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HOUSE BILL NO. 1412

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on April 10, 1996)

(Patron Prior to Substitute—Delegate Murphy)

A BILL to amend and reenact §§ 10.1-1318, 10.1-1457 and 62.1-44.29 of the Code of Virginia, relating to appeals of agency action.

Be it enacted by the General Assembly of Virginia:

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

§ 62.1-44.29. Judicial review.

(1) Any ~~owner~~ person aggrieved by 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, 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.).

(2) through (8) [Repealed.]

2. That §§ 10.1-1318, 10.1-1457 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 United States 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, threatened or imminent injury; (ii) such injury which is an invasion of an immediate, a legally protected, pecuniary and substantial interest and which is concrete and particularized; (iii) (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent 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.*

§ 10.1-1457. Judicial review.

~~Any~~A. Except as provided in subsection B, any person aggrieved by a final decision of the Board or Director under this chapter shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

B. Any person who has participated, in person or by the submittal of written comments, in the public comment process related to a final decision of the Board or Director under § 10.1-1408.1 or § 10.1-1426 and who has exhausted all available administrative remedies for review of the Board's or Director's decision, shall be entitled to judicial review thereof in accordance with 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 United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (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, 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 United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the

60 *result of the independent action of some third party not before the court; and (iii) such injury will likely*
61 *be redressed by a favorable decision by the court.*

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

63 **3. That the first enactment of this act shall expire upon a final and unappealable decision of a**
64 **court of competent jurisdiction declaring that subsection B of § 10.1-1318 as it is currently**
65 **effective does not meet the requirements for state program approval under Title V of the federal**
66 **Clean Air Act or regulations promulgated thereunder with respect to standing to seek judicial**
67 **review of state permitting decisions.**

68 **4. That the second enactment of this act shall not be effective unless and until a final and**
69 **unappealable decision of a court of competent jurisdiction has declared that subsection B of**
70 **§ 10.1-1318 as it is currently effective does not meet the requirements for state program approval**
71 **under Title V of the federal Clean Air Act or regulations promulgated thereunder with respect to**
72 **standing to seek judicial review of state permitting decisions.**