

1 **Senate Bill No. 84**

2 (By Senator Laird)

3 _____
4 [Introduced January 8, 2014; referred to the Committee on the
5 Judiciary.]
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**FISCAL
NOTE**

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

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.**

23 (a) In any contested case all parties shall be afforded an
24 opportunity for hearing after at least ten days' written notice.

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

22 (b) For the purpose of conducting a hearing in any contested
23 case, any agency which now has or may be hereafter expressly
24 granted by statute the power to issue subpoenas or subpoenas duces

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

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

1 court of the county in which the hearing is being held, or the
2 judge thereof in vacation, upon application by ~~such~~ the agency or
3 any member of the body which comprises ~~such~~ the agency, shall
4 compel obedience by attachment proceedings for contempt as in the
5 case of disobedience of the requirements of a subpoena or subpoena
6 duces tecum issued from ~~such~~ the circuit court or a refusal to
7 testify therein. Witnesses at ~~such~~ these hearings shall testify
8 under oath or affirmation.

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

11 (d) All hearings shall be conducted in an impartial manner.
12 The agency, any member of the body which comprises the agency, or
13 any hearing examiner or other person permitted by statute to hold
14 any ~~such~~ hearing for ~~such~~ that agency, and duly authorized by ~~such~~
15 the agency so to do, ~~shall have the power to~~ may: (1) Administer
16 oaths and affirmations; (2) rule upon offers of proof and receive
17 relevant evidence; (3) regulate the course of the hearing; (4) hold
18 conferences for the settlement or simplification of the issues by
19 consent of the parties; (5) dispose of procedural requests or
20 similar matters; and (6) take any other action authorized by a rule
21 adopted by the agency in accordance with the provisions of article
22 three of this chapter. Notwithstanding any provision in this code
23 to the contrary, in any such hearing to be conducted by a hearing
24 examiner, the hearing examiner shall be selected from a panel of

1 five hearing examiners by a process in which the agency first
2 strikes two hearing examiners from the panel and the respondent
3 subsequently strikes two hearing examiners from the panel.

4 (e) Except where otherwise provided by statute, the hearing in
5 any contested case shall be held in the county selected by the
6 agency.

7 (f) Notwithstanding the provisions of subparagraph (a) of this
8 section, upon request to the agency from any party to the hearing,
9 all reported testimony and evidence at ~~such~~ the hearing shall be
10 transcribed, and a copy thereof furnished to ~~such~~ the party at his
11 or her expense. The agency shall have the responsibility for
12 making arrangements for the transcription of the reported testimony
13 and evidence, and ~~such~~ the transcription shall be accomplished with
14 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. The bill also makes stylistic changes.

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