

HOUSE BILL 1435

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 201; Title 68, Chapter 211 and Title 68, Chapter 212, relative to third party appeals of permits.

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

SECTION 1. Tennessee Code Annotated, Section 68-201-108(a)(1), is amended by deleting the language “A person” at the beginning of the first sentence and by substituting instead the language “Except as provided in subdivision (a)(2), a person”.

SECTION 2. Tennessee Code Annotated, Section 68-201-108, is amended by renumbering the current subdivision (a)(2) as subdivision (a)(3) and by inserting the following language as a new subdivision (a)(2):

(a)

(2) A petition for permit appeal by an aggrieved party other than a permit applicant may only be filed pursuant to this section by an aggrieved person who participated in the public comment period or gave testimony at a formal public hearing. The appeal shall be based upon one or more 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. A petition for permit appeal shall be filed with the technical secretary within thirty (30) days after the commissioner's final decision to issue or deny the permit is

posted on the department web site. Notwithstanding § 4-5-223 or any other law to the contrary, this section shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit by such an aggrieved person, and its process shall be exhausted before judicial review may be sought.

SECTION 3. Tennessee Code Annotated, Section 68-211-113, is amended by deleting subsection (d) and substituting instead the following language:

(d) A petition for permit appeal may be filed, pursuant to this subsection (d), by an aggrieved person who participated in the public comment period or gave testimony at a formal public hearing. The appeal shall be based upon one or more 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 (d) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to issue or deny the final permit.

Notwithstanding § 4-5-223 or any other law to the contrary, this subsection (d) shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit by such an aggrieved person, and its process shall be exhausted before judicial review may be sought.

SECTION 4. Tennessee Code Annotated, Section 68-212-113(a), is amended by deleting subdivision (2)(B) and substituting instead the following language:

(2)

(B) A petition for permit appeal may be filed, pursuant to this subdivision (B), by an aggrieved person who participated in the public comment period or gave testimony at a formal public hearing. The appeal shall be based upon one

or more 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 subdivision (B) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to issue or deny the final permit. Notwithstanding § 4-5-223 or any other law to the contrary, this subdivision (B) shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit by such an aggrieved person, and its process shall be exhausted before judicial review may be sought.

SECTION 5. This act shall take effect July 1, 2014, the public welfare requiring it, and shall apply to all cases filed on or after that date.