



State of Tennessee

PUBLIC CHAPTER NO. 181

SENATE BILL NO. 159

By Norris, Southerland

Substituted for: House Bill No. 153

By McCormick, Rogers

AN ACT to amend Tennessee Code Annotated, Title 60; Title 68 and Title 69, relative to the contested case hearing process.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 60-1-401, is amended by deleting subsection (h) in its entirety and by substituting instead the following language:

(h) If the operator files an appeal of such citation or assessment of a penalty as provided by subsection (g), the proceedings on such appeal shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the appeal is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, remanding, or vacating the supervisor's citation or assessment of a penalty. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

SECTION 2. Tennessee Code Annotated, Section 68-201-107, is amended by deleting subsection (b) in its entirety.

SECTION 3. Tennessee Code Annotated, Section 68-201-108, is amended by deleting subsection (a) in its entirety and by substituting instead the following language:

(a)(1) A person aggrieved by a final action of the technical secretary on a permit, order, or assessment may request a hearing before the board pursuant to this section by filing a petition with the technical secretary within thirty (30) days of issuance of the permit or service of the order or assessment. The hearing shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The

administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

(2) Hearings before the board on requests for variances and certificates of exemption may be conducted as contested case hearings in accordance with the Uniform Administrative Procedures Act, compiled in chapter 4, part 5.

SECTION 4. Tennessee Code Annotated, Section 68-211-113, is amended by deleting subsections (a) and (b) in their entirety and by substituting instead the following language:

(a)(1) Any person whose plans for the construction of, or change in, any solid waste processing facility or disposal facility are disapproved by the commissioner may secure a review of the commissioner's disapproval by filing with the commissioner a written petition setting forth the grounds and reasons for such person's objections to the commissioner's disapproval, and asking for a hearing before the board. Any disapproval of such plans shall become final and not subject to review unless such petition for a hearing before the board is filed no later than thirty (30) days after the notice of disapproval is served.

(2) Any person against whom an order for correction is issued may secure a review of such order by filing with the commissioner a written petition setting forth the grounds and reasons for any objection to the order and asking for a hearing before the board. The order shall become final and not subject to review unless the person named in the order files a petition under this section no later than thirty (30) days after the date the order is served.

(b) The hearing before the board on any petition filed under subsection (a) shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage

of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date is stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

SECTION 5. Tennessee Code Annotated, Section 68-211-113, is further amended by deleting subsections (e) and (f) in their entirety.

SECTION 6. Tennessee Code Annotated, Section 68-211-113, is further amended by adding the following sentence at the end of subsection (h):

When such an appeal is timely filed, the procedure for conducting the contested case shall be in accordance with the provisions of § 68-211-113(b).

SECTION 7. Tennessee Code Annotated, Section 68-211-117, is amended by deleting subdivision (b)(2) in its entirety and by substituting instead the following language:

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the grounds and reasons for such person's objections and asking for a hearing in the matter involved before the board. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with the provisions of § 68-211-113(b).

SECTION 8. Tennessee Code Annotated, Section 68-212-113, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) The hearing before the board on any petition filed under subsection (a) shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties; provided that in a petition filed under subdivision (a)(2)(B) the judge shall hold the hearing in the county where the facility or site is proposed to be located. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case, issued by the administrative judge, shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date is stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed under the provisions of § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

SECTION 9. Tennessee Code Annotated, Section 68-212-117(a), is amended by deleting the last sentence in its entirety and by substituting instead the following new language:

When such an appeal is timely filed, the procedure for conducting the contested case shall be in accordance with the provisions of § 68-212-113(b). The department shall not be obligated to assist a complainant in gathering information or making investigations or to provide counsel for the purpose of drawing the complaint.

SECTION 10. Tennessee Code Annotated, Section 68-215-115, is amended by deleting subdivision (b)(2) in its entirety and by substituting instead the following language:

Any person against whom an assessment is issued may secure a review of the propriety or amount of the assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the board. Any such assessment shall become final and not subject to review unless the person named therein files the petition within thirty (30) days after the assessment is received. When the petition is timely filed, the procedure for conducting the contested case shall be in accordance with the provisions of § 68-215-119(b).

SECTION 11. Tennessee Code Annotated, Section 68-215-119, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) Hearings before the board shall be conducted as contested cases and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date is stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

SECTION 12. Tennessee Code Annotated, Section 68-215-123, is amended by deleting subdivision (a)(2) in its entirety and by substituting instead the following language:

(2) If either the complainant or the alleged violator believes the commissioner's or board's action or determination is or will be inadequate or too severe, such complainant or alleged violator may appeal to the board for a hearing by filing a petition for review. Such appeal must be made within thirty (30) days after receipt of the notification sent by the commissioner or board. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with the provisions of § 68-215-119(b).

SECTION 13. Tennessee Code Annotated, Section 69-3-105, is amended by deleting subsection (f) in its entirety and by substituting instead the following language:

(f)(1) The board has and shall exercise the power, duty, and responsibility to:

(A) Hear appeals as specified in subsection (i) from administrative judges' orders assessing penalties or damages, or issuing, denying, revoking or modifying a permit; and

(B) Affirm, modify, or revoke such orders, as specified in subsection (i).

SECTION 14. Tennessee Code Annotated, Section 69-3-105, is amended by deleting subdivision (i) in its entirety and by substituting instead the following language:

(i) A petition for permit appeal may be filed by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application. Additionally, for those permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment. Any petition for permit appeal under this subsection (i) shall be filed with the board within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit. Notwithstanding the provisions of § 4-5-223 or § 69-3-118(a), or any other provision of law to the contrary, this subsection (i) and the established procedures of Tennessee's antidegradation statement, found in the rules promulgated by the department, shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 69-3-110(a).

SECTION 15. Tennessee Code Annotated, Section 69-3-110, is amended by deleting subsection (a) in its entirety and by substituting instead the following language:

(a) Any hearing brought before the board pursuant to § 69-3-105(i), § 69-3-109, or § 69-3-118 shall be conducted as a contested case. The hearing shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date is stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

SECTION 16. Tennessee Code Annotated, Section 69-3-110, is amended by deleting subsection (c) in its entirety.

SECTION 17. Tennessee Code Annotated, Section 69-3-111, is amended by deleting the following language:

Any appeals from any final order or other final determination of the board by any party shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 18. Tennessee Code Annotated, Section 69-3-302, is amended by deleting the section in its entirety and substituting instead the following language:

69-3-302. Final orders by the board or an administrative judge shall be published on the department website within five (5) business days, in addition to other publication required by law.

SECTION 19. For the purpose of construing this act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, this act shall be deemed to be procedural in nature. It is the intent of the general assembly that this act and the Uniform Administrative Procedures Act shall be complied with, however when in conflict, the provisions of this act shall govern.

SECTION 20. This act shall take effect July 1, 2013, the public welfare requiring it and shall apply to all cases filed on or after such date.

SENATE BILL NO. 159

PASSED: April 3, 2013



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of April 2013



BILL HASLAM, GOVERNOR