


Commonwealth of Virginia		
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Administrative Law Advisory Committee		

2016 Session Update

Recommended by ALAC

Passed

SB206 - Administrative Process Act; ex parte communications. Provides that, during the period that a hearing is pending, a hearing officer is prohibited from communicating with any person concerning the hearing without notice and opportunity for all parties to participate in the communication. The bill also provides that a hearing officer may communicate about a pending hearing in instances where the communication is authorized by law, involves a ministerial matter, or does not augment, diminish, or modify the evidence in the record. In addition, the bill establishes the procedures to be followed if a hearing officer makes or receives a prohibited communication and the relief that a hearing officer may provide in such instances. As introduced, the bill is the recommendation of the Administrative Law Advisory Committee and approved by the Virginia Code Commission. (Edwards - Passed with amendments)

SB207 - Administrative Process Act; reconsideration of formal hearings. Provides a procedure for a party to file a petition for reconsideration of an agency's decision from a formal hearing under the Administrative Process Act (APA). The bill requires the agency to render a written decision on a party's timely petition for reconsideration within 30 days; the agency may deny the petition, modify the decision, or vacate the decision and set a new hearing for further proceedings. The agency shall state the reasons for its action. The bill also provides for the reconsideration of other decisions of a policy-making board of a state agency. If reconsideration is sought for the decision of a board, the board may (i) consider the petition for reconsideration at its next regularly scheduled meeting, (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt, or (iii) delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the state agency that provides administrative support to the board. The bill provides that any agency that intends to promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration may promulgate emergency regulations. The bill also requires the Department of Human Resource Management to submit an annual report to the Senate Committee on General Laws and Technology and the House Committee on General Laws detailing (a) the number of employee grievance hearings held pursuant to the APA and (b) the

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number of decisions from such hearings that were rendered in favor of employees. As introduced, the bill is the recommendation of the Administrative Law Advisory Committee and approved by the Virginia Code Commission. (Edwards - Passed with amendments)

Not Recommended by ALAC

Passed

HB 462 - Administrative Process Act; contents of notices for case proceedings. Requires the notice for either an informal conference or a formal proceeding to include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party. (Head)

HB 644 - Administrative Process Act; judicial review of certain regulations. Provides that in any court action brought by a person affected by and claiming the unlawfulness of any regulation on the basis that an agency failed to follow any procedure for the promulgation or adoption of a regulation specified in the Administrative Process Act or in such agency's basic law, the burden shall be upon the party complaining of the agency action to designate and demonstrate the unlawfulness of the regulation by a preponderance of the evidence. The bill provides that if the court finds in favor of the party complaining of the agency action, the court shall declare the regulation null and void and remand the case to the agency for further proceedings. (Leftwich)

Failed

HB898 - Administrative Process Act; contents of economic impact statements. Requires the Department of Planning and Budget in preparing an economic impact analysis to also determine the cumulative impact of the proposed regulation, taking into account the impact of any other proposed or final regulation on the businesses or other entities to which the regulation being analyzed would apply. The bill contains technical amendments. (Ransone - Left in House General Laws)

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VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 478

An Act to amend the Code of Virginia by adding in Article 4 of Chapter 40 of Title 2.2 a section numbered 2.2-4024.2, relating to the Administrative Process Act; ex parte communications.

[S 206]

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 4 of Chapter 40 of Title 2.2 a section numbered 2.2-4024.2 as follows:

§ 2.2-4024.2. *Ex parte communications.*

A. Except as otherwise provided in this section, while a formal hearing conducted in accordance with § 2.2-4020 is pending, the hearing officer shall not communicate with any person concerning the hearing without notice and opportunity for all parties to participate in the communication.

B. A hearing officer may communicate about a pending formal hearing conducted in accordance with § 2.2-4020 with any person if the communication is authorized by law or concerns an uncontested procedural issue. A hearing officer may communicate with any person on ministerial matters about a pending formal hearing conducted in accordance with § 2.2-4020 if the communication does not augment, diminish, or modify the evidence in the record.

C. If a hearing officer makes or receives a communication prohibited by this section, the hearing officer shall make a part of the hearing record: (i) a copy of the communication or, if it is not written, a memorandum containing the substance of the communication; (ii) the response thereto; and (iii) the identity of the person who made the communication.

D. If a communication prohibited by this section is made, the hearing officer shall notify all parties of the prohibited communication and permit the parties to respond not later than 15 days after the notice is given. For good cause, the hearing officer may permit additional evidence in response to the prohibited communication.

E. If necessary to eliminate any prejudicial effect of a communication made that is prohibited by this section, a hearing officer may (i) be disqualified under § 2.2-4024.1; (ii) seal the parts of the record pertaining to the communication by protective order; or (iii) grant other appropriate relief, including an adverse ruling on the merits of the case.

2. That nothing in this act shall be construed to contravene the express provisions of § 32.1-325.1 of the Code of Virginia.

SB 206 Amendments

AMENDMENT(S) PROPOSED BY THE HOUSE OF DELEGATES

GENERAL LAWS

1. After line 33, engrossed

insert

2. That nothing in this act shall be construed to contravene the express provisions of § 32.1-325.1 of the Code of Virginia.

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 694

An Act to amend and reenact § 2.2-4020 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 40 of Title 2.2 a section numbered 2.2-4023.1, relating to the Administrative Process Act; reconsideration of formal hearings.

[S 207]

Approved April 4, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4020 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 40 of Title 2.2 a section numbered 2.2-4023.1 as follows:

§ 2.2-4020. Formal hearings; litigated issues.

A. The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may do so in any case to the extent that informal procedures under § 2.2-4019 have not been had or have failed to dispose of a case by consent.

B. Parties to formal proceedings shall be given reasonable notice of the (i) time, place, and nature thereof, (ii) basic law under which the agency contemplates its possible exercise of authority, and (iii) matters of fact and law asserted or questioned by the agency. Applicants for licenses, rights, benefits, or renewals thereof have the burden of approaching the agency concerned without such prior notice but they shall be similarly informed thereafter in the further course of the proceedings whether pursuant to this section or to § 2.2-4019.

C. In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing. Where a hearing officer presides, or where a subordinate designated for that purpose presides in hearings specified in subsection F of § 2.2-4024, he shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by the presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion. The agency shall give deference to findings by the presiding officer explicitly based on the demeanor of witnesses.

D. Prior to the recommendations or decisions of subordinates, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) statements of reasons therefor. In all cases, on request, opportunity shall be afforded for oral argument ~~(i)~~ (a) to hearing officers or subordinate presiding officers, as the case may be, in all cases in which they make such recommendations or decisions or ~~(ii)~~ (b) to the agency in cases in which it makes the original decision without such prior recommendation and otherwise as it may permit in its discretion or provide by general rule. Where hearing officers or subordinate presiding officers, as the case may be, make recommendations ~~or decisions~~, the agency shall receive and act on exceptions thereto.

E. All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

§ 2.2-4023.1. Reconsideration.

A. *A party may file a petition for reconsideration of an agency's final decision made pursuant to § 2.2-4020. The petition shall be filed with the agency not later than 15 days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall not suspend the execution of the agency decision nor toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of Supreme Court of Virginia, unless the agency provides for suspension of its decision when it grants a petition for reconsideration. The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.*

B. The agency shall render a written decision on a party's timely petition for reconsideration within

30 days from receipt of the petition for reconsideration. Such decision shall (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action.

C. If reconsideration is sought for the decision of a policy-making board of an agency, such board may (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) notwithstanding any other provision of law, delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the agency that provides administrative support to the board, in which case a decision on the reconsideration shall be rendered within 30 days of receipt of the petition by the board.

D. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

E. The agency may reconsider its final decision on its own initiative for good cause within 30 days of the date of the final decision. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

F. Notwithstanding the provisions of this section, (i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii) any agency that has statutory authority for reconsideration in its basic law may respond to requests in accordance with such law.

2. That any agency which intends to promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration may promulgate emergency regulations to become effective within 280 days or less from the enactment of this act.

3. That the Department of Human Resource Management shall submit a report by November 1 of each year to the Senate Committee on General Laws and Technology and the House Committee on General Laws detailing (i) the number of employee grievance hearings held pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and (ii) the number of decisions from such hearings that were rendered in favor of employees.

SB 207 Amendments

AMENDMENT(S) PROPOSED BY THE HOUSE OF DELEGATES

GENERAL LAWS

1. Line 77, engrossed, after *section*,

insert

(i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii)

GENERAL LAWS

2. Line 79, engrossed, after **2.**

insert

That any agency which intends to promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration may promulgate emergency regulations to become effective within 280 days or less from the enactment of this act.

3.

AMENDMENT(S) PROPOSED BY THE SENATE

SEN. PETERSEN

1. After line 78, substitute

insert

2. That the Department of Human Resource Management shall submit a report by November 1 of each year to the Senate Committee on General Laws and Technology and the House Committee on General Laws detailing (i) the number of employee grievance hearings held pursuant to the Administrative Process Act (§ **2.2-4000** et seq. of the Code of Virginia) and (ii) the number of decisions from such hearings that were rendered in favor of employees.



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July 10, 2015

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Re: Report of Boyd-Graves Conference Committee studying Senate Bill No. 926 and
Senate Bill No. 929

Dear Steve:

The following comprise the referenced committee:

Stephen D. Busch, Esq.
Thomas G. Bell, Jr., Esq.
Victor O. Cardwell, Esq.
Peter C. DePaolis, Esq.
M. Pierce Rucker, Esq., Chair
Charles W. Sickels, Esq.
Nathan J. D. Veldhuis, Esq.

The Hon. Gregory D. Habeeb, a member of the Conference, requested that the referenced Senate bills be reviewed for comment by a committee of the Conference. The bills are attached as Exhibit A.

The two bills were introduced in the 2015 session of the General Assembly by Senator John Edwards. Neither of the bills was enacted, and it is anticipated that Senator Edwards will reintroduce them in their next session in substantially the same form as in 2015. The bills authorize use of third party commercial carriers when delivery of notice by mail, ordinary mail, registered mail or certified mail is permitted. Senator Edwards has advised me that the purpose of bills is to authorize what he believes is occurring anyway, that being the widespread use of commercial delivery services in lieu of the mail, as he believes those services are a superior

method of delivery. Senator Edwards perceives no problems arising from the passage of the two bills.

Some history will assist in understanding how the bills came to be. Back in 2011, the Virginia Code Commission ("the Commission"), then chaired by Senator Edwards, began looking at the notice provisions of the Code of Virginia ("the Code"). In 2012, the Commission requested the assistance of the Supreme Court of Virginia ("SC") and the Boyd-Graves Conference ("BG"). BG undertook to study the Titles 8.01, 11, 20, 25.1, 26, 43, 50, 55 and 64.1 (now 64.2) of the Code, while a study committee appointed by then Chief Justice Kinser studied Titles 16.1, 17.1, 18.2 and 19.2. Steve Busch chaired the BG study committee, which concluded that a "one-size-fits-all" statute for notice by mail, commercial carrier or email should not be enacted, and the Conference as a whole did not conclude otherwise. The SC study committee, of which Professor Kent Sinclair was a member, essentially reached the same conclusion as Steve's committee, but suggested that authorizing service by a commercial delivery service where the Code authorizes delivery by mail, "ordinary" mail, certified mail or registered mail would be impact neutral and, therefore, beneficial. The report of the SC study committee suggested possible enabling legislation with language almost identical to that of Senate Bill 926. Both Steve Busch and Professor Sinclair reported to the Commission the findings of their respective committees.

Neither BG nor the SC studied notice provisions found in Titles 2.2 or 54.1 of the Code. The Commission asked the Administrative Law Advisory Committee ("ALAC") to expand ways that administrative notice provisions are handled. The ALAC recommended to the Commission what is encompassed in the Senate Bill 929. The language of the bill is essentially identical to that of Senate Bill No. 926.

I spoke with Professor Sinclair about both bills asking him if he perceived any problems with either and whether he thought the term "third-party commercial carrier" should be defined and, if so, did he have a definition to offer. Professor Sinclair prefers the term "commercial delivery service" which is found in several Virginia statutes and Rules of Court and does not feel that a definition of that term is required, as none exists now and the term has not caused problems in the many years it has been in use in Virginia. Professor Sinclair feels that the bills are "pretty safe," but that the wording related to "proofs of service" could be better (although he did not propose alternative language).

In a meeting with Delegate Habeeb and representatives of the Commission, Delegate Habeeb advised that he has no special interest in the bills but, as a consequence of issues raised by Steve Busch's study committee in 2013, he wanted to make sure that BG had an opportunity to study the bills before consideration by his committee in 2016.

Our committee met on June 20, 2015, to consider the bills and their history. No committee member felt that the bills address a problem that needs correction. Many members expressed caution about changes in existing law that does not address a particular problem. No committee member expressed particular opposition to bills, but no member felt strongly enough to support them either. As such, the Committee takes no position on these bills and recommends that the Conference take no position either.

Respectfully submitted for the Committee,



M. Pierce Rucker

MPR/jds
Enclosures

cc: Stephen D. Busch, Esq.
Thomas G. Bell, Jr., Esq.
Victor O. Cardwell, Esq.
Peter C. DePaolis, Esq.
Charles W. Sickels, Esq.
Nathan J. D. Veldhuis, Esq.

EXHIBIT A

2015 SESSION

ENGROSSED

15100043D

SENATE BILL NO. 926

Senate Amendments in [] — February 9, 2015

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 4.1 of Title 16.1 a section numbered 16.1-69.5:1, by adding in Chapter 1 of Title 17.1 a section numbered 17.1-133, and by adding sections numbered 18.2-6.1 and 19.2-5.1, relating to notice provisions; third party commercial carrier.

Patron Prior to Engrossment—Senator Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 4.1 of Title 16.1 a section numbered 16.1-69.5:1, by adding in Chapter 1 of Title 17.1 a section numbered 17.1-133, and by adding sections numbered 18.2-6.1 and 19.2-5.1 as follows:

§ 16.1-69.5:1. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by mail, ordinary mail, registered mail, or certified mail, such provision shall be deemed to authorize such service, delivery, or transmission by a third party commercial carrier. [Where registered mail or certified mail is required, proof of service shall also be required by the third-party commercial carrier.] Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a third party commercial carrier is used.

§ 17.1-133. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by mail, ordinary mail, registered mail, or certified mail, such provision shall be deemed to authorize such service, delivery, or transmission by a third party commercial carrier. [Where registered mail or certified mail is required, proof of service shall also be required by the third-party commercial carrier.] Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a third party commercial carrier is used.

§ 18.2-6.1. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by mail, ordinary mail, registered mail, or certified mail, such provision shall be deemed to authorize such service, delivery, or transmission by a third party commercial carrier. [Where registered mail or certified mail is required, proof of service shall also be required by the third-party commercial carrier.] Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a third party commercial carrier is used.

§ 19.2-5.1. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by mail, ordinary mail, registered mail, or certified mail, such provision shall be deemed to authorize such service, delivery, or transmission by a third party commercial carrier. [Where registered mail or certified mail is required, proof of service shall also be required by the third-party commercial carrier.] Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a third party commercial carrier is used.

ENGROSSED

SB926E

2/9/15 20:10

2015 SESSION

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REPRINT

15101155D

SENATE BILL NO. 929

Senate Amendments in [] — January 29, 2015

A BILL to amend the Code of Virginia by adding sections numbered 2.2-601.2 and 54.1-101.2, relating to use by certain state agencies of third-party commercial carriers for service, delivery, or transmission of notices.

Patron Prior to Engrossment—Senator Edwards

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 2.2-601.2 and 54.1-101.2 as follows:

§ 2.2-601.2. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.


Where service, delivery, or transmission of any notice or paper is authorized or required by any provision of this title to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," such provision shall be deemed to authorize such service, delivery, or transmission by third-party commercial carrier. [Where registered mail or certified mail is required, proof of service shall also be required by the third-party commercial carrier.] Any applicable requirements in other titles of this Code or the Rules of the Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a third-party commercial carrier is used.

§ 54.1-101.2. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper is authorized or required by any provision of this title to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," such provision shall be deemed to authorize such service, delivery, or transmission by third-party commercial carrier. [Where registered mail or certified mail is required, proof of service shall also be required by the third-party commercial carrier.] Any applicable requirements in other titles of this Code or the Rules of the Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a third-party commercial carrier is used.

ENGROSSED

SB929E

Commonwealth of Virginia		
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Administrative Law Advisory Committee		

2016 Work Plan Administrative Law Advisory Committee

Hearing Officer Deskbook Update

The Administrative Law Advisory Committee (ALAC) will form a work group to update the Hearing Officer Deskbook to account for recent statutory changes.

Guidance Document Requirements; Definition of Agency in Virginia Register Act

The statutory requirement that an agency must annually file with the Registrar's office a list of its guidance documents under which the agency currently operates applies to most agencies with rulemaking authority. ALAC could explore whether the guidance document list filing requirement should apply to agencies without rulemaking authority that issue guidance documents that interpret or implement a statute.

Model State Administrative Procedure Act

The Model State Administrative Procedure Act judicial work group may reconvene to discuss additional amendments, including amendments on administrative hearings by teleconference or videoconference.

Executive Review Process

The work group will continue to discuss recommendations to future administrations on ensuring the efficiency and effectiveness of the executive review process for rules and regulations.

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Virginia Register Act

§ 2.2-4100. Short title; purpose of chapter; declaration of policy

A. This chapter shall be known and may be cited as the "Virginia Register Act."

B. It is the purpose of this chapter to satisfy the need for public availability of information respecting the regulations of state agencies. Nothing in this chapter contemplates or is designed to limit or impede the present or future making, amendment, or repeal of regulations by administrative agencies. It is declared to be the policy of the Commonwealth to encourage, facilitate, and assist agencies in developing regulations that will inform the public of the requirements, policies, and procedures of the administrative authorities of the State.

1973, c. 535, §§ 9-6.15, 9-6.22; 1975, c. 502; 2001, c. 844.

§ 2.2-4101. Definitions

As used in this chapter, unless the context requires a different meaning:

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § 30-150, and educational institutions operated by the Commonwealth with respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

"Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter 15 (§ 30-145 et seq.) of Title 30.

"Commission" means the Virginia Code Commission.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

1973, c. 535, § 9-6.16; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1985, cc. 67, 602; 1993, c. 669; 1997, cc. 11, 87; 2001, c. 844.

§ 2.2-4102. Registrar of Regulations; personnel, facilities and services; publications

The Commission shall engage or appoint on a contract, part-time, or annual basis a professionally experienced or trained Registrar of Regulations. Under the direction of the Commission, the Registrar shall, at a suitable place to be designated by the Commission, perform the duties required by this chapter or assigned by the Commission in accordance with this chapter or Chapter 15 (§ 30-145 et seq.) of Title 30. The Commission shall as necessary also (i) appoint clerical or other personnel if any, (ii) arrange by contract or otherwise for the necessary facilities and services, and (iii) provide for the compilation and publication of the Virginia Register of Regulations and the Virginia Administrative Code pursuant to §§ 2.2-4031 and 30-146

1973, c. 535, § 9-6.17; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1992, c. 216; 1993, c. 669; 1997, c. 87; 2001, c. 844; 2003, c. 212.

§ 2.2-4103. Agencies to file regulations with Registrar; other duties; failure to file

It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations, together with the dates of adoption, revision, publication, or amendment thereof and such additional information requested by the Commission or the Registrar for the purpose of publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter, coincidentally with the issuance thereof, each agency shall from day to day so file, date, and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations. The filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate any prior regulations repealed, modified, or supplemented, (iii) state any special effective or terminal dates, and (iv) be accompanied by a statement or certification, either in original or electronic form, that the regulations are full, true, and correctly dated. No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.

Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, of Title 28.2, which are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) as provided in subsection B of § 2.2-4002, shall be effective on the date specified by the promulgating agency. Such orders shall continue to be filed with the Registrar either before or after their effective dates in order to satisfy the need for public availability of information respecting the regulations of state agencies.

An order setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2, which is exempt from the requirements of the Administrative Process Act as provided by subsection A of § 2.2-4002, shall be effective on the date specified. Such orders shall be filed with the Registrar for prompt publication.

In addition, each agency shall itself (i) maintain a complete list of all of its currently operative regulations for public consultation, (ii) make available to public inspection a complete file of the full texts of all such regulations, and (iii) allow public copying thereof or make copies available either without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public record a complete file of its regulations that have been superseded on and after June 1, 1975.

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency

currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make such list available for public inspection, (ii) make available for public inspection the full texts of all such guidance documents to the extent such inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

Where regulations adopt textual matter by reference to publications other than the Federal Register or Code of Federal Regulations, the agency shall (i) file with the Registrar copies of the referenced publications, (ii) state on the face of or as notations to regulations making such adoptions by reference the places where copies of the referred publications may be procured, and (iii) make copies of such referred publications available for public inspection and copying along with its other regulations.

Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to the exercise of his authority to see that the laws are faithfully executed, may, until compliance with this chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of any agency in whole or part whenever the Commission certifies to him that the agency has failed to comply with this section or this chapter in stated respects, to respond promptly to the requests of the Registrar, or to comply with the regulations of the Commission.

1973, c. 535, § 9-6.18; 1975, c. 502; 1982, c. 489; 1989, c. 299; 1997, cc. 11, 87; 2001, c. 844; 2007, c. 41; 2010, cc. 178, 407, 728.

§ 2.2-4103. (Effective July 1, 2016) Agencies to file regulations with Registrar; other duties; failure to file

It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations, together with the dates of adoption, revision, publication, or amendment thereof and such additional information requested by the Commission or the Registrar for the purpose of publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter, coincidentally with the issuance thereof, each agency shall from day to day so file, date, and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations. The filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate any prior regulations repealed, modified, or supplemented, (iii) state any special effective or terminal dates, and (iv) be accompanied by a statement or certification, either in original or electronic form, that the regulations are full, true, and correctly dated. No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.

Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, of Title 28.2, which are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) as provided in subsection B of § 2.2-4002, shall be effective on the date specified by the promulgating agency. Such orders shall continue to be filed with the Registrar either before or after their effective dates in order to satisfy the need for public availability of information respecting the regulations of state agencies.

In addition, each agency shall itself (i) maintain a complete list of all of its currently operative regulations for public consultation, (ii) make available to public inspection a complete file of the

full texts of all such regulations, and (iii) allow public copying thereof or make copies available either without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public record a complete file of its regulations that have been superseded on and after June 1, 1975.

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make such list available for public inspection, (ii) make available for public inspection the full texts of all such guidance documents to the extent such inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

Where regulations adopt textual matter by reference to publications other than the Federal Register or Code of Federal Regulations, the agency shall (i) file with the Registrar copies of the referenced publications, (ii) state on the face of or as notations to regulations making such adoptions by reference the places where copies of the referred publications may be procured, and (iii) make copies of such referred publications available for public inspection and copying along with its other regulations.

Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to the exercise of his authority to see that the laws are faithfully executed, may, until compliance with this chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of any agency in whole or part whenever the Commission certifies to him that the agency has failed to comply with this section or this chapter in stated respects, to respond promptly to the requests of the Registrar, or to comply with the regulations of the Commission.

1973, c. 535, § 9-6.18; 1975, c. 502; 1982, c. 489; 1989, c. 299; 1997, cc. 11, 87; 2001, c. 844; 2007, c. 41; 2010, cc. 178, 407, 728.

§ 2.2-4104. Duties of Commission in compiling Virginia Administrative Code and Register

The Commission, through the Registrar and otherwise as it directs, may in the course of the work of compiling and maintaining the Virginia Administrative Code and the Register:

1. In writing at any time call upon all agencies to submit to the Registrar one or more copies of all existing regulations as well as all subsequent amendments, repeals, additions, or new regulations. However, this subdivision shall not affect the duty of agencies to comply with § 2.2-4103 without calls or reminders;
2. Advise agencies as to the form and style of their regulations as well as the codification thereof; and
3. Formulate and issue, without reference to or limitation by the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), general or special regulations respecting the nature and content of the Virginia Administrative Code, making exceptions thereto, supplementing or limiting the duties of agencies hereunder, and otherwise carrying out the purposes of this chapter.

1973, c. 535, § 9-6.20; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1993, c. 669; 2001, c. 844.