

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE December 27, 1989
ADMINISTRATIVE LAW DIVISION

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Parkways, Economic Development and Tourism Authority TITLE NUMBER: 001 184

RULE TYPE: Procedural; CITE AUTHORITY 17-16A-13(b)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 001

TITLE OF RULE BEING PROPOSED: West Virginia Parkways, Economic Development and Tourism Authority Hearing Procedure Rules

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON February 5, 1990 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Parkways, Economic
Development and Tourism Authority
P. O. Box 1469
Charleston, West Virginia 25325

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE: In accordance with Section 4(b), Article 3, Chapter 29A of the West Virginia Code, as amended, the objectives of the proposed rules now sought to be implemented by the West Virginia Parkways, Economic Development and Tourism Authority are to adopt procedural rules governing formal and informal practice before the Authority; to implement procedures for orderly presentations at hearings; to comply with the hearing requirements of Section 13(b), Article 16A, Chapter 17, of the West Virginia Code, as amended; and to inform and educate all members of the public as to how they may effectively communicate with the Authority by way of hearing response.

The economic impact of this rule on the State and its residents is minimal. This rule provides only for implementation of procedures before the Authority. The hearing requirement of Section 13(b), Article 16A, Chapter 17, was implemented by statute independently from these rules. Any costs of compliance will be paid from operating revenues which are derived from toll receipts rather than money allocated by any executive or legislative branch of State Government. The costs of implementing the rules, as they are proposed, to the State and the persons effected by the rules should also be minimal. The hearing requirement is a statutory requirement separate from these procedural rules, which if anything, would serve to organize and make more efficient the hearing procedure already required.

SUMMARY OF HEARING PROCEDURE RULES PROPOSED BY
WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY

The rules proposed by the West Virginia Parkways, Economic Development and Tourism Authority deal with hearing procedures. The proposed rules address and implement procedures regarding the form and content of hearing notices required by Chapter 13(b), Article 16A, Chapter 17 of the West Virginia Code. In addition, they implement and provide for the presentation of information at and the conduct of such hearings. The rules provide for oral and written presentation and comments, some of which may be submitted as much as five (5) days after close of the hearing. The proposed procedural rules provide for consolidation of multiple hearings where appropriate. Promulgation of these rules is required by Section 13(b), Article 16A, Chapter 17 to implement hearing procedures precedent to entering into any contract for the development of a project by the Authority.

PROPOSED
WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY
HEARING PROCEDURE RULES

When the Authority determines that it has reached a stage in the development of any project at which a public hearing is required, it will accomplish the following action:

A. NOTICE

When a public hearing is scheduled, notice in the form of a legal advertisement will be published at least once in a newspaper having general circulation in the vicinity of the proposed project pursuant to the provisions of West Virginia Code 59-3-2 and 17-16A-13(b). Each notice shall specify the date, time and place of the hearing and will contain a description of the project.

The notice shall further indicate that social, economic and other appropriate effects of the project will be discussed at the hearing. To promote public understanding, a map or drawing may be included where possible.

The notice will specify where maps; drawings; and studies, if any, are available for inspection and copying. The notice will specify what material will be available at the public hearing for public viewing. Locations where material will be placed will include the offices of the Authority, and should the project be in a location in excess of ten miles from these offices, information may be made available at the office of the clerk of the county commission in the various counties, or mayor's offices or public libraries.

B. TIME OF NOTICE PUBLICATION

The Authority in preparation of the hearing notice form should assume that a minimum period of 10 working days will pass before the notice of a hearing will appear in the newspapers after submission for publication.

1. Public Hearing

The notice required by West Virginia Code 17-16A-13(b) shall appear in the newspaper at least 20 days prior to the hearing.

C. ENVIRONMENTAL STATEMENT NOTICES

When a draft environmental impact statement is submitted to the public and agencies for comment as a part of the hearing process, the cutoff date for comment will be 45 days after the first notice appears in the newspapers. The notice shall advise the cutoff date and where the document is available

for public inspection. When a draft negative declaration is part of the hearing process, the cutoff date will be 30 days after the notice is published in the newspapers.

When a draft environmental impact statement is not concurrent with the public hearing process, the notice shall state where the draft is available, how copies may be obtained and where comments will be received. The notice will also contain the last date comments will be received. The cutoff date will be at least 60 days after the first publication of the notice. Comment time for a draft negative declaration not concurrent with the public hearing process is 30 days after date of first publication.

D. OTHER NOTICE

No notice shall be required, in addition to the formal newspaper legal advertisement, mandated by the statute.

E. TRANSMITTAL LETTER

The authority will prepare a transmittal letter forwarding material to those persons and agencies on the mailing list. The transmittal letter will include the date, time and place of the public hearing.

F. MAILING

Mailing will be accomplished based upon a mailing list developed by the Authority. A list of state and federal agencies will be incorporated into all mailing lists. The Authority will add the names of those citizens and organizations who have requested placement on a specific mailing list.

Mailing shall include, but not be limited to, a copy of the notice, a copy of a transmittal letter, the hearing handout and a copy of any applicable environmental statement or negative declaration. The mailing will be accomplished to allow the material to arrive at its destination prior to publication of the notice in the newspaper. Material will be mailed to the locations for public viewing in enough time to arrive prior to the first publication of the notice.

Mailing shall be by first class mail unless otherwise specified.

G. LOCATION

Location of the hearing will be selected by the Authority. Consideration will be given to the accessibility of the location to the people affected by the project to be discussed. The number of people expected to attend the hearing will also be considered. Only buildings with public access will be used.

H. EQUIPMENT

The Authority will furnish all sound equipment, comment sheets and supplies necessary to erect exhibits and prepare the room for the hearing.

I. TIME

All hearings will be held at a time convenient for persons affected by the proposed project.

J. CONDUCT OF A HEARING

1. Hearings will be moderated by a responsible official of or selected by the Authority.
2. The Authority will have on hand an individual who is sufficiently familiar with the project to answer questions raised by citizens.
3. The Authority's presentation will be concise and effort will be expended to reduce technical terminology.
4. The Authority's presentation will include, but not be limited to, the need for the proposed project, alternative courses of action if any are appropriate; alternative project locations and major features; social, economic, environmental and other effects of the alternatives and the consistency of the project with local planning goals and objectives. The alternatives, if any, presented at each hearing will be developed to comparable levels of detail.
5. Provision will be made by the Authority for submission of written statements and other exhibits in addition to oral statements at hearings. Cutoff dates for all written statements will be announced to be five days after the hearing.
6. At a hearing involving a federally funded project, the federal-state relationship will be described.
7. The Authority will explain its relocation assistance program, if any, and relocation assistance payments at each public hearing where appropriate.
8. At a federally assisted project hearing the public will be advised that prior to location or design approval all information developed in support of the proposed location or design will be available for public inspection for 14 working days.
9. The Authority will provide, for the convenience of those wishing to speak for or against any project which is the subject of a public hearing, an appropriate registration document for the purpose of reserving time within which to present their position

for or against the project. Signing in will not be a condition precedent to making a presentation at the hearing. Those parties attending the public hearing and signed on the appropriate registration roster will be given first opportunity to speak for or against the project, in the order in which they sign in. Initial presentations shall be limited to a period no longer than five minutes for each party wishing to make his or her position known with regard to the project; thereafter, to the extent allowed by the remaining time set for the hearing, the Authority will permit others who have not registered to make their position with regard to the project known. In the event all parties attending the hearing have presented their position with regard to the project, and time allowed for the hearing remains, those who have registered prior to commencement of the hearing will be permitted an additional two minutes each for presentation of additional information to the Authority.

10. Parties appearing at the hearing may present their information by oral presentation or by written presentation. After the close of the hearing, no further oral presentations will be accepted by the Authority, but written comment sheets on a form prepared by the Authority, will be available for members of the public to submit, provided, however, that such written submissions may not be considered by the Authority if they are received more than five (5) days after the last date upon which the hearing is conducted.

11. To the extent possible, the Authority will attempt to determine the number of members of the public who will attend the hearing, and shall make provisions for premises large enough to accommodate that number. In the event an unforeseen number of members of the public appear to make their presentation at the hearing, and the site selected for the hearing is not large enough to accommodate all parties, preference will be given to those members of the public who have registered to speak prior to commencement of the hearing. Thereafter, the Authority will make every reasonable attempt to allow additional room for those parties who wish to make presentations, but as a result of space restrictions could not earlier be admitted to the hearing room.

K. TRANSCRIPT

The Authority will develop a verbatim transcript of the proceedings of each public hearing. After the transcript has been prepared, the original will be retained in the file. All copies will be forwarded to the Authority for certification and transmittal to the Federal Highway Administration, should the project be federally funded. Copies of the transcript and appendices will be available for public information.

L. ALTERNATE COMPLIANCE

1. In the event the project is federally funded, the hearing procedure of the Department of Transportation will be

followed to the extent that the same is not in conflict with these regulations.

2. In the event the Department of Transportation is involved in any project to which this hearing procedure is applicable, compliance with the regulations of the department as to such hearing, to avoid duplication of effort, shall be deemed compliance with these regulations.

3. The Authority may consolidate into a single hearing the hearings required for each of several projects which relate to areas in the same locale, but shall, make ample provision for a hearing site large enough to accommodate consolidated hearing and expand the time of the hearings to permit ample opportunity for the public to address the issues pertaining to the increased number of projects which are the subject of the hearing.

ABRAMS, BYRON, HENDERSON & RICHMOND

ATTORNEYS AT LAW

POST OFFICE DRAWER W

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December 22, 1989

Secretary of State
State of West Virginia
Capital Complex
Charleston, West Virginia 25305

ATTENTION: Administrative Law Section
Judy Cooper

Re: Proposed Hearing Procedure Rules, West Virginia
Parkways, Economic Development and Tourism Authority

Dear Judy:

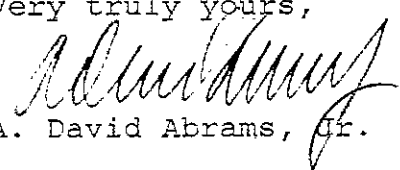
Please find enclosed a notice of a comment period on a proposed rule with regard to the above referenced procedural rules.

I have also enclosed a copy of the proposed rules, a fiscal note required in accordance with Section 4(b), Article 3, Chapter 29A and a brief summary of the proposal.

Please see that the notice of this comment period is published in the State Register on Friday, December 29, 1989.

Thank you for your cooperation.

Very truly yours,


A. David Abrams, Jr.

ADA.JR.1ct

Enclosures