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HOUSE BILL NO. 2211

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact § 2.2-4020 of the Code of Virginia, relating to the Administrative Process Act; formal hearings; proceedings held by telephone.

Patron—Fariss

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4020 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4020. Formal hearings; litigated issues.**

A. The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may do so in any case to the extent that informal procedures under § 2.2-4019 have not been had or have failed to dispose of a case by consent.

B. Parties to formal proceedings shall be given reasonable notice of the (i) time, place, and nature thereof; (ii) basic law under which the agency contemplates its possible exercise of authority; (iii) matters of fact and law asserted or questioned by the agency; and (iv) contact information consisting of the name, telephone number, and government email address of the person designated by the agency to respond to questions or otherwise assist a named party. Applicants for licenses, rights, benefits, or renewals thereof have the burden of approaching the agency concerned without such prior notice but they shall be similarly informed thereafter in the further course of the proceedings whether pursuant to this section or to § 2.2-4019.

C. In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing. *In any formal proceeding held by telephone, the presiding officers, or a person designated by such persons, shall make one additional attempt at contact if contact is not made with a party to the hearing on the first attempt, prior to commencing the hearing.* Where a hearing officer presides, or where a subordinate designated for that purpose presides in hearings specified in subsection F of § 2.2-4024, he shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by the presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion. The agency shall give deference to findings by the presiding officer explicitly based on the demeanor of witnesses.

D. Prior to the recommendations or decisions of subordinates, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) statements of reasons therefor. In all cases, on request, opportunity shall be afforded for oral argument (a) to hearing officers or subordinate presiding officers, as the case may be, in all cases in which they make such recommendations or decisions or (b) to the agency in cases in which it makes the original decision without such prior recommendation and otherwise as it may permit in its discretion or provide by general rule. Where hearing officers or subordinate presiding officers, as the case may be, make recommendations, the agency shall receive and act on exceptions thereto.

E. All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by 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.

INTRODUCED

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