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## HOUSE BILL NO. 1532

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws)

(Patron Prior to Substitute—Delegate Grayson)

House Amendments in [ ] — February 13, 1996

A *BILL to amend and reenact [ § § 9-6.14:4, 9-6.14:16, 10.1-1318, and 62.1-44.29 ] of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 9-6.14:7.2, relating to the Administrative Process Act [ ; rights of citizens ] .*

**Be it enacted by the General Assembly of Virginia:**

**1. That [ § § 9-6.14:4, 9-6.14:16, 10.1-1318, and 62.1-44.29 of the Code of Virginia are is ] amended and reenacted and that the Code of Virginia is amended by adding a section numbered 9-6.14:7.2 as follows:**

§ 9-6.14:4. Definitions.

As used in this chapter:

A. "Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

B. "Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

C. "Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

D. "Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means any manual or other document developed by a state agency for official use [ ~~to direct, instruct or advise to provide general direction, instruction or advice to~~ ] agency employees in determinations regarding permitting activities.

E. "Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of this chapter and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of this chapter in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 hereof in connection with case decisions.

F. "Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

G. "Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

H. ~~[Repealed.]~~

§ 9-6.14:7.2. *Use of supplemental information by agency.*

A. *Each state agency shall annually publish a list of any guidance documents. Notice of any changes to existing guidance documents shall be published at the time of the change in the Virginia Register of Regulations unless the change is so minor that the agency finds such publication to be impractical or unnecessary.*

B. *When a state agency proposes to use new guidance documents developed by it, notice of the proposed use shall be published by the agency in at least one issue of the Virginia Register of Regulations before commencing the use.*

C. *This requirement shall not apply to federal guidance documents.*

~~[ § 9-6.14:16. Right, forms, venue.~~

A. Any person affected by and claiming the unlawfulness of any regulation, or party aggrieved by and claiming unlawfulness of a case decision, as the same are defined in § 9-6.14:4 of this chapter and whether or not excluded from the procedural requirements of Article 2 (§ 9-6.14:7.1 et seq.) or 3 (§ 9-6.14:11 et seq.) hereof, shall have a right to the direct review thereof by an appropriate and timely court action against the agency as such or its officers or agents in the manner provided by the rules of the Supreme Court of Virginia. *In the case of environmental-permitting decisions made under*

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60 *the authority of §§ 10.1-1318, 10.1-1457, or § 62.1-44.29, "aggrieved" shall be interpreted no more*  
61 *broadly than required by federal environmental laws and regulations governing delegation of federal*  
62 *environmental programs to state agencies for administration.* Such actions may be instituted in any  
63 court of competent jurisdiction as provided in § 9-6.14:5, and the judgments of such courts of original  
64 jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise  
65 provided by law. In addition, when any such regulation or case decision is the subject of an enforcement  
66 action in court, the same shall also be reviewable by the court as a defense to the action, and the  
67 judgment or decree therein shall be appealable as in other cases.

68 B. The provisions of this article shall apply to case decisions regarding the grant or denial of aid to  
69 dependent children, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization.  
70 However, no appeal pursuant to this article may be brought regarding the adequacy of standards of need  
71 and payment levels for public assistance programs. Notwithstanding the provisions of § 9-6.14:17, such  
72 review shall be based solely upon the agency record, and the court shall be limited to ascertaining  
73 whether there was evidence in the agency record to support the case decision of the agency acting as the  
74 trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand  
75 the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy,  
76 federal or state, upon which the action of the agency was based shall not be subject to review by the  
77 court. No intermediate relief shall be granted under § 9-6.14:18.

78 § 10.1-1318. Appeal from decision of Board.

79 A. Any owner aggrieved by a final decision of the Board under §§ 10.1-1309, 10.1-1322 or  
80 subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of  
81 the Administrative Process Act (§ 9-6.14:1 et seq.).

82 B. Any person who is aggrieved by a final decision of the Board under § 10.1-1322, who  
83 participated, in person or by submittal of written comments, in the public comment process related to  
84 the Board's decision and who has exhausted all available administrative remedies for review of the  
85 Board's decision, shall be entitled to judicial review of the Board's decision in accordance with the  
86 provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). The person invoking jurisdiction under  
87 this subsection bears the burden of establishing that (i) such person has suffered an actual, threatened or  
88 imminent injury; (ii) such injury is an invasion of an immediate, legally protected, pecuniary and  
89 substantial interest which is concrete and particularized; (iii) such injury is fairly traceable to the  
90 decision of the Board and not the result of the action of some third party not before the court; and (iv)  
91 such injury will likely be redressed by a favorable decision by the court. *For purposes of this section,*  
92 *"aggrieved" shall have the meaning ascribed to it in § 9-6.14:16.*

93 § 62.1-44.29. Judicial review.

94 (1) Any owner *person* aggrieved by a final decision of the Board under §§ 62.1-44.15 (5), 62.1-44.15  
95 (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  
96 affirmative or negative in form, is entitled to judicial review thereof in accordance with the provisions of  
97 the Administrative Process Act (§ 9-6.14:1 et seq.). *For purposes of this section, "aggrieved" shall have*  
98 *the meaning ascribed to it in § 9-6.14:16.*

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