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## HOUSE BILL NO. 1412

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on February 26, 1996)

(Patron Prior to Substitute—Delegate Murphy)

*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.*

**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 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.). ~~The person invoking jurisdiction under this subsection bears the burden of establishing that (i) such person has suffered an actual, 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) such injury will likely be redressed by a favorable decision by the court.~~

C. *For purposes of subsection B, a person "aggrieved" by a permit issued by the Board under a mandated or delegated program pursuant to the federal Clean Air Act (42 U.S.C. § 7401 et seq.) means a person meeting the applicable minimum standing requirements established by the federal Clean Air Act or regulations adopted thereunder which are necessary on or after the effective date of this subsection to obtain federal approval, for state administration, of such program.*

§ 62.1-44.29. Judicial review.

~~(1) Any owner aggrieved by, or any person who is aggrieved by and 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, and who has exhausted all available administrative remedies, is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). For purposes of this section, a person "aggrieved" by a permit issued by the Board under a delegated program pursuant to the federal Clean Water Act (33 U.S.C. § 1251 et seq.) means a person meeting the applicable minimum standing requirements established by the Clean Water Act or regulations adopted thereunder which are necessary to obtain or retain federal approval, for state administration, of such program.~~

~~(2) through (8) [Repealed.]~~

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

SENATE SUBSTITUTE

HB1412S1