

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4586

**FISCAL
NOTE**

BY DELEGATES D. KELLY, MAYNARD, MILLER, WILLIAMS,

STEELE, PUSHKIN, AND D. JEFFRIES

[BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY]

[Introduced January 29, 2020; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15A-9-1, §15A-9-2, §15A-9-3, §15A-9-4, §15A-9-5, §15A-9-6, and §15A-9-7,
3 all relating to establishing the Office of Administrative Hearings within the Department of
4 Military Affairs and Public Safety, authorizing the appointment of a Chief Hearing
5 Examiner, establishing the organization of the Office of the Chief Hearing Examiner,
6 establishing the jurisdiction of the office of administrative hearings, establishing hearing
7 procedures, establishing rule-making authority, establishing a duty to provide notice of
8 change of address, and establishing policies for the transition from divisions of the
9 department to the office of administrative hearings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

1 (a) The Office of Administrative Hearings is created as a separate operating agency within
2 the department.

3 (b) The secretary shall appoint a director of the office who serves as the administrative
4 head of the office and as Chief Hearing Examiner.

5 (c) Prior to appointment, the Chief Hearing Examiner shall be a citizen of the United States
6 and a resident of this state who is admitted to the practice of law in this state.

7 (d) The salary of the Chief Hearing Examiner shall be set by the secretary of the
8 department.

9 (e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the
10 Chief Hearing Examiner during his or her term shall:

11 (1) Devote his or her full time to the duties of the position;

12 (2) Not otherwise engage in the active practice of law or be associated with any group or
13 entity which is itself engaged in the active practice of law. This subsection does not prohibit the
14 Chief Hearing Examiner from being a member of a national, state or local bar association or

15 committee, or of any other similar group or organization, nor does it prohibit the Chief Hearing
16 Examiner from engaging in the practice of law by representing himself, herself or his or her
17 immediate family in their personal affairs in matters not subject to this article;

18 (3) Not engage directly or indirectly in any activity, occupation or business interfering or
19 inconsistent with his or her duties as Chief Hearing Examiner;

20 (4) Not hold any other appointed public office or any elected public office or any other
21 position of public trust; and

22 (5) Not be a candidate for any elected public office, or serve on or under any committee
23 of, any political party.

24 (f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

§15A-9-2. Organization of office.

1 (a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative
2 Hearings and he or she may employ hearing examiners and other clerical personnel necessary
3 for the proper administration of this article.

4 (1) The Chief Hearing Examiner may delegate administrative duties to other employees,
5 but the Chief Hearing Examiner is responsible for all official delegated acts.

6 (2) All employees of the Office of Administrative Hearings are classified exempt.

7 (b) The Chief Hearing Examiner shall:

8 (1) Direct and supervise the work of the office staff;

9 (2) Hold hearings;

10 (3) Make hearing assignments;

11 (4) Maintain the records of the office;

12 (5) Review and approve decisions of hearing examiners as to legal accuracy, clarity, and
13 other requirements; and

14 (6) Perform the other duties necessary and proper to carry out the purposes of this article.

15 (c) The administrative expenses of the office shall be included within the annual budget of

16 the Division of Administrative Services.

§15A-9-3. Jurisdiction of Office of Administrative Hearings.

1 Notwithstanding any provision of this code to the contrary, the Office of Administrative
2 Hearings has jurisdiction to hear and determine all:

3 (1) Level one grievance proceedings for all divisions of the department, except for the
4 State Police.

5 (2) Appeals from decisions or orders of the State Fire Commission;

6 (3) Appeals from orders of the State Fire Marshal;

7 (4) Other matters for which a hearing examiner is necessary within the department or any
8 division of the department;

9 (5) Other matters which may be conferred upon the office by statute or legislatively
10 approved rules.

§15A-9-4. Hearing procedures.

1 (a) All level one grievance hearings before the office shall be heard in accordance with
2 practices and procedures as set forth in §6C-2-1 et seq. of this code.

3 (b) All hearings on appeals before the office shall be heard de novo and conducted
4 pursuant to the provisions of the contested case procedure set forth in §29A-5-1 et seq. of this
5 code.

6 (1) Notwithstanding any provision of this code to the contrary, the division head, or the
7 Fire Commission, may be represented at hearings conducted by the office and evidence
8 submitted by the division head may be considered in such hearings with or without such
9 representation.

10 (2) The West Virginia Rules of Evidence governing proceedings in the courts of this state
11 shall be given like effect in hearings held before a hearing examiner. All testimony shall be given
12 under oath.

13 (3) The hearing examiner may request proposed findings of fact and conclusions of law

14 from the parties prior to the issuance by the office of the decision in the matter.

15 (c) Hearings and all records of hearings are exempt from the requirements of §29B-1-1 et
16 seq. of this code, until the results of the hearing have been rendered: *Provided*, That once the
17 decision is rendered, the records may be exempt from disclosure, pursuant to §29B-1-4 or other
18 applicable section of this code.

§15A-9-5. Rule-making authority.

1 The Office of Administrative Hearings may propose legislative and procedural rules in
2 accordance with the provisions of chapter 29A of this code in order to implement the provisions
3 of this article and to carry out the duties prescribed therein.

§15A-9-6. Duty to provide notice of change of address.

1 Any person who has any pending contested matter before the Office of Administrative
2 Hearings is required to provide notice of a change in address in writing at least 10 days prior to
3 any scheduled hearing in which they are a party. If the person's final hearing is held prior to the
4 person's change in address, then the person is required to provide the written notice prior to the
5 issuance of the final order in their case. Written notice must be provided by certified mail, return
6 receipt requested, facsimile, or by electronic mail, to the Office of Administrative Hearings.

§15A-9-7. Transition from divisions of the department to the Office of Administrative
Hearings.

1 (a) In order to implement an orderly and efficient transition of the administrative hearing
2 process from the many divisions of the department, the secretary may establish interim policies
3 and procedures for the transfer of administrative hearings, appeals from decisions or orders of,
4 as contemplated by this article, currently administered by the separate divisions and the Fire
5 Commission, no later than October 1, 2020.

6 (b) On the effective date of this article, all equipment and records necessary to effectuate
7 the purposes of this article shall be transferred from the many divisions of the department to the
8 Office of Administrative Hearings: *Provided*, That in order to provide for a smooth transition, the

9 secretary may establish interim policies and procedures, determine how the equipment and
10 records are to be transferred and provide that the transfers provided for in this subsection take
11 effect no later than October 1, 2020.

NOTE: The purpose of this bill is to establish the Office of Administrative Hearings within the Department of Military Affairs and Public Safety.

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