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HOUSE BILL NO. 2370

Offered January 16, 2017

A *BILL to amend and reenact §§ 2.2-4023.1 and 2.2-4028 of the Code of Virginia, relating to Administrative Process Act; reconsideration or intermediate relief; suspension of effective date of a regulation or agency decision.*

Patron—Head

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4023.1 and 2.2-4028 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4023.1. Reconsideration.

A. A party may file a petition for reconsideration of an agency's final decision made pursuant to § 2.2-4019 or 2.2-4020. The petition shall be filed with the agency not later than 15 days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall ~~not~~ suspend the execution of the agency decision ~~not~~ and toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of Supreme Court of Virginia; ~~unless the agency provides for suspension of its decision when it grants a petition for reconsideration.~~ The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.

B. The agency shall render a written decision on a party's timely petition for reconsideration within 30 days from receipt of the petition for reconsideration. Such decision shall (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action.

C. If reconsideration is sought for the decision of a policy-making board of an agency, such board may (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) notwithstanding any other provision of law, delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the agency that provides administrative support to the board, in which case a decision on the reconsideration shall be rendered within 30 days of receipt of the petition by the board.

D. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

E. The agency may reconsider its final decision on its own initiative for good cause within 30 days of the date of the final decision. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

F. Notwithstanding the provisions of this section, (i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii) any agency that has statutory authority for reconsideration in its basic law may respond to requests in accordance with such law.

§ 2.2-4028. Intermediate relief.

When judicial review is instituted or is about to be, the agency concerned ~~may~~ *shall*, on request of any party ~~or its own motion~~, postpone the effective date of the regulation or decision involved ~~where it deems that justice so requires. Otherwise the court may, on proper application and with or without bond, deposits in court, or other safeguards or assurances as may be suitable, issue all necessary and appropriate process to postpone the effective dates or preserve existing status or rights pending conclusion of the review proceedings if the court finds the same to be required to prevent immediate, unavoidable, and irreparable injury and that the issues of law or fact presented are not only substantial but that there is probable cause for it to anticipate a likelihood of reversible error in accordance with § 2.2-4027.~~ Actions by the court may include (i) the stay of operation of agency decisions of an injunctive nature or those requiring the payment of money or suspending or revoking a license or other benefit and (ii) the continuation of previous licenses in effect until timely applications for renewal are duly determined by the agency.

INTRODUCED

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