


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

SUMMARY
Administrative Law Advisory Committee
MSAPA Work Group
August 9, 2017
11:30 AM
House Room 2
Capitol Building

MEMBERS PRESENT: Tom Lisk (chair), Eric Page, Roger Chaffe, Paul Kugelman, Mike Quinan

MEMBERS ABSENT: Mike Quinan

STAFF PRESENT: Andrew Kubincanek

Welcome and call to order: Tom Lisk called the meeting to order at 11:30 a.m.

Reconsideration: In 2015 ALAC created a process for reconsideration of case decisions that was limited to formal hearings and did not toll the appeals process. During the 2016 Session of the Virginia General Assembly, HB 2370 was introduced to broaden that authority to include informal fact-findings and include provisions to toll the appeals process. The bill failed but may be reintroduced in 2018. At the request of the House General Laws Committee, JLARC and DPB conducted a study on the bill and concluded that it would incur significant costs on agencies.

Roger Chaffe asked if anyone on ALAC knew if the 2015 statute had been utilized by agencies. Paul Kugelman stated that he could not quantify how much it had been used, but stated that the Attorney General’s Office had received questions on the scope and clarity of the language. Mr. Chaffe suggested giving the 2015 statute more time to work before changing it again. Mr. Kugelman expressed concerns that HB 2370 or a similar bill would give someone too much power to arbitrarily delay actions.

Eric Page said that the work group consistently opposed the tolling provision, and that he still believed that was correct. He stated the intent of the language was to give agencies the flexibility

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to reconsider a decision if new evidence had come to light, and that he thought the majority of requests for reconsideration would be denied by the agency. Mr. Page stated that ALAC should not support passage of HB 2370.

Mr. Lisk agreed that it was premature to consider amending the reconsideration section at this time.

Protective Orders: The Code Commission did not take action on ALAC's bill related to protective orders and sealing the record of a hearing, expressing concerns that the standard for doing so was too broad.

Mr. Page suggested that the committee could use the standard in Rule 4.1C of the Rules of the Supreme Court to narrow the scope of what could be kept confidential. He added that ALAC used the existing standard in §2.2-4023 to maintain consistency within the APA and protect the same information that can be sealed in a final order, so that said information is not made public during the hearing. Mr. Lisk stated that using the standard from Rule 4.1C might necessitate also amending §2.2-4023 and questioned whether or not Rule 4.1C was actually a more narrow standard.

Mr. Page suggested drafting multiple options to present to the Code Commission. Mr. Kugelman volunteered to draft the language with assistance from Mr. Page. Mr. Lisk stated that the committee needed to be comfortable that it was a tight, but consistent standard.

Public Comment and Adjournment: Mr. Lisk opened the floor for public comment. There being none, the meeting was adjourned at 11:55 a.m.

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