


Commonwealth of Virginia		
Thomas A. Lisk, Chair		General Assembly Building 201 North 9th St., Second Floor Richmond, Virginia 23219 (Phone) 804-786-3591 (Fax) 804-692-0625 akubincanek@dls.virginia.gov http://codecommission.dls.virginia.gov/alac/alac.shtml
Andrew Kubincanek, Program Coordinator		
Administrative Law Advisory Committee		

2015 Session Review - VAPA Bills

Passed

ALAC Recommended

[SB 927](#) Administrative Process Act; disqualification; presiding officers and hearing officers. Establishes a process for the disqualification of presiding officers and hearing officers in situations where such officers cannot accord a fair and impartial hearing or consideration or when required by the applicable rules governing the practice of law. A presiding officer or hearing officer shall be subject to disqualification for any factor leading a reasonable person to question his impartiality, including prejudice, financial interest, and ex parte communications. The bill establishes a process for challenging the initial decision to not disqualify. This bill is a recommendation of the Virginia Code Commission.

[SB 928](#) Virginia Administrative Process Act; default by nonappearing party. Establishes a mechanism to more efficiently dispose of contested matters under the Virginia Administrative Process Act where the defendant in an administrative proceeding fails to appear at a hearing without a valid excuse. Currently, unless an agency's enabling statute provides differently, there is no provision for allowing an agency to enter a default order in a case in which the defendant fails to appear at a hearing. The bill's provisions do not apply to any administrative hearings process that is governed by § 32.1-325.1 relating to provider appeals. This bill is a recommendation of the Virginia Code Commission.

Other

[HB 1751](#) Administrative Process Act; certain review by Joint Commission on Administrative Rules. Provides that in the event the economic impact analysis completed by the Department of Planning and Budget (the Department)

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reveals that a proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period allowed for preparation of the economic impact analysis. The bill requires the Joint Commission on Administrative Rules to review such rule or regulation and report quarterly to the Governor and the General Assembly on any such regulation, including in its report a statement of any position taken by the Commission on any such regulation.

HB 1899/SB 1198 Administrative Process Act; legislative review of regulations. Extends the period during which the relevant standing committee of both houses of the General Assembly or the Joint Commission on Administrative Rules may transmit, with the Governor's concurrence, a statement directing the suspension of the effective date of a portion or all of a final regulation. Under current law, the statement must be filed within the 30-day final adoption period. The bill provides that if the promulgating agency has specified a later effective date, the statement may be transmitted at any time prior to the specified later effective date. The bill contains technical amendments.

Failed

ALAC Recommended

SB 929 State agencies; use of third-party commercial carrier for service, delivery, or transmission of notices. Authorizes state agencies under Titles 2.2 and 54.1 of the Code of Virginia to use a third-party commercial carrier when service, delivery, or transmission of any notice or paper is authorized or required to be accomplished by mail, ordinary mail, registered mail, or certified mail. The bill also (i) provides that any applicable requirements in other titles of the Code of Virginia or the Rules of the Supreme Court of Virginia for proof of any service, delivery, or transmission shall remain in effect when a third-party commercial carrier is used and (ii) specifies that where registered or certified mail is required, proof of service must also be required by the third-party commercial carrier. This bill is a recommendation of the Virginia Code Commission.

Passed Senate. Left in House Courts of Justice.

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Other

SB 1281 Administrative Process Act; exemptions for certain industries regulated by the Department of Criminal Justice Services. Permits the Criminal Justice Services Board to establish training standards for private security professionals, bail bondsmen, bail enforcement agents, and special conservators of the peace without utilizing the Administrative Process Act. Under current law, the establishment of training standards for law enforcement, corrections officers, and certain others is exempted.

Defeated in Senate.


SB 1282 Administrative Process Act; notice in formal proceedings; disqualification of presiding and hearing officers. Establishes a process for the disqualification of presiding officers and hearing officers. The bill also specifies the information that an agency must provide parties to a formal proceeding including (i) the names and addresses of witnesses the agency will present at the hearing unless disclosure would be otherwise prohibited by law, (ii) copies of statements of parties and witnesses proposed to be called by the agency, (iii) copies of all records and other evidence that the agency proposes to offer, (iv) copies of investigative reports made by or on behalf of the agency pertaining to the subject matter of the adjudication, (v) copies of statements of expert witnesses proposed to be called by the agency, and (vi) any exculpatory material in the possession of the agency.

Passed Senate. Left in House Appropriations.

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2015 Work Plan Draft Administrative Law Advisory Committee

CONTINUING

Model State Administrative Procedure Act

The Model State Administrative Procedure Act judicial work group will reconvene to continue discussion of ex parte communications and any additional amendments. The Administrative Law Advisory Committee (ALAC) will also discuss amendments on administrative hearings by teleconference or videoconference.

Executive Review Process

The work group will continue to study EO-17, Development and Review of State Agency Regulations and discuss recommendations on increasing the efficiency and effectiveness of the executive review process for rules and regulations.

APA Exemptions

ALAC will form a work group to review an amendment to § 2.2-4006 enacted by the 2011 Session of the General Assembly, regarding an exemption for regulations that are necessary to conform to changes in Virginia law where no agency discretion is involved. The 2011 amendment required such regulations to be filed with the Registrar's office within 90 days of the law's effective date. Some agencies are now being advised that once the 90-day period passes, they cannot use the exemption and have to go through the full or fast-track process.

Guidance Documents

ALAC previously discussed soliciting presentations from the Department of Environmental Quality and the Department of Health Professions regarding these agencies' use of guidance documents.

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