


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

**SUMMARY**  
**Administrative Law Advisory Committee**  
**May 7, 2014**  
**12:00 PM**  
**Capitol Building**  
**House Room 1**

**MEMBERS PRESENT:** Thomas Lisk (Chair), Eric Page, Katya Herndon, Alexander Skirpan, Roger Chaffe, Jeff Gore, Elizabeth Andrews, Karen Perrine, Edward Mullen, Brooks Smith, Kristina Stoney

**MEMBERS ABSENT:** Mike Quinan

**STAFF PRESENT:** Andrew Kubincanek

**Welcome and call to order:** Tom Lisk welcomed the group and called the meeting to order at 12:05 PM.

**New Members:** Mr. Lisk introduced Kristina Stoney, the group's new representative from the Office of the Attorney General. Mr. Lisk also announced that Katya Herndon would be leaving the Office of the Executive Secretary. Ms. Herndon has been coordinating with the office on a replacement.

**Discussion of 2014 Work Plan:**

*2014 Session Updates*

The group discussed Senate Bill 358, the ALAC-recommended bill on the date of adoption for the purpose of appeal. Mr. Lisk informed the group of changes to the recommended language following the November 2013 Code Commission meeting and the December 2013 ALAC meeting. The final bill reflected the Code Commission's desire for a single, clear date and set the date of adoption as the date of publication in the Register of Regulations. The group agreed that this could create a situation where appeals are filed once the regulation has already become effective and resolved to monitor the effects of the change.

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Elizabeth Andrews  
Roger L. Chaffe  
Jeffrey S. Gore

Katya Herndon  
Edward A. Mullen  
Eric M. Page  
Karen Perrine

Michael Quinan  
Alexander F. Skirpan, Jr.  
Brooks Smith  
Kristina Stoney

Brooks Smith addressed the group on House Bill 445, which provides an exemption for the Department of Environmental Quality (DEQ) on water quality standards. Previously, Total Maximum Daily Loads (TMDL) had been covered under an exemption for federally-mandated regulations, however, this mandate expired. DEQ worked with stakeholders to develop an alternative process to maintain the exemption and ensure that existing TMDLs remain in compliance. Mr. Smith stated that no further action was necessary at this time.

Mr. Lisk directed the group to House Bill 955, an exemption for regulations required by statute or the appropriations act. The bill was carried over to the 2015 Session of the General Assembly. Roger Chaffe asked if the proposed language was redundant. Karen Perrine stated that the bill would exempt certain regulations from all of Article 2, including the executive review process. Mr. Chaffe suggested discussing the language with the patron and making recommendations to clarify the intent of the bill. Mr. Lisk agreed that the group should discuss the bill with the patron if he intends to go forward in the 2015 Session.

#### *Model State Administrative Procedure Act study*

Eric Page updated the group on the three amendments where he believed the work group had achieved some degree of consensus. Mr. Lisk asked Mr. Page to reconvene the MSAPA judicial work group to discuss amendments relating to default orders in administrative hearings and disqualification of hearing officers. Mr. Lisk stated that the full committee would discuss amendments on the use of teleconference and videoconference in administrative hearings.

#### *Guidance Documents*

Mr. Lisk stated that a study on guidance documents would likely be a larger, multi-year project. Mr. Smith stated that guidance documents are a huge issue for practitioners; some agencies are very organized in this regard, and others are not. The issue is compounded when agencies incorporate guidance documents into case decisions. Mr. Lisk suggested looking at the Department of Environmental Quality as a model, and considered an agency-by-agency study, but decided that this may not be feasible. Ms. Perrine stated that the Department of Health Professions also organizes guidance documents very well. In consideration of a future study on guidance documents, Mr. Lisk suggested that the group solicit presentations from the Department of Environmental Quality and the Department of Health Professions regarding these agencies' use of guidance documents.

#### *Executive Order on Regulations/Executive Review Process*

The group discussed how the length of the executive review process has grown longer with each administration's executive order. Elizabeth Andrews noted that more and more bills have enactment clauses as a workaround. Jeff Gore stated that many legislators have expressed frustration with the length of time it takes for the provisions of a bill to be implemented due to the review process. Ms. Perrine referenced a JLARC study on inconsistencies with the VAPA and recent Executive Orders. Kristina Stoney stated that she had worked with Governor's Office on Executive Orders in the past and would be happy to discuss the Executive Order on regulations. Karen Perrine volunteered to head a work group to liaise with the Department of Planning and Budget and the Governor's office to offer input on the forthcoming executive order.

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*New Business: Delivery Methods of Administrative Notices*

The Code Commission expressed an interest in the results of a study on alternative delivery methods (such as electronic delivery methods) for administrative notices. Mr. Lisk stated that ALAC will contact relevant parties studying this issue and offer assistance or form a work group as is necessary.

*New Business: FOIA Study*

Mr. Lisk suggested that ALAC monitor the three-year study of the Freedom of Information Act passed during the 2014 Session. Brooks Smith stated that there are very clear intersects between the VAPA and FOIA and volunteered to liaise with the FOIA Advisory Council and monitor the study for any topics of interest.

*New Business: Exemptions*

Ms. Perrine suggested that ALAC review an amendment by the 2011 Session of the General Assembly to 2.2-4006, regarding an exemption for regulations that are necessary to conform to changes in Virginia law where no agency discretion is involved. In 2011, this exemption was amended to add that the regulation must 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 days pass, they cannot use the exemption and have to go through the full or fast-track process. Ms. Andrews suggested considering this along with clarifications to House Bill 955.

**Public Comment: Adjournment:** Mr. Lisk opened the floor for public comment. Hearing no public comment, Mr. Lisk adjourned the meeting at 12:58 PM.

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