

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

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

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

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

1 by such agency or any member of the body which comprises such
2 agency, shall compel obedience by attachment proceedings for
3 contempt as in the case of disobedience of the requirements of a
4 subpoena or subpoena duces tecum issued from such circuit court or
5 a refusal to testify therein. Witnesses at such hearings shall
6 testify under oath or affirmation.

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

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

1 subsequently strikes two hearing examiners from the panel.

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

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