

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 702

*An Act to amend and reenact § 2.2-4021 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4020.1, relating to the Administrative Process Act; summary case decisions.*

[H 1486]

Approved April 5, 2006

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-4021 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4020.1 as follows:**

**§ 2.2-4020.1. Summary case decisions.**

A. Any person who has (i) applied for a permit, certificate, or license from an agency or (ii) received written notice of a potential violation from an agency may request a summary case decision from the agency. The request for a summary case decision shall be in writing, signed by or on behalf of the requestor, and be submitted to the agency secretary as defined by the Rules of the Supreme Court of Virginia. The request shall include:

1. A statement that no material facts are in dispute;
  2. A proposed stipulation of all such undisputed material facts concerning the application or notice;
  3. A clear and concise statement of the questions of law to be decided by summary case decision;
- and

4. A statement that the requestor waives his right to any other administrative proceeding provided in this article by the agency on the questions of law to be decided by summary case decision.

B. Within 21 days of receipt of a complete request for summary case decision, the agency shall determine whether the matter in dispute properly may be decided by summary case decision and shall promptly notify the requestor of its determination in writing. If a request for summary case decision is not complete, the agency may request additional specific information from the requestor. The agency shall decide the matter by summary case decision if it determines that there are no disputed issues of material fact. However, if (i) an informal fact-finding proceeding as provided in § 2.2-4019, a formal hearing as provided in § 2.2-4020, or other proceeding authorized by the agency's basic law concerning the application or notice has been scheduled, the requestor has been notified, and the issues that are the subject of such proceeding or hearing include questions that are the subject of the request for summary case decision or (ii) the matter must be decided through any public participation requirements under this chapter or the agency's basic law, the agency shall not be required to decide the matter by summary case decision.

C. Denial of a request for summary case decision shall not be subject to judicial review in accordance with this chapter and the Rules of the Supreme Court of Virginia, and shall not prejudice any rights the requestor has or may have under this chapter or the agency's basic law. Nothing in this article shall prevent an agency from consolidating the summary case decision proceeding into, or proceeding with, a separate informal fact-finding proceeding, formal hearing, or other proceeding authorized by the agency's basic law concerning the matter in question.

D. Upon granting a request for summary case decision, the agency shall establish a schedule for the parties to submit briefs on the questions of law in dispute and may, by agreement of the parties, provide for oral argument.

E. All decisions or recommended decisions shall be served on the requestor, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence contained in the record and relevant to the basic law under which the agency is operating, together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

**§ 2.2-4021. Timetable for decision; exemptions.**

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding ~~or~~, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding ~~or~~, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the

agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notification to the named party of its decision within five days of the decision.

C. In any informal fact-finding ~~or~~, formal proceeding, *or summary case decision proceeding* in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 30 days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within 30 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who conducted the informal fact-finding ~~or~~, formal proceeding, *or summary case decision proceeding* are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection B shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notice within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.