

SENATE BILL 159

By Norris

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 date the appeal of such citation or assessment of a penalty was filed, and an initial order being issued within sixty (60) days of completion of the record of the hearing, unless the administrative judge allows otherwise to avoid undue hardship. The administrative judge's initial order shall become final unless appealed to the board by the commissioner or other party or unless the board passes a motion to review the initial order pursuant to § 4-5-315. 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 may, at the board's discretion, allow each party an opportunity to present oral argument. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-

-314, affirming, modifying, or vacating the supervisor's citation or assessment of a penalty. A final order rendered pursuant to this section is effective upon its entry unless a later effective date shall be stated therein. The final order may assess all or a portion of the costs of the contested case proceeding, including the administrative judge's cost and stenographer costs, against the losing party or parties in the contested case. 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 under the provisions of § 4-5-322.

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 date such

petition was filed, and an initial order being issued within sixty (60) days of completion of the record of the hearing unless the administrative judge allows otherwise to avoid undue hardship. The administrative judge's initial order shall become final unless appealed to the board by the commissioner or other party or unless the board passes a motion to review the initial order pursuant to § 4-5-315. 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 may, at the board's discretion, allow each party an opportunity to present oral argument. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry unless a later effective date shall be stated therein. The final order may assess all or a portion of the costs of the contested case proceeding, including the administrative judge's cost and stenographer costs, against the losing party or parties in the contested case. 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 under the provisions of § 4-5-322.

(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, §§ 4-5-301 et seq.

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

(a) 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 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 date such petition was filed, and an initial order being issued within sixty (60) days of completion of the record of the hearing, unless the administrative judge allows otherwise to avoid undue hardship. The administrative judge's initial order shall become final, unless appealed to the board by the commissioner or other party or unless the board passes a motion to review the initial order pursuant to § 4-5-315. 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 may, at the board's discretion, allow each party an opportunity to present oral argument. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry unless a later effective date is stated therein. The final order may assess all or a portion

of the costs of the contested case proceeding, including the administrative judge's cost and stenographer costs, against the losing party or parties in the contested case. 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 under the provisions of § 4-5-322. The board has the power to enter such orders as in its opinion will best further the purposes of this part.

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

SECTION 6. Tennessee Code Annotated, Section 68-211-113, is further amended by adding the following sentence at the end of current subsection (h) which will be redesignated, "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 redesignating the remaining subsection accordingly, by adding the following language as subdivision (a)(2), and by redesignating the remaining subdivisions of subsection (a) accordingly:

(a)

(2) 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 9. Tennessee Code Annotated, Section 68-212-117, is amended by adding the following sentence at the end of subsection (a), "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 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:

(2) Any person against whom an assessment is issued may secure a review of the propriety or amount of such 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 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 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 date the petition was filed, and an initial order being issued within sixty (60) days of completion of the record of the hearing, unless the administrative judge allows otherwise to avoid undue hardship. The administrative judge's initial order shall become final unless appealed to the board by the commissioner or other party or unless the board passes a motion to review the initial order pursuant to § 4-5-315. 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 may, at the board's discretion, allow each party an opportunity to present oral argument. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry unless a later effective date is stated therein. The final order may assess all or a portion of the costs of the contested case proceeding, including the administrative judge's cost and stenographer costs, against the losing party or parties in the contested case. 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 under the provisions of § 4-5-322.

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, pursuant to this subsection (i), 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 the provisions of § 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 before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless the matter is settled. 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 date the petition was filed, and an initial order being issued within sixty (60) days of completion of the record of the hearing, unless the administrative judge allows otherwise to avoid undue hardship. The administrative judge's initial order shall become final unless appealed to the board by the commissioner or other party or unless the board passes a motion to review the initial order pursuant to § 4-5-315. 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 may, at the board's discretion, allow each party an opportunity to present oral argument. In such

appeals, the board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry unless a later effective date is stated therein. The final order may assess all or a portion of the costs of the contested case proceeding, including the administrative judge's cost and stenographer costs, against the losing party or parties in the contested case. 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 under the provisions of § 4-5-322.

SECTION 16. Tennessee Code Annotated, Section 69-3-110, is amended by deleting subsection (c) in its entirety and redesignating the remaining subsections accordingly.

SECTION 17. Tennessee Code Annotated, Section 69-3-302, is amended by deleting it 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 web site within five (5) business days, in addition to other publication required by law.

SECTION 18. This act shall take effect July 1, 2013, the public welfare requiring it and shall apply to all cases filed on or after that date.