

SENATE BILL 1918

By Niceley

AN ACT to amend Tennessee Code Annotated, Section 3-6-204; Title 4; Section 8-3-102; Title 27; Title 29; Section 36-5-1003; Section 36-5-1107; Section 37-5-514; Section 39-17-1509; Section 40-33-213; Section 42-2-224; Section 47-9-513; Section 49-1-1107; Title 53; Section 55-12-103; Section 55-17-116; Section 55-10-425; Section 60-1-401; Title 65; Title 67, Chapter 5, Part 13; Section 68-120-110; Section 68-201-116; Section 68-212-113; Section 68-212-114; Section 68-212-215; Section 68-221-714; Section 68-1-104; Section 69-3-115; Section 69-11-118; Section 71-3-510; Section 71-4-507 and Section 71-3-509, relative to jury trials.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-5-322, is amended by deleting subsections (e)-(j) and substituting the following:

(e) The procedure ordinarily followed in the reviewing court will be followed in the review of contested cases decided by the agency, except as otherwise provided in this chapter. The agency that issued the decision to be reviewed is not required to file a responsive pleading.

(f) Any judicial review under this section must be conducted as follows, except for reviews submitted to the middle division of the court of appeals under subdivision (b)(1)(B)(iii), which are subject to subsection (g):

- (1) The court shall conduct a de novo review on the record of the issues;
- (2) The review shall be conducted without a presumption that the determinations and findings of the agency are correct;
- (3) Additional evidence may be introduced and considered by the court;

(4) Upon written demand of an aggrieved person, the review shall be heard with a trial by jury; and

(5) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) In violation of constitutional or statutory provisions;

(B) In excess of the statutory authority of the agency;

(C) Made upon unlawful procedure;

(D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(E) Unsupported by evidence that is both substantial and material in the light of the evidence. In determining the substantiality of evidence, the trier of fact shall take into account whatever in the record fairly detracts from its weight.

(g) Any judicial review made under subdivision (b)(1)(B)(iii) must be conducted as follows:

(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court;

(2) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court;

(3) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) In violation of constitutional or statutory provisions;

(B) In excess of the statutory authority of the agency;

(C) Made upon unlawful procedure;

(D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(E) Unsupported by evidence that is both substantial and material in the light of the entire record. In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact; and

(4) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded, or modified by the reviewing court unless for errors that affect the merits of such decision.

(h) The reviewing court shall reduce its findings of fact and conclusions of law to writing and make them parts of the record.

SECTION 2. Tennessee Code Annotated, Section 53-1-201, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b) Upon written demand of any person against whom the commissioner seeks a permanent injunction under subsection (a), the proceeding shall be heard by the judge or chancellor de novo with a trial by jury.

SECTION 3. Tennessee Code Annotated, Section 53-1-202(b)(1), is amended by designating the existing language as subdivision (b)(1)(A) and adding the following as a new subdivision:

(B) Upon written demand of the claimant of any article that is the subject of a petition for an order of condemnation under subdivision (b)(1)(A), the proceeding shall be heard by the judge or chancellor de novo with a trial by jury.

SECTION 4. This act shall take effect January 1, 2019, the public welfare requiring it.