

1 **Senate Bill No. 96**

2 (By Senator Laird)

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4 [Introduced January 14, 2015; referred to the Committee on Government Organization; and then

5 to the Committee on the Judiciary.]

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

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

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

18 **ARTICLE 5. CONTESTED CASES.**

19 **§29A-5-1. Notice required; hearing; subpoenas; witness fees, etc.; depositions; records.**

20 (a) In any contested case all parties shall be afforded an opportunity for hearing after at least
21 ten days' written notice. The notice shall contain the date, time and place of the hearing and a short

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

14 (b) For the purpose of conducting a hearing in any contested case, any agency which now has
15 or may be hereafter expressly granted by statute the power to issue subpoenas or subpoenas duces
16 tecum or any member of the body which comprises ~~such the~~ agency may exercise ~~such that~~ power
17 in the name of the agency. Any such agency or any member of the body which comprises any such
18 agency may exercise ~~such that~~ power in the name of the agency for any party upon request. Under
19 no circumstances ~~shall~~ does this chapter ~~be construed as granting~~ grant the power to issue
20 subpoenas or subpoenas duces tecum to any agency or to any member of the body of any agency
21 which does not now by statute expressly have such power. When ~~such that~~ power exists, the

1 provisions of this section ~~shall~~ apply. Every ~~such~~ subpoena and subpoena duces tecum shall be
2 served at least five days before the return date thereof, either by personal service made by any person
3 over eighteen years of age or by registered or certified mail, but a return acknowledgment signed by
4 the person to whom the subpoena or subpoena duces tecum is directed ~~shall be~~ is required to prove
5 service by registered or certified mail. All subpoenas and subpoenas duces tecum shall be issued in
6 the name of the agency, ~~as aforesaid~~, but any party requesting their issuance must see that they are
7 properly served. Service of subpoenas and subpoenas duces tecum issued at the instance of the
8 agency ~~shall be~~ is the responsibility of the agency. Any person who serves any ~~such~~ subpoena or
9 subpoena duces tecum ~~shall be~~ is entitled to the same fee as sheriffs who serve witness subpoenas
10 for the circuit courts of this state; and fees for the attendance and travel of witnesses shall be the
11 same as for witnesses before the circuit courts of this state. All ~~such~~ fees shall be paid by the agency
12 if the subpoena or subpoena duces tecum were issued, without the request of an interested party, at
13 the instance of the agency. All ~~such~~ fees related to any subpoena or subpoena duces tecum issued
14 at the instance of an interested party shall be paid by the party who asks that such subpoena or
15 subpoena duces tecum be issued. All requests by interested parties for subpoenas and subpoenas
16 duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party
17 agrees to pay ~~such~~ the fees. Any such agency may compel the attendance of witnesses and the
18 production of books, records or papers in response to ~~such~~ subpoenas and subpoenas duces tecum.
19 Upon motion made promptly and in any event before the time specified in a subpoena duces tecum
20 for compliance therewith, the circuit court of the county in which the hearing is to be held, or the
21 circuit court in which the subpoena duces tecum was served, or the judge of either ~~such~~ court in

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

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

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

1 code to the contrary, in any such hearing to be conducted by a hearing examiner, the hearing
2 examiner shall be selected from a panel of five hearing examiners by a process in which the agency
3 first strikes two hearing examiners from the panel and the respondent subsequently strikes two
4 hearing examiners from the panel.

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

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