

LD2175661

## SENATE BILL NO. 488

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding a section numbered 9-6.14:4.2, relating to certain prohibited ex parte contacts in certain proceedings subject to the Administrative Process Act.

Patrons—Gartlan; Delegates: Croshaw and Diamonstein

Referred to the Committee on General Laws

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

**1. That the Code of Virginia is amended by adding a section numbered 2.1-346.2, as follows:**

§ 9-6.14:4.2. *Prohibited ex parte communications.*

A. The provisions of this section apply to any hearing and to the development or amendment of regulations pursuant to § 9-6.14:7.1 except to the extent required for the disposition of ex parte matters as authorized by law.

B. For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter.

C. No interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, hearing officer, or other employee who is or may reasonably be expected to participate in the decisional process of the agency, an ex parte communication relevant to the merits of the hearing or regulation.

D. No member of the body comprising the agency, hearing officer, or other employee who is or may reasonably be expected to participate in the decisional process of the agency, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the hearing or regulation.

E. A member of the body comprising the agency, hearing officer, or other employee who is or may reasonably be expected to participate in the decisional process of the agency who receives, or who makes or knowingly causes to be made, a communication prohibited by this section shall place on the public record of the action:

1. All such written communications;

2. Memoranda stating the substance of all such oral communications; and

3. All written responses, and memoranda stating the substance of all oral responses, to the materials described in subdivisions 1 and 2 of this subsection.

F. Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the agency, hearing officer, or other employee presiding over the hearing or regulatory process may, to the extent consistent with the interests of justice and the policy of the basic law, require the party to show cause why his claim or interest in the hearing or regulation should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

G. The prohibitions of this section shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a matter is noticed for hearing or at which a Notice of Intended Regulatory Action is published unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

H. The provisions of this section shall not be construed to repeal or override other provisions of law or agency regulation which impose stricter prohibitions or limits on ex parte communications.

INTRODUCED

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