

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

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8 SYNOPSIS: Existing law provides that procedure for  
9 hearings and appeals under the Alabama Surface  
10 Mining Control and Reclamation Act shall take  
11 precedence over the Administrative Procedure Act  
12 and shall be exclusive.

13 This bill would provide that the  
14 Administrative Procedure Act has no application to  
15 procedure for hearings and appeals under the  
16 Alabama Surface Mining Control and Reclamation Act.

17 This bill would further provide for judicial  
18 review of final commission actions within the  
19 circuit court of the county in which the commission  
20 maintains its principal office.

21 This bill would provide for retroactive  
22 effect.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12           "§9-16-79.

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

20           "(1)a. A determination by the regulatory authority  
21 as specified by law shall be made promptly and shall include a  
22 statement as to the action to be taken and reasons therefor.  
23 Notice of the determination or decision shall be promptly  
24 given to the parties involved by delivery or by mailing such  
25 notices to their last known addresses. When the regulatory  
26 authority gives a notice of determination, unless an appeal is  
27 filed by any person having an interest which may be adversely

1 affected with the chief hearing officer within 30 days of such  
2 notice such determination shall be deemed final and not  
3 subject to appeal;

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

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

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

19 "(2) An appeal to a hearing officer of a decision or  
20 order of the regulatory authority shall not automatically act  
21 as a stay of the decision or order. Pending completion of an  
22 appeal taken pursuant to subsection (a) of this section, a  
23 written application may be filed with the hearing officer  
24 requesting that he grant temporary relief from any notice or  
25 order issued under Section 9-16-93 together with a detailed  
26 statement giving reasons for granting such relief. The hearing  
27 officer shall issue an order or decision granting or denying

1 such relief expeditiously: Provided, that where the applicant  
2 requests relief from an order for cessation of coal mining and  
3 reclamation operations issued pursuant to Section 9-16-93, the  
4 order or decision on such application shall be issued within 5  
5 days of its receipt. The hearing officer may grant such  
6 relief, under such conditions as he may prescribe, if:

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

10 "b. The applicant shows that there is substantial  
11 likelihood that the findings of the hearing officer will be  
12 favorable to him; and

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

16 "Provided further, that where the hearing officer  
17 denies temporary relief from a cessation order or fails to act  
18 on the application for temporary relief within 5 days, the  
19 applicant may apply to the appropriate circuit court for  
20 relief pursuant to Rule 65 of the Alabama Rules of Civil  
21 Procedure.

22 "(3)a. The commission may grant or deny a petition  
23 for review. If the commission takes no action on a petition  
24 within 30 days, it shall be deemed denied. If the commission  
25 grants a petition for review but fails to act within 90 days  
26 of granting the petition, the commission shall be deemed to

1 have entered a final decision affirming the order of the  
2 hearing officer.

3 "b. The commission shall make its review of a  
4 decision of a hearing officer based on the administrative  
5 record, and the hearing officer's decision shall either be  
6 affirmed, reversed or referred back to the hearing officer  
7 with instructions for further specific inquiry. The commission  
8 shall promptly notify the parties in writing of its decision.

9 "c. The manner in which disputed claims before the  
10 commission shall be presented and the conduct of hearings and  
11 appeals before it shall be in accordance with the regulations  
12 prescribed by the commission. At any hearing the parties shall  
13 be afforded a reasonable opportunity for fair hearing and all  
14 testimony shall be taken down but need not be transcribed  
15 unless an appeal is applied for or taken. No person shall  
16 participate in the hearing or disposition of any claim as a  
17 member of the commission if he has an interest therein.

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

24 "b. Within 30 days from the time a petition for  
25 review is deemed denied or 30 days after the decision of the  
26 commission has become final, any party to the proceeding may  
27 secure a judicial review thereof by filing a notice of appeal

1 in the circuit court of the county in which the commission  
2 maintains its principal office. All parties to the  
3 administrative procedure shall be named parties in such an  
4 appeal. In such action, the notice of appeal need not be  
5 verified but shall state the grounds upon which a review is  
6 sought. Service shall be made in accordance with the Alabama  
7 Rules of Civil Procedure. ~~No~~ The circuit court shall not  
8 permit an appeal unless the person filing such appeal has  
9 exhausted his administrative remedies as provided by this  
10 article. Provided, where an appeal is taken to the commission  
11 from a cessation order issued pursuant to Section 9-16-93 and  
12 the commission fails or refuses to stay the order pending a  
13 final determination on the merits, the affected surface coal  
14 mining operator may apply to the appropriate circuit court for  
15 relief. The court may, under such conditions as it may  
16 prescribe, grant such temporary relief as it deems appropriate  
17 pending final determination of the proceedings if:

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

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

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

1           "(5) Upon notification by the court that notice of  
2 appeal has been filed, the regulatory authority shall transmit  
3 to the court the entire record of the proceedings under  
4 review, including the findings of fact and the decision of the  
5 hearing officer or the commission within 30 days or within  
6 such additional time as the court may allow. With the  
7 permission of the court, the record of the proceedings under  
8 review may be shortened by stipulation of all parties to the  
9 review proceedings. Any party unreasonably refusing to  
10 stipulate to limit the record may be taxed by the court for  
11 such additional costs as may be occasioned by the refusal.

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

14           "(6) The cause shall be tried de novo in said  
15 circuit court and shall be a preference case on the docket  
16 thereof. The court shall have jurisdiction to determine the  
17 reasonableness and lawfulness of the order of the regulatory  
18 authority. Upon a finding by the court that the order is not  
19 reasonable or lawful, or not supported by the clear  
20 preponderance of the evidence, the cause shall be remanded to  
21 the regulatory authority for further proceedings in accordance  
22 with the provisions of this article. The parties shall have  
23 all rights of exception and appeal as in other equity cases.

24           "(7) In any appeal from an order of the commission  
25 the appellant may, upon application to the circuit court,  
26 supersede any order of the commission on giving such  
27 supersedeas bond in an amount the court deems proper and



1 necessary to avoid the likelihood of material damage. The  
2 court may, under such conditions as it may prescribe, grant  
3 such supersedeas as it deems appropriate pending final  
4 determination of the proceeding if:

5 "a. All parties to the proceedings have been  
6 notified and given an opportunity to be heard on a request for  
7 a supersedeas;

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

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

14 "Such a bond shall be made payable to the respondent  
15 appellee. If a supersedeas bond has been given on appeal to  
16 the circuit court as hereinabove provided for, such bond shall  
17 continue in force and effect during an appeal to the Supreme  
18 Court of Alabama and until final adjudication of the case, and  
19 all the conditions of such bond shall be complied with, and no  
20 other supersedeas bond need be given by the appellant unless  
21 the court hearing the case shall determine that the amount of  
22 such supersedeas bond is either excessive or inadequate, in  
23 which case the court may order such bond reduced or increased  
24 as the court may decide.

25 "(8) An appeal may be taken from the decisions of  
26 the circuit court in the same manner as provided in civil  
27 cases.

1           "(9) Whenever an order is issued under this section  
2 or as a result of any administrative proceeding under this  
3 article, at the request of any person, a sum equal to the  
4 aggregate amount of all costs and expenses (including attorney  
5 fees) as determined by the commission, or, if no appeal is  
6 taken to the commission, as determined by the hearing officer,  
7 to have been reasonably incurred by such person for or in  
8 connection with his participation in such proceedings,  
9 including any judicial review of the commission actions, may  
10 be assessed against either party as the court, resulting from  
11 judicial review, or the commission or the hearing officer,  
12 resulting from administrative proceedings, deems proper.

13           "(10) The procedure provided in this article for  
14 hearings and appeals shall be exclusive except as otherwise  
15 specified.

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

21           Section 2. The provisions of this act are severable.  
22 If any part of this act is declared invalid or  
23 unconstitutional, that declaration shall not affect the part  
24 which remains.

25           Section 3. This act shall become effective  
26 immediately following its passage and approval by the  
27 Governor, or its otherwise becoming law.

