

SB 453

FILED

2009 APR 11 PM 3: 01

WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009

---

ENROLLED

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 453**

(SENATORS GREEN, WHITE, LAIRD, CHAFIN, YOST,  
MINARD, UNGER, KESSLER, BOWMAN, K. FACEMYER,  
D. FACEMIRE AND PLYMALE, *original sponsors*)

[Passed April 3, 2009; in effect ninety days from passage.]

FILED

2009 APR 11 PM 3: 01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 453**

(SENATORS GREEN, WHITE, LAIRD, CHAFIN, YOST, MINARD, UNGER, KESSLER,  
BOWMAN, K. FACEMYER, D. FACEMIRE AND PLYMALE, *original sponsors*)

---

[Passed April 3, 2009; in effect ninety days from passage.]

---

AN ACT to amend and reenact §24-1-9 of the Code of West Virginia, 1931, as amended, relating to the Public Service Commission; recommended decisions by hearing commissioner, examiner or panel; service of decisions on parties, including by electronic transmission; and removing antiquated language.

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

That §24-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS.**

**§24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.**

1 (a) Any order recommended by a single hearing commis-  
2 sioner, a hearing examiner or a panel consisting of a  
3 hearing examiner and a single commissioner with respect  
4 to any matter referred for hearing shall be in writing and  
5 shall set forth separately findings of fact and conclusions  
6 of law, which findings of fact shall make specific reference  
7 to the evidence in the record which supports such findings  
8 and shall be filed with the commission. A copy of such  
9 recommended order shall be served upon the parties who  
10 have appeared in the proceeding.

11 (b) Before any order is recommended, the parties shall be  
12 afforded an opportunity to submit, within the time  
13 prescribed by the hearing commissioner, hearing examiner  
14 or panel, proposed findings of fact and conclusions of law  
15 and briefs.

16 (c) The commission shall serve a copy of the recom-  
17 mended order on the parties by one of the following  
18 means:

19 (1) By certified U. S. mail, return receipt requested; or

20 (2) By electronic transmission: *Provided*, That the party  
21 has the capability to receive the electronic transmission,  
22 has furnished an electronic address and has agreed in  
23 writing to accept recommended orders electronically.  
24 Electronic transmissions shall contain a "return receipt"  
25 or "read receipt" mechanism to assure that a recom-  
26 mended order was received by the party: *Provided*,  
27 *however*, That if the commission does not receive a  
28 confirmatory electronic transmission acknowledging the  
29 recommended order was received by the party, via return  
30 receipt, read receipt or electronic mail, within three  
31 business days of service, the commission shall serve the  
32 recommended order by certified U. S. mail, return receipt  
33 requested.

34 (d) Service is complete when the recommended order is  
35 placed in the mail or transmitted electronically to the  
36 party.

37 (e) Within the time prescribed, the parties shall be  
38 afforded an opportunity to file exceptions to the recom-  
39 mended order and a brief in support, provided the time  
40 fixed is not less than fifteen days from the date of service  
41 of such recommended order.

42 (f) In all proceedings in which exceptions have been filed  
43 to a recommended order, the commission, before issuing  
44 its final order, may afford the parties an opportunity for  
45 oral argument. When exceptions are filed, the commission  
46 shall consider the exceptions. If sufficient reason appears  
47 for the exceptions, the commission may grant the review  
48 or make an order or hold or authorize further hearings or  
49 proceedings. The commission, after review, upon the  
50 whole record, or as supplemented by a further hearing,  
51 shall decide the matter in controversy and make appropri-  
52 ate order thereon.

53 (g) When no exceptions are filed within the time speci-  
54 fied, the recommended order shall become the order of the  
55 commission five days following the expiration of the  
56 period for filing exceptions unless the order is stayed or  
57 postponed by the commission: *Provided*, That the commis-  
58 sion may, on its own motion before the order becomes the  
59 order of the commission, review any matter and take  
60 action as if exceptions had been filed.

61 (h) The commission, a hearing commissioner, a hearing  
62 examiner or panel to whom a matter is referred may  
63 expedite the hearing and decision of any case, if the public  
64 interest requires, by the use of pretrial conferences,  
65 stipulations, and agreements, prepared testimony, deposi-  
66 tions, daily transcripts of evidence, trial briefs and oral  
67 argument, in lieu of briefs.

Enr. Com. Sub. for S. B. No. 453] 4


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

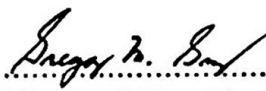
  
.....  
Chairman Senate Committee

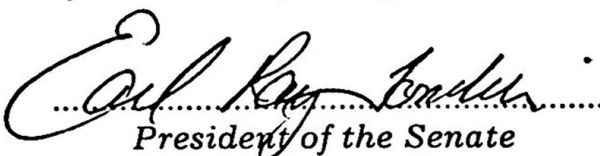
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 11<sup>th</sup>  
Day of April, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 9 2009

Time 2:50 pm