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HOUSE BILL NO. 1719

House Amendments in [] — January 29, 1997

A *BILL to amend and reenact § 9-6.14:17 of the Code of Virginia, relating to the Administrative Process Act; issues on review.*

Patron—Robinson

Referred to Committee on General Laws

[Be it enacted by the General Assembly of Virginia:

1. That § 9-6.14:17 of the Code of Virginia is amended and reenacted as follows:]

§ 9-6.14:17. Issues on review.

A. The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidential support for findings of fact.

B. The determination of such fact issue is to be made upon the whole evidential record provided by the agency if its proceeding was required to be conducted as provided in § 9-6.14:8 or § 9-6.14:12 of this chapter or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein. When the decision on review is so to be made on such agency record, the duty of the court with respect to issues of fact is limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did. Where there is no such agency record so required and made, any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings under § 9-6.14:7.1 or § 9-6.14:11 as augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency. Whether such fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

C. Notwithstanding the provisions of subsection B, in any case in which a hearing officer for an agency [which is (i) a party to an enforcement proceeding and (ii)] exempt from the provisions of § 9-6.14:14.1 provides a recommendation or conclusion of the case decision, the court may [~~try the matter de novo~~ if it finds that a manifest injustice has occurred or would occur otherwise (i) remand the case to the agency with instructions or (ii) try the case de novo.]

ENGROSSED

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