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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 232

(By Mr. GARRIGAN)

PASSED MARCH 11, 1971

In Effect NINETY DAYS FROM Passage



232

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 4-2-71

ENROLLED
Senate Bill No. 232
(By MR. CARRIGAN)

[Passed March 11, 1971; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to subpoenas in appeal hearings before water resources board.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-15. Appeal to water resources board.

- 1 (a) Any person adversely affected by an order made
- 2 and entered by the chief in accordance with the pro-
- 3 visions of this article, or aggrieved by failure or refusal

4 of the chief to act within the time required by section
5 seven of this article on an application for a permit or
6 aggrieved by the terms and conditions of a permit granted
7 under the provisions of this article, may appeal to the
8 water resources board for an order vacating or modify-
9 ing such order, or for such order, action or terms and
10 conditions as the chief should have entered, taken or
11 imposed. The person so appealing shall be known as
12 the appellant and the chief shall be known as the ap-
13 pellee. If the chief denies a permit because of any dis-
14 approval of a permit application by one or more of
15 the public officers required to review such application
16 under the provisions of subsection (b), section seven of
17 this article, such public officers shall be joined as a co-
18 appellee or coappellees with the chief in such appeal.

19 (b) Such appeal shall be perfected by filing a notice
20 of appeal, on the form prescribed by the board for such
21 purpose, with the board within thirty days after date
22 upon which the appellant received the copy of such order
23 or received such permit, as the case may be. The filing
24 of the notice of appeal shall not stay or suspend the

25 execution of the order appealed from. If it appears to
26 the director or the board that an unjust hardship to the
27 appellant will result from the execution of the chief's
28 order pending determination of the appeal, the director
29 or the board may grant a suspension of such order and
30 fix its terms. The notice of appeal shall set forth the order
31 or terms and conditions complained of and the grounds
32 upon which the appeal is based. A copy of the notice
33 of appeal shall be filed by the board with the chief within
34 three days after the notice of appeal is filed with the board.

35 (c) Within seven days after receipt of his copy of the
36 notice of appeal, the chief shall prepare and certify to
37 the board a complete record of the proceedings out of
38 which the appeal arises including all documents and
39 correspondence in the chief's file relating to the matter
40 in question. With the consent of the board and upon such
41 terms and conditions as the board may prescribe, any
42 persons affected by any such activity or by such alleged
43 pollution may by petition intervene as a party appellant
44 or appellee. The board shall hear the appeal de novo,
45 and evidence may be offered on behalf of the appellant

46 and appellee, and, with the consent of the board, by any
47 intervenors.

48 (d) All of the pertinent provisions of article five, chap-
49 ter twenty-nine-a of this code shall apply to and govern
50 the hearing on appeal authorized by this section and
51 the administrative procedures in connection with and
52 following such hearing, with like effect as if the pro-
53 visions of said article five were set forth in extenso in this
54 section, with the following modifications or exceptions:

55 (1) Unless the board directs otherwise, the appeal hear-
56 ing shall be held in the city of Charleston, Kanawha
57 county, West Virginia; and

58 (2) In accordance with the provisions of section one,
59 article five of said chapter twenty-nine-a, all of the testi-
60 mony at any such hearing shall be recorded by steno-
61 graphic notes and characters or by mechanical means.
62 Such reported testimony shall in every appeal hearing
63 under this article be transcribed.

64 (e) Any such appeal hearing shall be conducted by a
65 quorum of the board, but the parties may by stipulation
66 agree to take evidence before a hearing examiner em-

67 ployed by the board. For the purpose of conducting such
68 appeal hearing, any member of the board and the chair-
69 man thereof shall have the power and authority to issue
70 subpoenas and subpoenas duces tecum in the name of the
71 board, in accordance with the provisions of section one,
72 article five, chapter twenty-nine-a of this code. All sub-
73 poenas and subpoenas duces tecum shall be issued and
74 served within the time and for the fees and shall be
75 enforced, as specified in section one, article five of said
76 chapter twenty-nine-a, and all of the said section one
77 provisions dealing with subpoenas and subpoenas duces
78 tecum shall apply to subpoenas and subpoenas duces
79 tecum issued for the purpose of an appeal hearing
80 hereunder.

81 (f) Any such hearing shall be held within twenty
82 days after the date upon which the board received the
83 timely notice of appeal, unless there is a postponement
84 or continuance. The board may postpone or continue
85 any hearing upon its own motion, or upon application
86 of the appellant, the appellee or any intervenors for
87 good cause shown. The chief shall be represented at

88 any such hearing by the attorney general or his assist-
89 ants. At any such hearing the appellant and any inter-
90 venor may represent himself or be represented by an
91 attorney at law admitted to practice before any circuit
92 court of this state.

93 (g) After such hearing and consideration of all of the
94 testimony, evidence and record in the case, the board
95 shall make and enter an order affirming, modifying or
96 vacating the order of the chief, or shall make and enter
97 such order as the chief should have entered, or shall
98 make and enter an order approving or modifying the
99 terms and conditions of any permit issued. In deter-
100 mining its course of action, the board shall take into
101 consideration not only the factors which the chief was
102 authorized to consider in making his order and in fix-
103 ing the terms and conditions of any permit, but also
104 the economic feasibility of treating and/or controlling
105 the sewage, industrial wastes or other wastes involved.

106 (h) Such order shall be accompanied by findings of
107 fact and conclusions of law as specified in section three,
108 article five, chapter twenty-nine-a of this code, and a

109 copy of such order and accompanying findings and con-
110 clusions shall be served upon the appellant, and any inter-
111 venors, and their attorneys of record, if any, and upon
112 the appellee in person or by registered or certified mail.

113 (i) The board shall also cause a notice to be served
114 with the copy of such order, which notice shall advise
115 the appellant, the appellee and any intervenors of their
116 right to judicial review, in accordance with the pro-
117 visions of section sixteen of this article. The order of
118 the board shall be final unless vacated or modified upon
119 judicial review thereof in accordance with the provisions
120 of section sixteen of this article.

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

Russell M. Ball
Chairman Senate Committee

Phyllis Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Myers
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Edw. Court
President of the Senate

Lewis N. McManus
Speaker House of Delegates

The within approved this the 1st
day of April, 1971.

Arch. A. Shreve, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/71

Time 11:50 A.M.

RECEIVED

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA