

Commonwealth of Virginia

Christopher Nolen, Chair

Elizabeth Palen, Executive Director



General Assembly Building
910 Capitol Street, Second Floor
Richmond, Virginia 23219
(Phone) 804-786-3591
(Fax) 804-692-0625
EPalen@leg.state.va.us

<http://legis.state.va.us/codecomm/alac/alac.htm>

Administrative Law Advisory Committee

Meeting Summary
May 21, 2008; 12:15 PM
House Room 2; The Capitol
Richmond, Virginia

Members Present: Chris Nolen, Jim Guy, John Paul Jones, Roger Chaffe, Phyllis Errico, Jane Chaffin, Alex Skirpan, Martin Kent, Edward Macon (for Katya Herdon), Cindy Berndt

Staff Present: Elizabeth Palen, Patrick Regan and Maggie Dodd

Guests: Melanie West, Robin Crane

I. Welcome and Call to Order-Chris Nolen (Chair)

- The meeting was called to order at 12:15 PM

II. Melanie West, Associate Director, Economic & Regulatory Analysis Division, Virginia Department of Planning and Budget

- The Virginia Department of Planning and Budget is undergoing a review of the Administrative Process Act. The focus is on two main areas.
- First, there is a need to update public comment regulations.
 - Goal is to encourage agencies to re-promulgate their public participation guidelines.
 - Many agencies use public comment and notice through the Virginia Regulatory Town Hall.
 - Please see the Proposed Public Participation Regulation Handout.
 - There is a deadline of Jan 1, 2009 for agencies to have these new regulations in place.
 - Planning and Budget is training and advising agencies in Virginia for the change.
 - All agencies have a copy of the draft public comment regulations.
 - A presentation will be made to the full Attorney General's Task Force on Administrative and Regulatory Reform on June 20th to explain the recommended changes. This is the final date for public comment.
 - The Final Proposed Public Comment Guidelines will be handed out shortly after that meeting.
 - With Jane Chaffin's help, the adoption has been streamlined so that agencies can easily include it in their regulations.

- Jim Guy will send the draft out to the appropriate committees of the Virginia Bar Association.
- The second area of focus is on rulemaking in Article 2:
 - Robin Crane did a lot of work on the proposed changes.
 - The proposal is currently under review in the Governor's Office.
 - Please see the Proposed Changes to Article 2 Handout.
- Overall Goals:
 - Modernize the language to reflect developing terminology relating to the executive branch review process
 - Improve the readability and chronological organization of the various sections pertaining to the promulgation process so that the APA is more comprehensible to the non-specialist reader
 - Provide clear definitions of terms
 - Help the Code more clearly reflect the administrative procedures developed in response to past legislative mandates; and
 - Maintain enough continuity with the current Code language to avoid the appearance of changing policies.
- Caveats:
 - A more thorough revision of the APA could involve major revisions of the language such as an effort to reduce the time involved in regulatory promulgations.
 - Too much specificity in the Code that ties it to current administrative processes may be undesirable in that it would constrain future administrative streamlining.
- The goal is to present this in time for the next legislative session.
- There are some recommendations for changes that would affect more than just article 2, i.e. Virginia Register Act, but they are not substantive changes.
- ALAC would like the opportunity to look at the proposed changes so they can comment and report to the Code Commission.

III. Work Group Progress Reports

- Appeals Work Group-Roger Chaffe (Chair)
 - Overview of the draft of Part 2A.
 - Additional input will be requested before taking final action to present to the Code Commission, everyone has received a copy of the draft.
 - Part 2A hasn't been changed since 1990
 - Provide guidelines for the courts for how appeals from decisions should be handled.
 - A copy of the draft will be posted online with Roger's explanation of the changes.
 - Motion to provide this draft to interested stake holders for comment was accepted.
 - A copy of the draft with Roger's comments and the redlined changes will be posted online for comment.
- APA Exemptions Work Group-John Paul Jones (Chair)
 - See Handouts-Two categories of Exemptions were found.
 - Where an agencies function is being exempted from the code in the organic statute (A)

- Statement in the code that a particular agency action qualifies as an exemption already in the code (B)
- Category B seems to be regulations that are preemptive to regulatory process review.
- Category A
 - For the most part the things that are exempted are traditional exemptions with no real problems or controversies.
 - Next step might be to make subcategories of the exemptions, but probably same result will come about.
 - Code Commission saw many things come through, and they wanted to know is there really a problem. Periodically there needs to be a review, but this hand out brings us up- to- date.
 - Make sub-categories and then write a final report of findings
- Emergency Rulemaking
 - Is it being abused?
 - See handout.
 - GAB decides what an emergency is, which leads to a lot of “emergencies”.
 - Many times it is a legislative mandate that the agency proceed in this way, or they are trying to comply with a federal regulation/mandate
 - Total of 2 years of legislative sessions have been reviewed in this document.
 - Appropriations bills can be looked at for the next meeting.
- Incorporation by Reference Work Group-Jim Guy (Chair)
 - The group is in the process of developing an instrument (survey) to collect data on incorporation by reference-other states and one to practitioners/agencies/interested parties.
 - Questions still need to be developed. Comment from the group is welcome.
 - The second area the group is looking at deals with incorporation by reference with internet links.
 - The work group recommends a pop up when a web browser leaves a state agency website warning the browser that the link may not be the actual regulation or reference that is current.
- At the July Code Commission meeting a progress report will be given. There was a recommend that a website warning be added immediately for incorporation by reference links.

IV. Code Commission meeting

- Work plan for 2008-2009:
 - Send suggestions to Elizabeth.

V. The meeting was adjourned at 1:20 pm.