WEST VIRGINIA CODE CHAPTER 22B ARTICLE 4

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§22B-4-1. Appointment and organization of surface mine board.

(a) On and after the effective date of this article, the "reclamation board of review", heretofore created, shall continue in existence and hereafter shall be known as the "surface mine board".

(b) The board shall be composed of seven members who shall be appointed by the Governor with the advice and consent of the Senate. Not more than four members of the board shall be of the same political party. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the Governor with the advice and consent of the Senate. One of the appointees to such board shall be a person who, by reason of previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who by reason of training and experience, can be classed as one capable and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in engineering. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. One of the appointees to such board shall be a person with significant experience in the advocacy of environmental protection. One of the appointees to such board shall be a person who represents the general public interest: Provided, That, in any case brought before the board relating to quarry operations as regulated by article four of chapter twenty-two of this code, two alternate board members will serve on the board who have expertise related to the operation of quarries. These two alternate members will serve in place of the board member appointed due to his or her expertise in coal operations and the board member which has been appointed due to his or her expertise in forestry. Each alternative member shall have the identical term as the member which he or she is replacing. The alternative board member replacing the member with expertise in coal shall be appointed based on his or her expertise in quarry operations. The alternative board member replacing the member with expertise in forestry shall be appointed based on his or her expertise in geology.

(c) During his or her tenure on the board, no member shall receive significant direct or indirect financial compensation from or exercise any control over any person or entity which holds or has held, within the two years next preceding the member's appointment, a permit to conduct activity regulated by the division, under the provisions of article three or four, chapter twenty-two of this code, or any similar agency of any other state or of the federal government: Provided, That the member classed as experienced in coal mining, the member classed as experienced in engineering, the member classed as experienced in water pollution control or water conservation problems and the two alternative board members serving to hear quarry related cases may receive significant financial compensation from

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regulated entities for professional services or regular employment so long as the professional or employment relationship is disclosed to the board. No member shall participate in any matter before the board related to a regulated entity from which the member receives or has received, within the preceding two years direct or indirect financial compensation. For purposes of this section, “significant direct or indirect financial compensation” means twenty percent of gross income for a calendar year received by the member, any member of his or her immediate family or the member's primary employer.

(d) The members of the board shall be appointed for terms of the same duration as their predecessor under the original appointment of two members appointed to serve a term of two years; two members appointed to serve a term of three years; two members to serve a term of four years; and one member to serve a term of five years. Any member whose term expires may be reappointed by the Governor. In the event a board member is unable to complete the term, the Governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

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§22B-4-2. Authority to receive money.

In addition to all other powers and duties of the surface mine board, as prescribed in this chapter or elsewhere by law, the board shall have and may exercise the power and authority to receive any money as a result of the resolution of any case on appeal. Moneys received from cases arising from the Surface Mine Reclamation Act, as provided in article three of chapter twenty-two shall be deposited to the credit of the special reclamation fund created pursuant to section eleven, article three, chapter twenty-two of this code. Moneys received from cases arising from the Quarry Reclamation Act, as provided in article four of chapter twenty-two of this code, shall be deposited to the credit of the quarry reclamation fund created pursuant to section twenty-two, article four, chapter twenty-two of this code.

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§22B-4-3. Judicial review.

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

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

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