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SENATE BILL NO. 154

Offered January 10, 2018

Prefiled December 28, 2017

A BILL to amend and reenact § 2.2-4024 of the Code of Virginia, relating to the Administrative Process Act; hearing officers; timely decisions.

Patron—Edwards

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4024 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

- 1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and

3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer appointed in accordance with this section shall be subject to disqualification as provided in § 2.2-4024.1. If the hearing officer denies a petition for disqualification pursuant to § 2.2-4024.1, the petitioning party may request reconsideration of the denial by filing a written request with the Executive Secretary along with an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion as follows:

1. If the agency's written regulations or procedures require the hearing officer to render a recommendation or conclusion within a specified time period, the hearing officer shall render the recommendation or conclusion on or before the expiration of the specified period; and

2. In all other cases, the hearing officer shall render the recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency.

If the hearing officer does not render a decision within 90 days the time required by this subsection, then the agency or the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

INTRODUCED

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59 F. This section shall not apply to hearings conducted by (i) any commission or board where all of
60 the members, or a quorum, are present; (ii) the Virginia Alcoholic Beverage Control Authority, the
61 Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia
62 Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.),
63 § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under
64 Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened
65 pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board
66 of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the
67 Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet
68 the minimum qualifications set forth in subsection A. Agency employees who are not licensed to
69 practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to
70 clause (ii) shall participate in periodic training courses.

71 G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing
72 officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland
73 Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia
74 Resources Authority pursuant to their basic laws.