

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 129**

BY SENATOR LAIRD

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

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

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

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

**ARTICLE 5. CONTESTED CASES.**

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

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

17 (b) For the purpose of conducting a hearing in any contested case, any agency which now  
18 has or may be hereafter expressly granted by statute the power to issue subpoenas or subpoenas  
19 duces tecum or any member of the body which comprises ~~such~~ the agency may exercise ~~such~~  
20 that power in the name of the agency. Any such agency or any member of the body which  
21 comprises any such agency may exercise ~~such~~ that power in the name of the agency for any  
22 party upon request. Under no circumstances ~~shall~~ does this chapter ~~be construed as granting~~  
23 grant the power to issue subpoenas or subpoenas duces tecum to any agency or to any member  
24 of the body of any agency which does not now by statute expressly have such power. When ~~such~~  
25 that power exists, the provisions of this section ~~shall~~ apply. Every ~~such~~ subpoena and subpoena  
26 duces tecum shall be served at least five days before the return date thereof, either by personal  
27 service made by any person over eighteen years of age or by registered or certified mail, but a  
28 return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum  
29 is directed ~~shall be~~ is required to prove service by registered or certified mail. All subpoenas and  
30 subpoenas duces tecum shall be issued in the name of the agency, ~~as aforesaid~~, but any party  
31 requesting their issuance must see that they are properly served. Service of subpoenas and  
32 subpoenas duces tecum issued at the instance of the agency ~~shall be~~ is the responsibility of the  
33 agency. Any person who serves any ~~such~~ subpoena or subpoena duces tecum ~~shall be~~ is entitled  
34 to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state; and  
35 fees for the attendance and travel of witnesses shall be the same as for witnesses before the  
36 circuit courts of this state. All ~~such~~ fees shall be paid by the agency if the subpoena or subpoena  
37 duces tecum were issued, without the request of an interested party, at the instance of the agency.  
38 All ~~such~~ fees related to any subpoena or subpoena duces tecum issued at the instance of an  
39 interested party shall be paid by the party who asks that such subpoena or subpoena duces tecum  
40 be issued. All requests by interested parties for subpoenas and subpoenas duces tecum shall be

41 in writing and shall contain a statement acknowledging that the requesting party agrees to pay  
42 ~~such~~ the fees. Any such agency may compel the attendance of witnesses and the production of  
43 books, records or papers in response to ~~such~~ subpoenas and subpoenas duces tecum. Upon  
44 motion made promptly and in any event before the time specified in a subpoena duces tecum for  
45 compliance therewith, the circuit court of the county in which the hearing is to be held, or the  
46 circuit court in which the subpoena duces tecum was served, or the judge of either ~~such~~ court in  
47 vacation, may grant any relief with respect to such subpoena duces tecum which either ~~such~~  
48 court, under the West Virginia Rules of Civil Procedure for Trial Courts of Record, could grant,  
49 and for any of the same reasons, with respect to a subpoena duces tecum issued from either  
50 ~~such~~ court. In case of disobedience or neglect of any subpoena or subpoena duces tecum served  
51 on any person, or the refusal of any witness to testify to any matter regarding which he or she  
52 may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or  
53 the judge thereof in vacation, upon application by ~~such~~ the agency or any member of the body  
54 which comprises ~~such~~ the agency, shall compel obedience by attachment proceedings for  
55 contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces  
56 tecum issued from ~~such~~ the circuit court or a refusal to testify therein. Witnesses at ~~such~~ these  
57 hearings shall testify under oath or affirmation.

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

60 (d) All hearings shall be conducted in an impartial manner. The agency, any member of  
61 the body which comprises the agency, or any hearing examiner or other person permitted by  
62 statute to hold any ~~such~~ hearing for ~~such~~ that agency, and duly authorized by ~~such~~ the agency so  
63 to do, ~~shall have the power to~~ may: (1) Administer oaths and affirmations; (2) rule upon offers of  
64 proof and receive relevant evidence;(3)regulate the course of the hearing;(4) hold conferences

65 for the settlement or simplification of the issues by consent of the parties; (5) dispose of procedural  
66 requests or similar matters; and (6) take any other action authorized by a rule adopted by the  
67 agency in accordance with the provisions of article three of this chapter. Notwithstanding any  
68 provision in this code to the contrary, in any such hearing to be conducted by a hearing examiner,  
69 the hearing examiner shall be selected from a panel of five hearing examiners by a process in  
70 which the agency first strikes two hearing examiners from the panel and the respondent  
71 subsequently strikes two hearing examiners from the panel.

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

74 (f) Notwithstanding the provisions of subparagraph (a) of this section, upon request to the  
75 agency from any party to the hearing, all reported testimony and evidence at ~~such~~ the hearing  
76 shall be transcribed, and a copy thereof furnished to ~~such~~ the party at his or her expense. The  
77 agency shall have the responsibility for making arrangements for the transcription of the reported  
78 testimony and evidence, and ~~such~~ the transcription shall be accomplished with 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 a heading or the present law and underscoring indicates new language that would be added.