

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964

## ENROLLED

SENATE BILL NO. 30

*Originating in the Committee*  
(By *Mr. on the Judiciary*)

PASSED February 5, 1964

In Effect July 1, 1964 Passage

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FILED IN THE OFFICE OF  
JOE F. BURDETT  
SECRETARY OF STATE  
THIS DATE 2-11-64

# 30

# ENROLLED

## JUDICIARY

### Senate Bill No. 30

(Originating in the Committee on the Judiciary)

[Passed February 5, 1964; in effect July 1, 1964.]

AN ACT to repeal section three, article two, chapter five of the  
the code of West Virginia, one thousand nine hundred  
thirty-one, as amended, and to amend said code by adding  
thereto a new chapter, designated chapter twenty-nine-a,  
relating to rule-making procedures of state agencies and  
administrative procedures generally; and providing for  
review of the determinations of state agencies.

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

That section three, article two, chapter five of the code of  
West Virginia, one thousand nine hundred thirty-one, as  
amended, be repealed; and that said code be amended by add-  
ing thereto a new chapter, designated chapter twenty-nine-a,  
to read as follows:

CHAPTER 29-A.

STATE ADMINISTRATIVE PROCEDURES

**Article 1. Definitions and Application of Chapter.**

**Section 1. Definitions.**—For the purpose of this chap-

2 ter:

3 (a) “Agency” means any state board, commission,  
4 department or officer authorized by law to make rules  
5 or adjudicate contested cases, except those in the legis-  
6 lative or judicial branches;

7 (b) “Person” includes individuals, partnerships, cor-  
8 porations, associations or public or private organizations  
9 of any character;

10 (c) “Rule” includes every regulation, standard, or  
11 statement of policy or interpretation of general applica-  
12 tion and future effect, including the amendment or re-  
13 peal thereof, affecting private rights, privileges or in-  
14 terests, or the procedures available to the public, adopted  
15 by an agency to implement, extend, apply, interpret or  
16 make specific the law enforced or administered by it or  
17 to govern its organization or procedure, but does not in-  
18 clude regulations relating solely to the internal manage-

19 ment of the agency, nor regulations of which notice is  
20 customarily given to the public by markers or signs, nor  
21 mere instructions;

22 (d) "Rule making" means the agency process for the  
23 formulation, amendment or repeal of a rule;

24 (e) "Contested case" means a proceeding before an  
25 agency in which the legal rights, duties, interests or priv-  
26 ileges of specific parties are required by law or constitu-  
27 tional right to be determined after an agency hearing,  
28 but shall not include cases in which an agency issues a  
29 license, permit or certificate after an examination to test  
30 the knowledge or ability of the applicant where the con-  
31 troversy concerns whether the examination was fair or  
32 whether the applicant passed the examination, and shall  
33 not include rule making; and

34 (f) "Order" means the whole or any part of the final  
35 disposition (whether affirmative, negative, injunctive or  
36 declaratory in form) by any agency of any matter other  
37 than rule making.

20 Sec. 2. Application of Chapter.—The provisions of  
21 this chapter shall not apply to rules relating to, or con-

3 tested cases involving, public elections, the conduct of  
4 inmates of public institutions, the conduct of students at  
5 public schools or public educational institutions, the con-  
6 duct of persons in military service or the receipt of pub-  
7 lic assistance.

8 The provisions of this chapter shall not apply in any  
9 respect whatever to the West Virginia board of probation  
10 and parole, the public service commission, the board of  
11 public works, the West Virginia board of education, and  
12 the board of governors of West Virginia university: *Pro-*  
13 *vided*, That these named agencies shall comply with sec-  
14 tion one, article two of this chapter: *Provided, however,*  
15 That any rule promulgated by any such named agency on  
16 and after the effective date of this act shall not become  
17 effective unless and until two certified copies of such rule  
18 have been on file in the office of the secretary of state for  
19 sixty consecutive days.

## **Article 2. Public Records.**

2 Section 1. **Filing Rules.**—(a) Each agency shall com-  
2 pile and index all of its lawfully adopted rules which  
3 are in force on the effective date of this act and shall file

4 in the office of the secretary of state two certified copies  
5 of such compilation and index. If any agency shall fail  
6 to file such certified copies on or before January one, one  
7 thousand nine hundred sixty-five, then the rules of such  
8 agency which are not so filed shall become void and un-  
9 enforceable and shall be of no legal force and effect. The  
10 secretary of state shall keep a permanent register of such  
11 rules which shall be open to public inspection during the  
12 office hours of the secretary of state.

13 (b) The secretary of state shall prescribe by rule a  
14 standard size, format and numbering system for rules to  
15 be filed in his office, making exception where rules issued  
16 by other agencies cannot effectively convey necessary  
17 information within the size and format established. Rules  
18 pertaining to the size, format and numbering system is-  
19 sued by the secretary of state under the authority of this  
20 section shall become effective thirty days after such rules  
21 have been included in the permanent register main-  
22 tained by the secretary of state in accordance with this  
23 section. The secretary of state may refuse to accept for  
24 filing any rules which do not comply with this chapter

25 or with his rules pertaining to size, format and number-  
26 ing.

**Sec. 2. Making Orders and Records Available.**—Every  
2 agency shall publish or, pursuant to rules adopted in ac-  
3 cordance with the provisions of this chapter, make avail-  
4 able to public inspection all final orders, decisions and  
5 opinions in the adjudication of contested cases except  
6 those required for good cause to be held confidential and  
7 not cited as precedents. Save as otherwise required by  
8 statute, matters of official record shall, pursuant to rules  
9 adopted in accordance with the provisions of this chapter,  
10 be made available for public inspection.

### **Article 3. Rule Making.**

**Section 1. Rules of Procedure Required.**—In addition  
2 to other rule-making requirements imposed by law:  
3 (a) Each agency shall adopt rules governing the for-  
4 mal and informal procedures prescribed or authorized by  
5 this chapter. Such rules shall include rules of practice  
6 before the agency, together with forms and instructions.  
7 (b) To assist interested persons dealing with it, each  
8 agency shall so far as deemed practicable supplement its  
9 rules with descriptive statements of its procedures.

**Sec. 2. Notice Must Be Given.**—On and after the effective date of this act, no agency shall make any rule unless and until notice thereof has been given to all persons who, in the manner hereinafter provided in this section, have requested notice of any proposed rule. The notice shall either contain the express terms of the proposed rule, or shall contain an informative summary thereof. The notice shall be given by mail as specified in section two, article seven of this chapter. The notice shall include a statement of the time, date and place at which interested persons may submit data, objections, suggested amendments, views, evidence and arguments orally or in writing concerning the proposed rule, and such notice must be given not less than thirty nor more than sixty days prior to the date fixed. The request by any person to receive notice shall be in writing and shall request the agency to notify him of any rule proposed by such agency during the calendar year in which the request is made. Each agency by rule may prescribe the form of such written request for notification, and may require an annual fee in an amount not to exceed one dollar to accompany each



22 such written request. All such fees shall be deposited in  
23 the state treasury to the credit of the state general fund.  
24 An agency may, in its discretion, also publish the re-  
25 quired notice, at the expense of the agency, in one news-  
26 paper of general circulation in the state, or, if the rule  
27 has only local application, in one newspaper of general  
28 circulation in the locality to which it applies. If an  
29 agency determines to give notice also by publication, the  
30 publication shall appear at least once. No rule hereafter  
31 adopted is valid unless adopted in substantial compliance  
32 with the provisions of this section.

**Sec. 3. Submission of Data, etc., Concerning Proposed**

2 **Rule.**—On the date and at the time and place specified in  
3 the notice required by section two of this article an  
4 opportunity shall be afforded all interested persons to  
5 submit data, objections, suggested amendments, views,  
6 evidence and arguments orally or in writing concerning  
7 the proposed rule. The proposed rule may be adopted  
8 in the form in which it was proposed, or as amended  
9 after the submission of such data, etc., providing the

10 amendments do not alter the main purpose of the rule  
11 as proposed.

**Sec. 4. Effective Date of Rules.**—After the effective  
2 date of this act, each rule lawfully adopted by any agency  
3 after notice and after affording interested persons an  
4 opportunity to submit data, etc., as required by sections  
5 two and three of this article, shall not become effective  
6 unless and until two certified copies of such rule have  
7 been on file in the office of the secretary of state for  
8 thirty consecutive days.

**Sec. 5. Emergency Rules.**—If, in an emergency, the  
2 adoption of a rule is necessary for the immediate preser-  
3 vation of the public peace, health, safety or welfare, an  
4 agency may promulgate the necessary rule, in which  
5 event the rule shall, notwithstanding the provisions of  
6 sections two, three and four of this article, become effec-  
7 tive immediately. The agency's finding of an emergency  
8 and a brief statement of the reasons therefor shall be  
9 filed with the rule. Notice of any such emergency rule  
10 shall forthwith be given as prescribed in section two of  
11 this article. No such rule shall remain in effect longer

12 than ninety days unless there is compliance with all the  
13 provisions of sections two and three of this article.

**Sec. 6. Petition for Adoption of Rules.**—Any interested  
2 person may petition an agency requesting the promulga-  
3 tion, amendment or repeal of any rule. Each agency may  
4 prescribe by rule the form for such petitions and the pro-  
5 cedure for their submission, consideration and disposi-  
6 tion.

**Sec. 7. Publication of Rules.**—(a) The secretary of  
2 state shall, as soon as practicable after January one, one  
3 thousand nine hundred sixty-five, publish as to each  
4 agency, in pamphlet form, all rules adopted by such  
5 agency and on file in his office. All such pamphlets shall  
6 be supplemented or revised as often as necessary.

7 (b) The secretary of state shall publish a quarterly  
8 bulletin in which he shall set forth the text of all rules  
9 filed during the preceding quarter, excluding rules in  
10 effect on January one, one thousand nine hundred sixty-  
11 five.

12 (c) The secretary of state may in his discretion omit  
13 from the publication in pamphlet form or the quarterly

14 bulletins rules the publication of which would be unduly  
15 cumbersome, expensive or otherwise inexpedient, if such  
16 rules are made available in printed or processed form on  
17 application to the adopting agency, and if the publication  
18 in pamphlet form or the quarterly bulletins contain a  
19 statement stating the general subject matter of the rules  
20 so omitted and stating how copies thereof may be ob-  
21 tained.

22 (d) The quarterly bulletins and the pamphlet publi-  
23 cations shall be made available upon request to officials  
24 of this state free of charge, and to other persons at a  
25 price fixed by the secretary of state to cover the cost  
26 thereof and mailing costs. All moneys so received shall  
27 be deposited in the state treasury to the credit of the state  
28 general fund.

#### **Article 4. Declaratory Rulings and Declaratory Judgments.**

Section 1. **Petition for Declaratory Rulings by Agen-**  
2 **cies.**—On petition of any interested person, an agency  
3 may issue a declaratory ruling with respect to the ap-  
4 plicability to any person, property or state of facts of  
5 any rule or statute enforceable by it. A declaratory rul-

6 ing, if issued after argument and stated to be binding,  
7 is binding between the agency and the petitioner on the  
8 state of facts alleged, unless it is altered or set aside by  
9 a court, but it shall not be binding on any other person.  
10 Such ruling is subject to review before the court and  
11 in the manner hereinafter provided for the review of  
12 orders or decisions in contested cases. Each agency may  
13 prescribe by rule the form for such petitions and the  
14 procedure for their submission, consideration and dis-  
15 position.

**Sec. 2. Declaratory Judgment on Validity of Rule.—**

2 (a) Any person, except the agency promulgating the rule,  
3 may have the validity of any rule determined by insti-  
4 tuting an action for a declaratory judgment in the circuit  
5 court of Kanawha county, West Virginia, when it appears  
6 that the rule, or its threatened application, interferes  
7 with or impairs or threatens to interfere with or impair,  
8 the legal rights or privileges of the plaintiff or plaintiffs.  
9 The agency shall be made a party to the proceeding. The  
10 declaratory judgment may be rendered whether or not

11 the plaintiff or plaintiffs has or have first requested the  
12 agency to pass upon the validity of the rule in question.

13 (b) The court shall declare the rule invalid if it finds  
14 that the rule violates constitutional provisions or ex-  
15 ceeds the statutory authority or jurisdiction of the  
16 agency or was adopted without compliance with statutory  
17 rule-making procedures or is arbitrary or capricious, or  
18 that, in the case of a rule adopted pursuant to section  
19 five, article three of this chapter, action under said sec-  
20 tion five was not justified.

21 (c) When the invalidity of a rule has been so declared,  
22 the agency shall, within thirty days after such declaratory  
23 judgment has been entered, acquiesce therein and modify  
24 or rescind such invalidated rule in accord with the re-  
25 quirement of such declaratory judgment unless the  
26 agency promptly, and in any event within such thirty-day  
27 period, notifies the plaintiff or plaintiffs of its intention to  
28 apply for an appeal to the supreme court of appeals from  
29 such declaratory judgment pursuant to section one, article  
30 six of this chapter. In the event such agency shall there-  
31 after make timely application for such appeal, the ac-

32 quiescence of the agency in the invalidity of such rule shall  
33 not be required until thirty days after timely applications  
34 for such appeal have been refused or within thirty days  
35 after the appeal has been dismissed or otherwise disposed  
36 of in the supreme court of appeals by an affirmance of the  
37 judgment invalidating said rule.

#### **Article 5. Contested Cases.**

##### **Section 1. Notice Required; Hearing; Subpoenas; Rec-**

2 **ords.**—(a) In any contested case all parties shall be  
3 afforded an opportunity for hearing after at least ten  
4 days' written notice. The notice shall contain the date,  
5 time and place of the hearing and a short and plain state-  
6 ment of the matters asserted. If the agency is unable to  
7 state the matters in detail at the time the notice is served,  
8 the initial notice may be limited to a statement of the  
9 issues involved. Thereafter upon application a more  
10 definite and detailed statement shall be furnished. An  
11 opportunity shall be afforded all parties to present evi-  
12 dence and argument with respect to the matters and  
13 issues involved. The required notice must be given as  
14 specified in section two, article seven of this chapter.

15 All of the testimony and evidence at any such hearing  
16 shall be reported by stenographic notes and characters  
17 or by mechanical means. All rulings on the admissibility  
18 of testimony and evidence shall also be reported. The  
19 agency shall prepare an official record, which shall in-  
20 clude reported testimony and exhibits in each contested  
21 case, and all agency staff memoranda and data used in  
22 consideration of the case, but it shall not be necessary  
23 to transcribe the reported testimony unless required for  
24 purposes of rehearing or judicial review. Informal dis-  
25 position may also be made of any contested case by stip-  
26 ulation, agreed settlement, consent order or default. Each  
27 agency shall adopt appropriate rules of procedure for  
28 hearing in contested cases.

29 (b) For the purpose of conducting a hearing in any  
30 contested case, any agency which now has or may be  
31 hereafter expressly granted by statute the power to issue  
32 subpoenas or *subpoenas duces tecum* or any member of  
33 the body which comprises such agency may exercise  
34 such power in the name of the agency. Any such agency  
35 or any member of the body which comprises any such



36 agency may exercise such power in the name of the  
37 agency for any party upon request. Under no circum-  
38 stances shall this act be construed as granting the power  
39 to issue subpoenas or *subpoenas duces tecum* to any  
40 agency or to any member of the body of any agency which  
41 does not now by statute expressly have such power.  
42 When such power exists, the provisions of this section  
43 shall apply. Every such subpoena and *subpoena duces*  
44 *tecum* shall be served at least five days before the return  
45 date thereof, either by personal service made by any  
46 person over eighteen years of age or by registered or  
47 certified mail, but a return acknowledgment signed by  
48 the person to whom the subpoena or *subpoena duces*  
49 *tecum* is directed shall be required to prove service by  
50 registered or certified mail. All subpoenas and *subpoenas*  
51 *duces tecum* shall be issued in the name of the agency,  
52 as aforesaid, but any party requesting their issuance  
53 must see that they are properly served. Service of sub-  
54 poenas and *subpoenas duces tecum* issued at the instance  
55 of the agency shall be the responsibility of the agency.  
56 Any person who serves any such subpoena or *subpoena*

57 *duces tecum* shall be entitled to the same fee as sheriffs  
58 who serve witness subpoenas for the circuit courts of  
59 this state; and fees for the attendance and travel of wit-  
60 nesses shall be the same as for witnesses before the cir-  
61 cuit courts of this state. All such fees shall be paid by  
62 the agency if the subpoena or *subpoena duces tecum*  
63 were issued, without the request of an interested party,  
64 at the instance of the agency. All such fees related to  
65 any subpoena or *subpoena duces tecum* issued at the  
66 instance of an interested party shall be paid by the party  
67 who asks that such subpoena or *subpoena duces tecum*  
68 be issued. All requests by interested parties for sub-  
69 poenas and *subpoenas duces tecum* shall be in writing  
70 and shall contain a statement acknowledging that the  
71 requesting party agrees to pay such fees. Any such  
72 agency may compel the attendance of witnesses and the  
73 production of books, records or papers in response to  
74 such subpoenas and *subpoenas duces tecum*. Upon motion  
75 made promptly and in any event before the time speci-  
76 fied in a *subpoena duces tecum* for compliance therewith,  
77 the circuit court of the county in which the hearing is

78 to be held, or the circuit court in which the *subpoena*  
79 *duces tecum* was served, or the judge of either such  
80 court in vacation, may grant any relief with respect to  
81 such *subpoena duces tecum* which either such court,  
82 under the West Virginia rules of civil procedure for trial  
83 courts of record, could grant, and for any of the same  
84 reasons, with respect to a *subpoena duces tecum* issued  
85 from either such court. In case of disobedience or neglect  
86 of any subpoena or *subpoena duces tecum* served on any  
87 person, or the refusal of any witness to testify to any mat-  
88 ter regarding which he may be lawfully interrogated,  
89 the circuit court of the county in which the hearing is  
90 being held, or the judge thereof in vacation, upon ap-  
91 plication by such agency or any member of the body  
92 which comprises such agency, shall compel obedience  
93 by attachment proceedings for contempt as in the case  
94 of disobedience of the requirements of a subpoena or  
95 *subpoena duces tecum* issued from such circuit court  
96 or a refusal to testify therein. Witnesses at such hearings  
97 shall testify under oath or affirmation.

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

100 (d) All hearings shall be conducted in an impartial  
101 manner. The agency, any member of the body which  
102 comprises the agency, or any hearing examiner or other  
103 person permitted by statute to hold any such hearing  
104 for such agency, and duly authorized by such agency  
105 so to do, shall have the power to: (1) administer oaths  
106 and affirmations, (2) rule upon offers of proof and re-  
107 ceive relevant evidence, (3) regulate the course of the  
108 hearing, (4) hold conferences for the settlement or  
109 simplification of the issues by consent of the parties, (5)  
110 dispose of procedural requests or similar matters and  
111 (6) take any other action authorized by a rule adopted  
112 by the agency in accordance with the provisions of article  
113 three of this chapter.

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

117 (f) Notwithstanding the provisions of subparagraph  
118 (a) of this section, upon request to the agency from any

119 party to the hearing all reported testimony and evidence  
120 at such hearing shall be transcribed, and a copy thereof  
121 furnished to such party at his expense. The agency shall  
122 have the responsibility for making arrangements for the  
123 transcription of the reported testimony and evidence,  
124 and such transcription shall be accomplished with all  
125 dispatch.

**Sec. 2. Rules of Evidence; Official Notice.**—(a) In  
2 contested cases irrelevant, immaterial, or unduly repeti-  
3 tious evidence shall be excluded. The rules of evidence  
4 as applied in civil cases in the circuit courts of this state  
5 shall be followed. When necessary to ascertain facts not  
6 reasonably susceptible of proof under those rules, evi-  
7 dence not admissible thereunder may be admitted, ex-  
8 cept where precluded by statute, if it is of a type com-  
9 monly relied upon by reasonably prudent men in the con-  
10 duct of their affairs. Agencies shall be bound by the rules  
11 of privilege recognized by law. Objections to evidentiary  
12 offers shall be noted in the record. Any party to any such  
13 hearing may vouch the record as to any excluded testi-  
14 mony or other evidence.

15 (b) All evidence, including papers, records, agency  
16 staff memoranda and documents in the possession of the  
17 agency, of which it desires to avail itself, shall be offered  
18 and made a part of the record in the case, and no other  
19 factual information or evidence shall be considered in the  
20 determination of the case. Documentary evidence may be  
21 received in the form of copies or excerpts or by incorpo-  
22 ration by reference.

23 (c) Every party shall have the right of cross-exami-  
24 nation of witnesses who testify, and shall have the right  
25 to submit rebuttal evidence.

26 (d) Agencies may take notice of judicially cognizable  
27 facts. All parties shall be notified either before or during  
28 hearing, or by reference in preliminary reports or other-  
29 wise, of the material so noticed, and they shall be afforded  
30 an opportunity to contest the facts so noticed.

31 (e) Upon motion in writing served by any party as  
32 notice may be served pursuant to section two, article  
33 seven of this chapter and therein assigning error or omis-  
34 sion in any part of any transcript of the proceedings had  
35 and testimony taken at any such hearing, the agency shall

36 settle all differences arising as to whether such transcript  
37 truly discloses what occurred at the hearing and shall  
38 direct that the transcript be corrected and revised in  
39 the respects designated by the agency, so as to make it  
40 conform to the whole truth.

**Sec. 3. Orders or Decisions.**—Every final order or de-  
2 cision rendered by an agency in a contested case shall  
3 be in writing or stated in the record and shall be accom-  
4 panied by findings of fact and conclusions of law. Prior  
5 to the rendering of any final order or decision, any party  
6 may propose findings of fact and conclusions of law. If  
7 proposed, all other parties shall be given an opportunity  
8 to except to such proposed findings and conclusions, and  
9 the final order or decision shall include a ruling on each  
10 proposed finding. Findings of fact, if set forth in statu-  
11 tory language, shall be accompanied by a concise and ex-  
12 plicit statement of the underlying facts supporting the  
13 findings. A copy of the order or decision and accompany-  
14 ing findings and conclusions shall be served upon each  
15 party and his attorney of record, if any, in person or by  
16 registered or certified mail.

**Sec. 4. Judicial Review of Contested Cases.—**(a) Any

2 party adversely affected by a final order or decision in a  
3 contested case is entitled to judicial review thereof under  
4 this chapter, but nothing in this chapter shall be deemed  
5 to prevent other means of review, redress or relief pro-  
6 vided by law.

7 (b) Proceedings for review shall be instituted by filing  
8 a petition, at the election of the petitioner, in either the  
9 circuit court of Kanawha county, West Virginia, or with  
10 the judge thereof in vacation, or in the circuit court of  
11 the county in which the petitioner or any one of the  
12 petitioners resides or does business, or with the judge  
13 thereof in vacation, within thirty days after the date  
14 upon which such party received notice of the final order  
15 or decision of the agency. A copy of the petition shall  
16 be served upon the agency and all other parties of record  
17 by registered or certified mail. The petition shall state  
18 whether the appeal is taken on questions of law or ques-  
19 tions of fact, or both. No appeal bond shall be required  
20 to effect any such appeal.

21 (c) The filing of the petition shall not stay enforce-



22 ment of the agency order or decision or act as a super-  
23 sedeas thereto, but the agency may stay such enforce-  
24 ment, and the appellant, at any time after the filing of  
25 his petition, may apply to such circuit court for a stay of  
26 or supersedeas to such final order or decision. Pending  
27 the appeal, the court may grant a stay or supersedeas  
28 upon such terms as it deems proper.

29 (d) Within fifteen days after receipt of a copy of the  
30 petition by the agency, or within such further time as  
31 the court may allow, the agency shall transmit to such  
32 circuit court the original or a certified copy of the entire  
33 record of the proceeding under review, including a tran-  
34 script of all testimony and all papers, motions, docu-  
35 ments, evidence and records as were before the agency,  
36 all agency staff memoranda submitted in connection with  
37 the case, and a statement of matters officially noted; but,  
38 by stipulation of all parties to the review proceeding, the  
39 record may be shortened. The expense of preparing such  
40 record shall be taxed as a part of the costs of the appeal.  
41 The appellant shall provide security for costs satisfac-  
42 tory to the court. Any party unreasonably refusing to

43 stipulate to limit the record may be taxed by the court for  
44 the additional costs involved. Upon demand by any  
45 party to the appeal, the agency shall furnish, at the cost  
46 of the party requesting same, a copy of such record. In  
47 the event the complete record is not filed with the court  
48 within the time provided for in this section, the appellant  
49 may apply to the court to have the case docketed, and the  
50 court shall order such record filed.

51 (e) Appeals taken on questions of law, fact or both,  
52 shall be heard upon assignments of error filed in the  
53 cause or set out in the briefs of the appellant. Errors  
54 not argued by brief may be disregarded, but the court  
55 may consider and decide errors which are not assigned  
56 or argued. The court or judge shall fix a date and time  
57 for the hearing on the petition, but such hearing, unless  
58 by agreement of the parties, shall not be held sooner than  
59 ten days after the filing of the petition, and notice of  
60 such date and time shall be forthwith given to the  
61 agency.

62 (f) The review shall be conducted by the court with-  
63 out a jury and shall be upon the record made before the

64 agency, except that in cases of alleged irregularities in  
65 procedure before the agency, not shown in the record,  
66 testimony thereon may be taken before the court. The  
67 court may hear oral arguments and require written briefs.

68 (g) The court may affirm the order or decision of the  
69 agency or remand the case for further proceedings. It  
70 shall reverse, vacate or modify the order or decision of  
71 the agency if the substantial rights of the petitioner or  
72 petitioners have been prejudiced because the adminis-  
73 trative findings, inferences, conclusions, decision or order  
74 are:

75 (1) In violation of constitutional or statutory pro-  
76 visions; or

77 (2) In excess of the statutory authority or jurisdiction  
78 of the agency; or

79 (3) Made upon unlawful procedures; or

80 (4) Affected by other error of law; or

81 (5) Clearly wrong in view of the reliable, probative  
82 and substantial evidence on the whole record; or

83 (6) Arbitrary or capricious or characterized by abuse

84 of discretion or clearly unwarranted exercise of discre-  
85 tion.

86 (h) The judgment of the circuit court shall be final  
87 unless reversed, vacated or modified on appeal to the su-  
88 preme court of appeals of this state in accordance with  
89 the provisions of section one, article six of this chapter.

**Sec. 5. Exceptions.**—The provisions of this article shall  
2 not apply to the workmen's compensation fund, the de-  
3 partment of employment security, the state tax commis-  
4 sioner, the state road commissioner, the state road com-  
5 mission, and the teacher's retirement board.

## **Article 6. Appeals.**

**Section 1. Supreme Court of Appeals.**—Any party  
2 adversely affected by the final judgment of the circuit  
3 court under this chapter may seek review thereof by  
4 appeal to the supreme court of appeals of this state, and  
5 jurisdiction is hereby conferred upon such court to hear  
6 and entertain such appeals upon application made there-  
7 for in the manner and within the time provided by law  
8 for civil appeals generally.

**Article 7. General Provisions.****Section 1. Limitations on Certain Administrative**

2 **Powers.**—No process, requirement of a report, inspection,  
3 or other investigative act or demand shall be issued,  
4 made, or enforced in any manner or for any purpose ex-  
5 cept as authorized by law.

**Sec. 2. Notice Generally.**—Whenever an agency or  
2 person is authorized or required to give any notice under  
3 this chapter, unless a different method of giving such  
4 notice is otherwise expressly permitted or prescribed,  
5 such notice shall be given either by personal delivery  
6 thereof to the agency or person to be so notified, or by  
7 depositing such notice in the United States mail, postage  
8 prepaid, in an envelope addressed to such agency or per-  
9 son at the last known address of such agency or person.  
10 **Proof of the giving of notice in either such manner may**  
11 **be made by the affidavit of any officer or assistant or**  
12 **employee of the agency, or by affidavit of any person**  
13 **over eighteen years of age, naming the agency or person**  
14 **to which or to whom such notice was given and specifying**  
15 **the time, place and manner of the giving thereof.**

**Sec. 3. Repeal.**—All acts or parts of acts which are  
2 inconsistent with the provisions of this chapter are hereby  
3 repealed to the extent of such inconsistency, but such  
4 repeal shall not affect pending proceedings. No subse-  
5 quent legislation shall be held to supersede or modify the  
6 provisions of this chapter except to the extent that such  
7 legislation shall do so specifically and expressly.

**Sec. 4. Construction and Effect; Severability of Pro-**  
2 **visions.**—Nothing in this chapter shall be held to limit  
3 or repeal additional requirements imposed by statute or  
4 otherwise recognized by law. No procedural requirement  
5 shall be mandatory as to any agency proceeding initiated  
6 prior to the effective date of this act. If any provision of  
7 this chapter or the application thereof to any person or  
8 circumstance is held invalid, such invalidity shall not  
9 affect other provisions or applications of the chapter  
10 which can be given effect without the invalid provision  
11 or its application, and to this end the provisions of this  
12 chapter are declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*D. Roy Parker*  
Chairman Senate Committee

*Etzel L. Candace*  
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1964 ~~passage~~.

*Howard H. Hager*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Howard W. Carson*  
President of the Senate

*Julius W. Bingham*  
Speaker House of Delegates

The within approved this the 13<sup>th</sup>  
day of February, 1964.

*W. M. Baum*  
Governor