

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 395**

BY SENATORS TRUMP AND BOSO

[Introduced January 26, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §22B-1-9 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §22B-2-3 of said code; to amend and reenact §22B-3-3 of said code; and to  
3 amend and reenact §22B-4-3 of said code, all relating to the general provisions for judicial  
4 review; providing that decisions of the Air Quality Board, Environmental Quality Board,  
5 and Surface Mine Board may be directly appealed to the Supreme Court of Appeals  
6 except in certain cases; and providing that a petition for appeal must be perfected within  
7 30 days after the entry of an order of a board.

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

## **ARTICLE 1. GENERAL POLICY AND PURPOSE.**

### **§22B-1-9. General provisions for judicial review.**

1 (a) Except as provided in §22B-2-3 and §22B-3-3 of this code, any person or a chief or  
2 the director, as the case may be, adversely affected by an order made and entered by a board  
3 after an appeal hearing, held in accordance with the provisions of this chapter may seek judicial  
4 review thereof by presenting a perfected petition of appeal in writing to the Supreme Court of  
5 Appeals within 30 days after the entry of an order of a board. An appeal made under this chapter  
6 is perfected upon the timely and proper filing of an original and the number of copies required by  
7 the rules of appellate procedure of a petitioner's brief and appendix in the office of the Clerk of  
8 the Supreme Court of Appeals.

9 (b) The board shall file with the Clerk of the Supreme Court of Appeals all papers,  
10 documents, evidence and other records comprising the complete record in the case, or certified  
11 copies thereof, as were before the board at the time of the entry of the order from which the appeal  
12 is taken.

13 (c) The filing of a petition of appeal under the provisions of this chapter does not  
14 automatically stay or suspend the effectiveness or execution of the order, permit or official action  
15 pending appeal.

16 (d) The chief or a director may employ legal counsel in all appeal proceedings made under

17 the provisions of this chapter. The chief or a director may also seek, at his or her sole discretion,  
 18 representation by the Attorney General or his or her assistants for appeals authorized pursuant  
 19 to the provisions of this chapter.

**ARTICLE 2. AIR QUALITY BOARD.**

**§22B-2-3. Judicial review of air quality board orders.**

1 All of the provisions of §22B-1-9 of this code apply to and govern such review with like  
 2 effect as if the provisions of ~~said that~~ section ~~nine~~ were set forth in extenso in this section, with  
 3 the following modifications or exceptions:

4 (1) As to cases involving an order denying an application for a permit, or approving or  
 5 modifying the terms and conditions of a permit, the petition for review shall be filed in the ~~circuit~~  
 6 ~~court of Kanawha County~~ Supreme Court of Appeals; and

7 (2) As to all other cases, the petition shall be filed, in the circuit court of the county wherein  
 8 the alleged statutory air pollution complained of originated or in Kanawha County upon agreement  
 9 between the parties.

**ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.**

**§22B-3-3. Judicial review.**

1 All of the provisions of §22B-1-9 of this code apply to and govern such review with like  
 2 effect as if the provisions of ~~said that~~ section ~~nine~~ were set forth in extenso in this section, with  
 3 the following modifications or exceptions:

4 (1) As to cases involving an order denying an application for a permit, or approving or  
 5 modifying the terms and conditions of a permit, the petition shall be filed in the ~~circuit court of~~  
 6 ~~Kanawha County~~ Supreme Court of Appeals;

7 (2) As to cases involving an order revoking or suspending a permit, the petition shall be  
 8 filed in the ~~circuit court of Kanawha County~~ Supreme Court of Appeals; and

9 (3) As to cases involving an order directing that any and all discharges or deposits of solid

10 waste, sewage, industrial wastes or other wastes, or the effluent therefrom, determined to be  
 11 causing pollution be stopped or prevented or else that remedial action be taken, the petition shall  
 12 be filed in the circuit court of the county in which the establishment is located or in which the  
 13 pollution occurs.

**ARTICLE 4. SURFACE MINE BOARD.**

**§22B-4-3. Judicial review.**

1 (a) All of the provisions of §22B-1-9 of this code apply to and govern such review with like  
 2 effect as if the provisions of ~~said that~~ section ~~nine~~ were set forth in extenso in this section. ~~except~~  
 3 ~~the petition shall be filed in the circuit court of Kanawha County or the county in which the surface-~~  
 4 ~~mining operation is located~~

5 (b) Notwithstanding the provisions of §29A-5-4 of this code to the contrary, all appeals as  
 6 to cases invoking the provisions of this article shall be filed in the Supreme Court of Appeals.

NOTE: The purpose of this bill is to provide for judicial review of appealed decisions of the Air Quality Board, the Environmental Quality Board, and Surface Mine Board directly to the Supreme Court of Appeals of West Virginia except in certain cases.

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

§22B-1-9 has been rewritten: therefore it has been completely underscored.