

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 395

BY SENATORS TRUMP AND BOSO

[Originating in the Committee on the Judiciary;

Reported on February 6, 2018]

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 of final orders of various environmental boards; providing for appeal directly to the
5 West Virginia Supreme Court, except in certain cases; requiring petition be filed within 30
6 days of entry of the final order; providing that appeal does not automatically stay any final
7 order or action approved by a board; authorizing the chief or director to employ outside
8 legal counsel without approval of the Attorney General; and providing that decisions of the
9 Air Quality Board, Environmental Quality Board, and Surface Mine Board may be directly
10 appealed to the Supreme Court of Appeals, except in certain cases.

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 a chief or the director, as the case may be, adversely affected by an~~
2 ~~order made and entered by a board after an appeal hearing, held in accordance with the~~
3 ~~provisions of this chapter, is entitled to judicial review thereof. All of the provisions of section four,~~
4 ~~article five, chapter twenty-nine-a of this code apply to and govern the review with like effect as if~~
5 ~~the provisions of said section four were set forth in extenso in this section, with the modifications~~
6 ~~or exceptions set forth in this chapter.~~

7 ~~(b) The judgment of the circuit court is final unless reversed, vacated or modified on appeal~~
8 ~~to the Supreme Court of Appeals, in accordance with the provisions of section one, article six,~~
9 ~~chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one~~
10 ~~the petition seeking such review shall be filed with said Supreme Court of Appeals within ninety~~
11 ~~days from the date of entry of the judgment of the circuit court.~~

12 ~~(c) Legal counsel and services for a chief or the director in all appeal proceedings in the~~
13 ~~circuit court and in the Supreme Court of Appeals of this state shall be provided by the Attorney~~

14 ~~General or his or her assistants or by the prosecuting attorney of the county in which the appeal~~
15 ~~is taken, all without additional compensation, or with the prior written approval of the Attorney~~
16 ~~General, a chief or the director may employ legal counsel.~~

17 (a) Except as provided in §22B-2-3 and §22B-3-3 of this code and notwithstanding the
18 provisions of §29A-5-4 of this code to the contrary, any person adversely affected by a final order
19 entered by a board after an appeal hearing, held in accordance with the provisions of this chapter,
20 may seek judicial review of the order by presenting a petition of appeal in writing to the Supreme
21 Court of Appeals within 30 days of entry of the final order.

22 (b) The filing of a petition of appeal under the provisions of this chapter does not
23 automatically stay or suspend the effectiveness or execution of the order, permit, or official action
24 pending appeal.

25 (c) Notwithstanding the provisions of §29A-5-4 of this code to the contrary, the chief or a
26 director may employ legal counsel in all appeal proceedings made under the provisions of this
27 chapter. The chief or a director may also request representation by the Attorney General or his
28 or her assistants for appeals authorized pursuant 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 section nine, article one of this chapter apply to and govern such~~
2 ~~review with like effect as if the provisions of said section nine were set forth in extenso in this~~
3 ~~section, with 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; 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.~~

10 (a) All of the provisions of §22B-1-9 of this code apply to and govern the review of any
11 final order denying an application for a permit, or approving or modifying the terms and conditions
12 of a permit.

13 (b) In all other cases, the petition shall be filed in the circuit court of the county in which
14 the alleged statutory air pollution complained of originated or in Kanawha County upon agreement
15 between the parties.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-3. Judicial review.

1 ~~All of the provisions of section nine, article one of this chapter apply to and govern such~~
2 ~~review with like effect as if the provisions of said section nine were set forth in extenso in this~~
3 ~~section, with 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;~~

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; 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.~~

14 (a) The provisions of §22B-1-9 of this code, apply to and govern the appeal of a final order
15 denying an application for a permit, or approving or modifying the terms and conditions of a permit,
16 or a final order revoking or suspending a permit.

17 (b) In cases involving an order directing that any and all discharges or deposits of solid
18 waste, sewage, industrial wastes or other wastes, or the effluent therefrom, determined to be

19 causing pollution be stopped or prevented or else remedial action be taken, the petition shall be
20 filed in the circuit court of the county in which the establishment is located or in which the pollution
21 occurs.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-3. Judicial review.

1 ~~All of the provisions of section nine, article one of this chapter apply to and govern such~~
2 ~~review with like effect as if the provisions of said section nine were set forth in extenso in this~~
3 ~~section, except the petition shall be filed in the circuit court of Kanawha County or the county in~~
4 ~~which the surface mining operation is located.~~

5 Notwithstanding the provisions of §29A-5-4 of this code, to the contrary, the provisions of
6 §22B-1-9 of this code apply to and govern the appeal of any final order under this article.