who asks  
10 that such subpoena or subpoena duces tecum be issued. All requests  
11 by interested parties for subpoenas and subpoenas duces tecum shall  
12 be in writing and shall contain a statement acknowledging that the  
13 requesting party agrees to pay ~~such~~ the fees. Any such agency may  
14 compel the attendance of witnesses and the production of books,  
15 records or papers in response to ~~such~~ subpoenas and subpoenas duces  
16 tecum. Upon motion made promptly and in any event before the time  
17 specified in a subpoena duces tecum for compliance therewith, the  
18 circuit court of the county in which the hearing is to be held, or  
19 the circuit court in which the subpoena duces tecum was served, or  
20 the judge of either ~~such~~ court in vacation, may grant any relief  
21 with respect to such subpoena duces tecum which either ~~such~~ court,  
22 under the West Virginia Rules of Civil Procedure for Trial Courts  
23 of Record, could grant, and for any of the same reasons, with

1 respect to a subpoena duces tecum issued from either ~~such~~ court.  
2 In case of disobedience or neglect of any subpoena or subpoena duces  
3 tecum served on any person, or the refusal of any witness to testify  
4 to any matter regarding which he or she may be lawfully  
5 interrogated, the circuit court of the county in which the hearing  
6 is being held, or the judge thereof in vacation, upon application  
7 by ~~such~~ the agency or any member of the body which comprises ~~such~~  
8 the agency, shall compel obedience by attachment proceedings for  
9 contempt as in the case of disobedience of the requirements of a  
10 subpoena or subpoena duces tecum issued from ~~such~~ the circuit court  
11 or a refusal to testify therein. Witnesses at ~~such~~ these hearings  
12 shall testify under oath or affirmation.

13 (c) Evidentiary depositions may be taken and read as in civil  
14 actions in the circuit courts of this state.

15 (d) All hearings shall be conducted in an impartial manner.  
16 The agency, any member of the body which comprises the agency, or  
17 any hearing examiner or other person permitted by statute to hold  
18 any ~~such~~ hearing for ~~such~~ that agency, and duly authorized by ~~such~~  
19 the agency so to do, ~~shall have the power to~~ may: (1) Administer  
20 oaths and affirmations; (2) rule upon offers of proof and receive  
21 relevant evidence; (3) regulate the course of the hearing; (4) hold  
22 conferences for the settlement or simplification of the issues by  
23 consent of the parties; (5) dispose of procedural requests or

1 similar matters; and (6) take any other action authorized by a rule  
2 adopted by the agency in accordance with the provisions of article  
3 three of this chapter. Notwithstanding any provision in this code  
4 to the contrary, in any such hearing to be conducted by a hearing  
5 examiner, the hearing examiner shall be selected from a panel of  
6 five hearing examiners by a process in which the agency first  
7 strikes two hearing examiners from the panel and the respondent  
8 subsequently strikes two hearing examiners from the panel.

9 (e) Except where otherwise provided by statute, the hearing in  
10 any contested case shall be held in the county selected by the  
11 agency.

12 (f) Notwithstanding the provisions of subparagraph (a) of this  
13 section, upon request to the agency from any party to the hearing,  
14 all reported testimony and evidence at ~~such~~ the hearing shall be  
15 transcribed, and a copy thereof furnished to ~~such~~ the party at his  
16 or her expense. The agency shall have the responsibility for  
17 making arrangements for the transcription of the reported testimony  
18 and evidence, and ~~such~~ the transcription shall be accomplished with  
19 all dispatch.

NOTE: The purpose of this bill is to provide that hearing examiners conducting state agency administrative hearings be selected from a panel of five hearing examiners by a process in which the state agency first strikes two hearing examiners and the respondent subsequently strikes two hearing examiners.

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