

LD0543661

SENATE BILL NO. 499

Senate Amendments in [] — February 10, 1994

A BILL to amend and reenact § 9-6.14:11 of the Code of Virginia, relating to permits by default.

Patron—Gartlan

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 9-6.14:11 of the Code of Virginia is amended and reenacted as follows:**

§ 9-6.14:11. Informal fact finding.

A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures include rights of parties to the case (i) to have reasonable notice thereof, (ii) to appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer as provided by subsection A of § 9-6.14:14.1, for the informal presentation of factual data, argument, or proof in connection with any case, (iii) to have notice of any contrary fact basis or information in the possession of the agency which can be relied upon in making an adverse decision, (iv) to receive a prompt decision of any application for a license, benefit, or renewal thereof, and (v) to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case.

B. Agencies may, in their case decisions, rely upon public data, documents or information only when the agencies have provided all parties with advance notice of an intent to consider such public data, documents or information. This requirement shall not apply to an agency's reliance on case law and administrative precedent.

C. In cases where a board or commission meets to render an informal fact-finding decision 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.

D. In any informal fact-finding proceeding in which a hearing officer, as described in § 9-6.14:14.1, 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 ninety days from the date of the informal fact-finding proceeding or from a later date agreed to by the named party and the agency. If the agency does not render a decision within ninety 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 thirty days from agency receipt of the notice, the decision is deemed to be in favor of the named party. An agency shall provide notification to the named party of its decision within five days of the decision.

E. In any informal fact-finding proceeding in which a hearing officer, as described in § 9-6.14:14.1, is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within thirty days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within thirty 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 thirty 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 the State Water Control Board or the Department of Environmental Quality [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.

F. The provisions of subsection D notwithstanding, if the board members or agency personnel who conducted the informal 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 D 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 notification 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.

ENGROSSED

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