

1 **H. B. 4426**

2 (By Delegates R. Phillips, Boggs, Marcum,
3 Tomblin, Sponaugle, Lynch, Skinner, Skaff,
4 Eldridge, Hartman and Campbell)
5

6 (By Request of the Department of Transportation -
7 Office of Administrative Hearings)

8 [Introduced February 6, 2014; referred to the

9 Committee on Government Organization then the Judiciary.]

10 A BILL to amend and reenact §29A-5-2 of the Code of West Virginia,
11 1931, as amended, relating to contested cases; clarifying that
12 the term "agency" as used in the section refers only to the
13 agency charged with conducting the administrative hearing and
14 not an agency appearing as a party in the proceeding.

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

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

18 **ARTICLE 5. CONTESTED CASES.**

19 **§29A-5-2. Rules of evidence; taking notice of facts; correction of**
20 **transcript.**

21 (a) In contested cases irrelevant, immaterial, or unduly
22 repetitious evidence shall be excluded. The rules of evidence as
23 applied in civil cases in the circuit courts of this state shall be
24 followed. When necessary to ascertain facts not reasonably
25 susceptible of proof under those rules, evidence not admissible
26 thereunder may be admitted, except where precluded by statute, if

1 it is of a type commonly relied upon by reasonably prudent men in
2 the conduct of their affairs. Agencies shall be bound by the rules
3 of privilege recognized by law. Objections to evidentiary offers
4 shall be noted in the record. Any party to any such hearing may
5 vouch the record as to any excluded testimony or other evidence.

6 (b) All evidence, including papers, records, agency staff
7 memoranda and documents in the possession of the agency, of which
8 it desires to avail itself, shall be offered and made a part of the
9 record in the case, and no other factual information or evidence
10 shall be considered in the determination of the case. Documentary
11 evidence may be received in the form of copies or excerpts or by
12 incorporation by reference.

13 (c) Every party shall have the right of cross-examination of
14 witnesses who testify, and shall have the right to submit rebuttal
15 evidence.

16 (d) Agencies may take notice of judicially cognizable facts.
17 All parties shall be notified either before or during hearing, or
18 by reference in preliminary reports or otherwise, of the material
19 so noticed, and they shall be afforded an opportunity to contest
20 the facts so noticed.

21 (e) Upon motion in writing served by any party as notice may
22 be served pursuant to section two, article seven of this chapter
23 and therein assigning error or omission in any part of any
24 transcript of the proceedings had and testimony taken at any such

1 hearing, the agency shall settle all differences arising as to
2 whether such transcript truly discloses what occurred at the
3 hearing and shall direct that the transcript be corrected and
4 revised in the respects designated by the agency, so as to make it
5 conform to the whole truth.

6 (f) For purposes of this section, the term "agency" refers
7 only to the agency charged with conducting the administrative
8 hearing.

NOTE: The purpose of this bill is to clarify that the term
"agency" within §29A-5-2 refers only to the agency charged with
conducting the administrative hearing and not an agency appearing
as a party in the proceeding.

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