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HOUSE BILL NO. 1486

Offered January 19, 2006

A BILL 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.

Patron—Janis

Referred to Committee on General Laws

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, license, or other approval from an agency or (ii) received notice of a potential violation or other deficiency 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 proposed stipulation of all material facts concerning the application or notice;
2. A statement that no material facts are in dispute;
3. A clear and concise statement of the question to be decided by summary case decision; and
4. A statement that the requestor waives his right to an informal fact-finding proceeding as provided in § 2.2-4019 and a formal hearing as provided in § 2.2-4020 or other evidentiary hearing on the issue 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 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 genuine issues of material fact. The determination of whether (i) the request for summary case decision is complete or (ii) there are genuine issues of material fact shall not be subject to judicial review.

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

D. 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, 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.

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

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