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SENATE BILL NO. 746

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 2, 2016)

(Patron Prior to Substitute—Senator Wagner)

A BILL to amend and reenact § 2.2-4030 of the Code of Virginia, relating to recovery of attorney fees from agency; actions brought in violation of law or for an improper purpose.

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4030 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4030. Recovery of costs and attorney fees from agency.**

A. In any civil case brought under Article 5 (§ 2.2-4025 et seq.) of this chapter or §§ § 2.2-4002, 2.2-4006, 2.2-4011, or § 2.2-4018, in which any person contests any agency action, such person shall be entitled to recover from that agency, including the Department of Game and Inland Fisheries, reasonable costs and attorneys' attorney fees if such person substantially prevails on the merits of the case and (i) the agency's position is not substantially justified, (ii) *the agency action was in violation of law, or (iii) the agency action was for an improper purpose*, unless special circumstances would make an award unjust. The award of attorneys' attorney fees shall not exceed \$25,000.

B. Nothing in this section shall be deemed to grant permission to bring an action against an agency if the agency would otherwise be immune from suit, or to grant a right to bring an action by a person who would otherwise lack standing to bring the action.

C. Any costs and attorneys' attorney fees assessed against an agency under this section shall be charged against the operating expenses of the agency for the fiscal year in which the assessment is made, and shall not be reimbursed from any other source.