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**HOUSE BILL NO. 654**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact §§ 2.2-4025, 2.2-4026, and 2.2-4027 of the Code of Virginia, relating to review of agency action under the Administrative Process Act.*

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Patron—Armstrong

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Referred to Committee on General Laws

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

**1. That §§ 2.2-4025, 2.2-4026, and 2.2-4027 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-4025. Exemptions operation of this article; limitations.

A. This article shall not apply to any agency action that (i) is placed beyond the control of the courts by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test, or election save as to want of authority therefor or claim of arbitrariness or fraud therein, *or* (iv) is a case in which the agency is acting as an agent for a court; ~~or (v) encompasses matters subject by law to a trial de novo in any court.~~

B. The provisions of this article, however, shall apply to case decisions regarding the grant or denial of Temporary Assistance for Needy Families, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization. However, no appeal may be brought regarding the adequacy of standards of need and payment levels for public assistance and social services programs. ~~Notwithstanding the provisions of § 2.2-4027, the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. The review shall be by trial de novo.~~ If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 2.2-4028.

§ 2.2-4026. Right, forms, venue.

Any person affected by and claiming the unlawfulness of any regulation, or party aggrieved by and claiming unlawfulness of a case decision and whether exempted from the procedural requirements of Article 2 (§ 2.2-4006 et seq.) or 3 (§ 2.2-4018 et seq.) of this chapter, shall have a right to *seek* the direct review *by a de novo appeal* thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the rules of the Supreme Court of Virginia. Actions may be instituted in any court of competent jurisdiction as provided in § 2.2-4003, and the judgments of the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any regulation or case decision is the subject of an enforcement action in court, it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases.

§ 2.2-4027. Issues on review; small business.

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of such fact issue shall be made upon the whole evidentiary record provided by the agency if its proceeding was required to be conducted as provided in § 2.2-4009 or 2.2-4020 or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein.

In addition to any other judicial review provided by law, a small business, as defined in subsection A of § 2.2-4007.1, that is adversely affected or aggrieved by final agency action shall be entitled to judicial review of compliance with the requirements of subdivision A 2 of § 2.2-4007.04 and § 2.2-4007.1 within one year following the date of final agency action.

When the decision on review is to be made on the agency record, the duty of the court with respect

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59 to issues of fact shall be limited to ascertaining whether there was substantial evidence in the agency  
60 record upon which the agency as the trier of the facts could reasonably find them to be as it did.

61 Where there is no agency record so required and made, any necessary facts in controversy shall be  
62 determined by the court upon the basis of the agency file, minutes, and records of its proceedings under  
63 § 2.2-4007.01 or 2.2-4019 as augmented, if need be, by the agency pursuant to order of the court or  
64 supplemented by any allowable and necessary proofs adduced in court except that the function of the  
65 court shall be to determine only whether the result reached by the agency could reasonably be said, on  
66 all such proofs, to be within the scope of the legal authority of the agency.

67 Whether the fact issues are reviewed on the agency record or one made in the review action, the  
68 court shall take due account of the presumption of official regularity, the experience and specialized  
69 competence of the agency, and the purposes of the basic law under which the agency has acted.

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