


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

SUMMARY

Administrative Law Advisory Committee
Emergency Regulations Work Group
November 26, 2012
11:00 AM
General Assembly Building
6th Floor, Speaker's Conference Room

Members Present: Christopher R. Nolen (Chair), Cindy Berndt, Roger Chaffe, Thomas A. Lisk, Karen Perrine, Michael Quinan, and Alexander F. Skirpan, Jr.

Staff Present: Elizabeth Palen

I. Welcome and call to order

- **Christopher R. Nolen**, (Chair) called the meeting to order.
- **Mr. Nolen** explained that the objective of the work group meeting is to discuss extending the effective period of emergency regulations.
 - Mr. Nolen stated that he has heard this timeline is not long enough, potentially creating a regulatory gap between when emergency regulations expire (after one year with an option for a six-month extension) and when full regulations are promulgated.

II. Discussion of possible approaches to extending the time period for emergency regulations

Mr. Nolen presented a suggestion that allowed emergency regulations to remain effective for 24 months with an option for an unlimited amount of six-month extensions to be approved by the governor.

- **Mr. Nolen** stated that this suggestion was not his own and may be excessive.
- **Mr. Nolen** presented his own suggestion which allowed for the standard 12-month initial period with an option for two additional six-month extensions, for a potential total of 24 months.

Christopher R. Nolen, Chair
Elizabeth Andrews
Cindy Berndt
Roger L. Chaffe

Jeffrey S. Gore
Katya Herndon
Thomas A. Lisk
Eric M. Page

Karen Perrine
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Alexander F. Skirpan, Jr.
Brooks Smith

- **Thomas A. Lisk** stated that the issue raises two questions: 1) is the initial 12-month period sufficient? and 2) is it appropriate to add additional extensions?
 - **Mr. Lisk** stated that he believes many agencies struggle to meet the initial period, but that extending it to two years may be inappropriate as delays are often related to the review process, not the creation of the regulations.
 - **Roger Chaffe** agreed that the initial 12-month period is insufficient given the delays in the review process and suggested shortening the review process for regulations replacing an emergency regulation.
 - **Mr. Nolen** stated that a new review process would be beyond the mandate of this work group and suggested that the first steps would be to make the initial period longer, then discuss whether or not additional extensions are appropriate.
 - **Mr. Lisk** stated that he would be wary of adding too many extensions and keeping regulations that had not been through the public comment process in place for more than two years.
 - **Mr. Lisk** stated that extending the initial period to 18 months and retaining the option for one six-month extension may be the best way to serve the public by ensuring that regulatory gaps do not occur and emergency regulations do not stay in place for too long.
 - **Mr. Chaffe** agreed, stating that anything further may require writing a new section in the administrative process act to address the system for emergency regulations.
- **Mr. Nolen** suggested that ALAC recommend to the Code Commission that the initial period be extended to 18 months.
 - Mr. Nolen also suggested that language be added to ensure reviews are carried out in a timely fashion.
 - **Mr. Lisk** stated that 18 months and one extension period is best because it does not open the door to the inclusion of more extension periods in the future.
 - **Cindy Berndt** stated that increasing the initial period from 12 to 18 months would account for changes and added delays in the regulatory process, but that it may not be possible to make the review process more efficient.
- **Karen Perrine** stated that there have been cases with gaps of several weeks or months between when the initial period expired and the six-month extension was granted by the governor.
 - **Mr. Nolen** suggested that language should be added to make clear that the Governor must authorize the extension prior to the expiration of the initial effective period of emergency regulations.
 - **Mr. Chaffe and Mr. Lisk** agreed that extensions could not be granted retroactively.
- **Ms. Perrine** suggested increasing the time when agencies must request an extension from 30 days prior to expiration to 45 days prior to expiration.
 - **Cindy Berndt** stated that many agencies would accept that change.
 - **Mr. Lisk** suggested that might make things harder by technically giving agencies less time to request the extension.
 - **Mike Quinan** suggested language indicating that requests for extensions should be submitted as soon as possible, but no later than 30 days prior to expiration.

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- **Mr. Lisk** stated that he was not sure if there was actually a problem that needed fixed.
- **Mr. Nolen** assessed that there was not a consensus on the issue of when to request the extension.

III. Public comment

- **Mr. Nolen** invited public comment.

IV. Adjourn

- Hearing none, **Mr. Nolen** adjourned the meeting.

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