

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 395

SENATORS TRUMP AND BOSO, *original sponsors*

[Passed March 6, 2018; in effect from passage]

1 AN ACT to amend and reenact §22B-1-9 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §22B-2-3 of said code; to amend and reenact §22B-3-3 of said code;
3 and to amend and reenact §22B-4-3 of said code, all relating to the general provisions for
4 judicial review of final orders of various environmental boards; requiring petition be filed
5 within 30 days of entry of the final order; providing that appeal does not automatically stay
6 any final order or action approved by a board; authorizing the chief or director to employ
7 outside legal counsel without approval of the Attorney General; providing that decisions of
8 the Air Quality Board, Environmental Quality Board, and Surface Mine Board denying an
9 application for a permit, or approving or modifying the terms and conditions of a permit,
10 may be directly appealed to the Supreme Court of Appeals; and providing for exceptions
11 to this right of direct appeal.

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) Any person, or the secretary, as the case may be, adversely affected by an order made
2 and entered by a board after an appeal hearing, held in accordance with the provisions of this
3 chapter, is entitled to judicial review thereof. All of the provisions of §29A-5-4 of this code apply
4 to and govern the review with like effect as if the provisions of §29A-5-4 of this code were set forth
5 in extenso in this section, with the modifications or exceptions set forth in this chapter: *Provided,*
6 That the exceptions set forth in §22B-2-3, §22B-3-3, and §22B-4-3 of this code apply.

7 (b) The filing of a petition of appeal under the provisions of this chapter does not
8 automatically stay or suspend the effectiveness or execution of the order, permit, or official action
9 pending appeal. The board shall file with the clerk of the court wherein the petition for appeal is
10 filed all papers, documents, evidence, and other records comprising the complete record in the
11 case, or certified copies thereof, as were before the board at the time of the entry of the order
12 from which the appeal is taken.

13 (c) Notwithstanding any provisions of this code to the contrary, the secretary may employ
14 in-house legal counsel to perform all legal services for the department and secretary or any
15 director, chief, or division therein in all proceedings made under the provisions of this chapter,
16 including those in any administrative proceeding or before any state or federal court. Additionally,
17 the secretary may call upon the Attorney General for any legal assistance and representation as
18 provided by law.

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 §22B-1-9 of this code were set forth in extenso in this section, with
3 the following modifications or exceptions:

4 (a) 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 Supreme
6 Court of Appeals within 30 days of the board's order: *Provided, That*, if all parties consent to it,
7 the proceedings may continue in the Circuit Court of Kanawha County; and

8 (b) As to all other cases, the petition shall be filed in the circuit court of the county wherein
9 the alleged statutory air pollution complained of originated or in Kanawha County upon agreement
10 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 §22B-1-9 of this code were set forth in extenso in this section, with
3 the following modifications or exceptions:

4 (a) 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 Supreme Court of

6 Appeals within 30 days of the board's order: *Provided*, That, if all parties consent to it, the
7 proceedings may continue in the Circuit Court of Kanawha County;

8 (b) As to cases involving an order revoking or suspending a permit, the petition shall be
9 filed in the circuit court of Kanawha County; and

10 (c) As to cases involving an order directing that any and all discharges or deposits of solid
11 waste, sewage, industrial wastes, or other wastes, or the effluent therefrom, determined to be
12 causing pollution be stopped or prevented or else that remedial action be taken, the petition shall
13 be filed in the circuit court of the county in which the establishment is located or in which the
14 pollution occurs.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-3. 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 §22B-1-9 of this code were set forth in extenso in this section, with
3 the following modifications or exceptions: (a) As to cases involving an order denying an
4 application for a permit, or approving or modifying the terms and conditions of a permit, the petition
5 shall be filed in the Supreme Court of Appeals within 30 days of the board's order: *Provided*, That,
6 if all parties consent to it, the proceedings may continue in the Circuit Court of Kanawha County;

7 (b) As to all other cases, the petition shall be filed in the Circuit Court of Kanawha County
8 or in the county wherein the surface mining operation is located.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2018.

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Governor