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HOUSE BILL NO. 2396

Offered January 23, 1995

A BILL to amend and reenact §§ 10.1-1318 and 62.1-44.29 of the Code of Virginia, relating to appeals of agency action.

Patrons—Plum, Almand, Christian, Connally, Cooper, Copeland, Crittenden, Darner, Dillard, Grayson, Jones, J.C., Melvin, Morgan, Murphy, Phillips, Puller, Robinson, Scott, Van Landingham and Van Yahres; Senators: Calhoun, Gartlan, Howell, Lambert, Lucas, Maxwell, Miller, Y.B., Waddell and Woods

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1318 and 62.1-44.29 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1318. Appeal from decision of Board.

A. Any owner aggrieved by a final decision of the Board under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

B. Any person who is aggrieved by *has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under § 10.1-1322, who participated, in person or by submittal of written comments, in the public comment process related to the Board's decision and who has exhausted all available administrative remedies for review of the Board's decision,* shall be entitled to judicial review of the Board's decision in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) *if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the federal Constitution.*

The person invoking jurisdiction under this subsection bears the burden of establishing that A person shall be deemed to meet such standard if (i) such person has suffered an actual, or threatened or imminent injury; (ii) such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized; (iii) such injury is fairly traceable to the decision of the Board and not the result of the action of some third party not before the court; and (iv) (iii) such injury will likely be redressed by a favorable decision by the court.

§ 62.1-44.29. Judicial review.

~~(1) Any owner aggrieved by, or any person who has participated, in person or by submittal of written comments, in the public comment process related to, a final decision of the Board under §§ 62.1-44.15 (5), 62.1-44.15 (8a), (8b), and (8c), 62.1-44.16, 62.1-44.17, 62.1-44.19 or § 62.1-44.25 relating to Virginia Pollution Discharge Elimination System (VPDES) permits, whether such decision is affirmative or negative in form, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the federal Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or threatened injury, (ii) such injury is fairly traceable to a decision of the Board, and (iii) such injury will likely be redressed by a favorable decision by the court.~~

~~(2) through (8) [Repealed.]~~

INTRODUCED

HB2396