


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

SUMMARY
Administrative Law Advisory Committee
Guidance Document Work Group
September 21, 2016
12:00 p.m.
House Room 2
The Capitol, Richmond

MEMBERS PRESENT: Karen Perrine (work group chair), Mike Quinan, Jeff Gore, Tom Lisk, Elizabeth Andrews (by phone)

MEMBERS ABSENT: n/a

STAFF PRESENT: Andrew Kubincanek

Welcome and call to order: Karen Perrine called the meeting to order at 12:05 p.m. The purpose of the work group is to provide clarity in instances where state entities with no rulemaking authority issue guidance documents that may be of interest to members of the public.

Review of Draft Language: The work group reviewed two drafts--a draft by Jeff Gore amending §2.2-4101 to include a definition of non-regulatory state agencies, to which the requirement to file guidance documents would apply, and a second draft by Karen Perrine to create a new section on guidance documents, in which the existing definition of agency would also apply to entities with no rulemaking authority. The second draft maintained current exemptions, but struck the Code Commission, as it has rulemaking authority and already files guidance documents.

The group agreed that the creation of a new section was cleaner and more easily understood. Tom Lisk suggested maintaining the Code Commission exemption and asked why the draft defined the term state agency as opposed to agency, as it is used elsewhere. Ms. Perrine stated that this was to prevent confusion with the previous definition and suggested changing the term to entity or state entity. Mr. Gore suggested changing the definition to simply agency, but noting that for the purpose of this section, agency would include any authority, instrumentality, officer, board, or other unit of government that did not have express rulemaking authority. The work group agreed with Mr. Gore's approach.

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 Elizabeth Andrews
 Roger L. Chaffe
 Jeffrey S. Gore

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 Eric M. Page
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 Mike Quinan

Alexander F. Skirpan, Jr.
 Brooks Smith
 Kristina Alexander
 Kristi Wright

Mr. Lisk also suggested retaining the language from the first draft regarding guidance documents related to program rules and policies.

Guidance Documents as Quasi-Regulations: Both drafts contained language stating that nothing in the sections shall confer or impose any regulatory authority where it did not already exist. The group agreed to remove the words “be interpreted to” and changed state agency to agency. The group considered whether or not the language about creating rights to an appeal or challenge were necessary. Mr. Gore stated that the language was meant to leave no doubt about the status of guidance documents, but that he was unaware of any right to appeal guidance documents in the VAPA. Ms. Perrine suggested that the group present the language to the Office of the Attorney General for an opinion on its necessity.

List of Agencies Affected: Ms. Perrine provided the group with a list of affected agencies, noting that there are some agencies that file documents, but do not meet the current definition, and other agencies that should be filing guidance documents, but do not. Mr. Lisk asked if legislative agencies should be exempted under the new section, or if their exemption is implied by the General Assembly’s exemption. Mr. Gore asked if the community colleges would be included in the new definition. Ms. Perrine stated that she would prefer to err on the side of inclusiveness, but would revisit these issues if there was a concern. Mr. Lisk asked if there would be any fiscal impact or an increased workload for the Registrar’s Office staff. Ms. Perrine stated that, since agencies are only required to file a list of guidance documents, the Registrar’s Office did not anticipate a significant increase in workload.

Public Comment and Adjournment: Ms. Perrine opened the floor for public comment. Hearing none, the meeting adjourned at 12:50 p.m.

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