

1 SB250
2 165831-2
3 By Senator Reed
4 RFD: Governmental Affairs
5 First Read: 17-MAR-15

1 SB250

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4 ENROLLED, An Act,

5 To amend Section 9-16-79, Code of Alabama 1975,
6 relating to hearings and appeals of final commission actions
7 under the Alabama Surface Mining Control and Reclamation Act
8 to provide that the Administrative Procedure Act does not
9 apply thereto; to provide for judicial review of actions in
10 the circuit court of the county in which the commission
11 maintains its principal office.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 9-16-79, Code of Alabama 1975, is
14 amended to read as follows:

15 "§9-16-79.

16 "Procedures for hearings and appeals under this
17 article shall be made as herein provided and in accordance
18 with such general rules and regulations as the regulatory
19 authority may prescribe. These procedures shall take
20 precedence over the Alabama Administrative Procedure Act,
21 which shall in no respect apply to proceedings arising under
22 this article.

23 "(1)a. A determination by the regulatory authority
24 as specified by law shall be made promptly and shall include a
25 statement as to the action to be taken and reasons therefor.

1 Notice of the determination or decision shall be promptly
2 given to the parties involved by delivery or by mailing such
3 notices to their last known addresses. When the regulatory
4 authority gives a notice of determination, unless an appeal is
5 filed by any person having an interest which may be adversely
6 affected with the chief hearing officer within 30 days of such
7 notice such determination shall be deemed final and not
8 subject to appeal;

9 "b. Unless such appeal is withdrawn, the hearing
10 officer shall affirm, modify, or set aside the determination
11 of the regulatory authority in a written decision
12 incorporating therein findings of fact and law. The parties
13 shall be promptly notified in writing of the hearing officers'
14 decision;

15 "c. The decision of a hearing officer shall become
16 final 10 days after notice of such decision has been mailed,
17 postage prepaid, to the parties to the proceedings at the
18 addresses furnished or, if none shall have been furnished, at
19 their last known addresses;

20 "d. Within 30 days from the time a decision of the
21 hearing officer has become final, any party to the proceedings
22 may secure administrative review by filing a petition for
23 review with the commission.

24 "(2) An appeal to a hearing officer of a decision or
25 order of the regulatory authority shall not automatically act

1 as a stay of the decision or order. Pending completion of an
2 appeal taken pursuant to subsection (a) of this section, a
3 written application may be filed with the hearing officer
4 requesting that he grant temporary relief from any notice or
5 order issued under Section 9-16-93 together with a detailed
6 statement giving reasons for granting such relief. The hearing
7 officer shall issue an order or decision granting or denying
8 such relief expeditiously: Provided, that where the applicant
9 requests relief from an order for cessation of coal mining and
10 reclamation operations issued pursuant to Section 9-16-93, the
11 order or decision on such application shall be issued within 5
12 days of its receipt. The hearing officer may grant such
13 relief, under such conditions as he may prescribe, if:

14 "a. A hearing has been held in the locality of the
15 permit area on the application for temporary relief in which
16 all parties were given an opportunity to be heard;

17 "b. The applicant shows that there is substantial
18 likelihood that the findings of the hearing officer will be
19 favorable to him; and

20 "c. Such relief will not adversely affect the health
21 or safety of the public or cause significant, imminent
22 environmental harm to land, air, or water resources.

23 "Provided further, that where the hearing officer
24 denies temporary relief from a cessation order or fails to act
25 on the application for temporary relief within 5 days, the

1 applicant may apply to the appropriate circuit court for
2 relief pursuant to Rule 65 of the Alabama Rules of Civil
3 Procedure.

4 "(3)a. The commission may grant or deny a petition
5 for review. If the commission takes no action on a petition
6 within 30 days, it shall be deemed denied. If the commission
7 grants a petition for review but fails to act within 90 days
8 of granting the petition, the commission shall be deemed to
9 have entered a final decision affirming the order of the
10 hearing officer.

11 "b. The commission shall make its review of a
12 decision of a hearing officer based on the administrative
13 record, and the hearing officer's decision shall either be
14 affirmed, reversed or referred back to the hearing officer
15 with instructions for further specific inquiry. The commission
16 shall promptly notify the parties in writing of its decision.

17 "c. The manner in which disputed claims before the
18 commission shall be presented and the conduct of hearings and
19 appeals before it shall be in accordance with the regulations
20 prescribed by the commission. At any hearing the parties shall
21 be afforded a reasonable opportunity for fair hearing and all
22 testimony shall be taken down but need not be transcribed
23 unless an appeal is applied for or taken. No person shall
24 participate in the hearing or disposition of any claim as a
25 member of the commission if he has an interest therein.

1 "(4)a. Any decision of the commission shall become
2 final 10 days after the date notification thereof shall have
3 been mailed, postage prepaid, to the parties to the
4 proceeding, at their last known addresses. The director shall
5 be deemed to be a party to all such proceedings and to any
6 judicial action involving any such decision.

7 "b. Within 30 days from the time a petition for
8 review is deemed denied or 30 days after the decision of the
9 commission has become final, any party to the proceeding may
10 secure a judicial review thereof by filing a notice of appeal
11 in the circuit court of the county in which the commission
12 maintains its principal office. All parties to the
13 administrative procedure shall be named parties in such an
14 appeal. In such action, the notice of appeal need not be
15 verified but shall state the grounds upon which a review is
16 sought. Service shall be made in accordance with the Alabama
17 Rules of Civil Procedure. ~~No~~ The circuit court shall not
18 permit an appeal unless the person filing such appeal has
19 exhausted his administrative remedies as provided by this
20 article. Provided, where an appeal is taken to the commission
21 from a cessation order issued pursuant to Section 9-16-93 and
22 the commission fails or refuses to stay the order pending a
23 final determination on the merits, the affected surface coal
24 mining operator may apply to the appropriate circuit court for
25 relief. The court may, under such conditions as it may

1 prescribe, grant such temporary relief as it deems appropriate
2 pending final determination of the proceedings if:

3 "1. All parties to the proceedings have been
4 notified and given an opportunity to be heard on a request for
5 temporary relief;

6 "2. The person requesting such relief shows that
7 there is a substantial likelihood that he will prevail on the
8 merits of the final determination of the proceeding; and

9 "3. Such relief will not adversely affect the public
10 health or safety or cause significant imminent environmental
11 harm to land, air, or water resources.

12 "(5) Upon notification by the court that notice of
13 appeal has been filed, the regulatory authority shall transmit
14 to the court the entire record of the proceedings under
15 review, including the findings of fact and the decision of the
16 hearing officer or the commission within 30 days or within
17 such additional time as the court may allow. With the
18 permission of the court, the record of the proceedings under
19 review may be shortened by stipulation of all parties to the
20 review proceedings. Any party unreasonably refusing to
21 stipulate to limit the record may be taxed by the court for
22 such additional costs as may be occasioned by the refusal.

23 "The court may require or permit subsequent
24 corrections or additions to the record when deemed desirable.

1 "(6) The cause shall be tried de novo in said
2 circuit court and shall be a preference case on the docket
3 thereof. The court shall have jurisdiction to determine the
4 reasonableness and lawfulness of the order of the regulatory
5 authority. Upon a finding by the court that the order is not
6 reasonable or lawful, or not supported by the clear
7 preponderance of the evidence, the cause shall be remanded to
8 the regulatory authority for further proceedings in accordance
9 with the provisions of this article. The parties shall have
10 all rights of exception and appeal as in other equity cases.

11 "(7) In any appeal from an order of the commission
12 the appellant may, upon application to the circuit court,
13 supersede any order of the commission on giving such
14 supersedeas bond in an amount the court deems proper and
15 necessary to avoid the likelihood of material damage. The
16 court may, under such conditions as it may prescribe, grant
17 such supersedeas as it deems appropriate pending final
18 determination of the proceeding if:

19 "a. All parties to the proceedings have been
20 notified and given an opportunity to be heard on a request for
21 a supersedeas;

22 "b. The person requesting the supersedeas shows that
23 there is a substantial likelihood that he will prevail on the
24 merits of the final determination of the proceedings; and

1 "c. Such relief will not adversely affect the public
2 health or safety or cause significant imminent environmental
3 harm to land, air or water resources.

4 "Such a bond shall be made payable to the respondent
5 appellee. If a supersedeas bond has been given on appeal to
6 the circuit court as hereinabove provided for, such bond shall
7 continue in force and effect during an appeal to the Supreme
8 Court of Alabama and until final adjudication of the case, and
9 all the conditions of such bond shall be complied with, and no
10 other supersedeas bond need be given by the appellant unless
11 the court hearing the case shall determine that the amount of
12 such supersedeas bond is either excessive or inadequate, in
13 which case the court may order such bond reduced or increased
14 as the court may decide.

15 "(8) An appeal may be taken from the decisions of
16 the circuit court in the same manner as provided in civil
17 cases.

18 "(9) Whenever an order is issued under this section
19 or as a result of any administrative proceeding under this
20 article, at the request of any person, a sum equal to the
21 aggregate amount of all costs and expenses (including attorney
22 fees) as determined by the commission, or, if no appeal is
23 taken to the commission, as determined by the hearing officer,
24 to have been reasonably incurred by such person for or in
25 connection with his participation in such proceedings,

1 including any judicial review of the commission actions, may
2 be assessed against either party as the court, resulting from
3 judicial review, or the commission or the hearing officer,
4 resulting from administrative proceedings, deems proper.

5 "(10) The procedure provided in this article for
6 hearings and appeals shall be exclusive except as otherwise
7 specified.

8 "(11) Nothing in this article shall prevent the
9 regulatory authority from making efforts to obtain voluntary
10 compliance through warning, conference or any other
11 appropriate means. However, nothing in this section shall be
12 taken to negate the mandatory enforcement of Section 9-16-93."

13 Section 2. The provisions of this act are severable.
14 If any part of this act is declared invalid or
15 unconstitutional, that declaration shall not affect the part
16 which remains.

17 Section 3. This act shall become effective 12 months
18 following its passage and approval by the Governor, or its
19 otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB250

Senate 07-APR-15

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 02-JUN-15

Senate concurred in House amendment 03-JUN-15

By: Senator Reed