

Pros and Cons of Legislative Oversight of Administrative Rules

E.M. Miller, Jr.
Director
Virginia Division of
Legislative Services



Legislative Role in Regulatory Process

Virginia Code Commission - Registrar of Regulations

- ❑ Central repository for all state agency regulations
- ❑ Publish Virginia Register of Regulations
- ❑ Approve regulation summaries prepared by agencies for publication in the Virginia Register- DLS attorney's review, on behalf of Registrar, agency summaries of regulations to ensure the accuracy with actual changes made to regulations
- ❑ Make determination as to whether certain amendments are identical to federal law or federal regulations and, therefore, exempt from the Administrative Process Act
- ❑ Publish Virginia Administrative Code
- ❑ Monitor Administrative Process Act (uses Administrative Law Advisory Committee to study and make recommendations)

Joint Commission on Administrative Rules

- ❑ Review (i) existing agency rules, regulations and practices and (ii) agency rules or regulations during the promulgation or final adoption process and make recommendations to the Governor and General Assembly
- ❑ Generally only focuses on regulations that have been brought to its attention by constituents
- ❑ Can object to a rule going through the legislative process, but cannot stop the process
- ❑ May review existing rules, but is limited to making recommendations to the Governor or having changes passed by the General Assembly to fix what it perceives to be a problem with a regulation
- ❑ Agencies are required to alert JCAR to any regulations that might have an adverse effect on small business
- ❑ Receives copies of all economic impact analyses prepared by the Department of Planning and Budget

Legislative Standing Committees

- ❑ Applicable legislative standing committees and JCAR may object to regulations, thereby delaying for a minimal time period, but cannot stop the regulatory process without the concurrence of the Governor
- ❑ Applicable legislative standing committees and JCAR are alerted to any rulemaking that the Governor has determined to be non-controversial and is promulgated through the fast-track rulemaking process
 - A fast-track rule can become effective as early as 45 days from publication in the Virginia Register
 - House and Senate Clerks decide which legislative standing committee the agency will notify

Legislative Standing Committees

Cont.

- Applicable standing committees or JCAR may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) JCAR may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session

Normal Timeframe to Consider in the Promulgation of a Regulation



VIRGINIA'S ADMINISTRATIVE LAW PROCEDURE

Promulgating entity approves NOIRA	Timeframe depends on entity's meeting schedule; also, see EO for Executive Branch timeframes
NOIRA filed with Registrar	19 days from Register cutoff to publication
NOIRA comment period	30 days from Register publication (established in APA)
Agency develops proposed regulation	180 days (established in EO)
Promulgating entity approves proposed regulation	Timeframe depends on entity's meeting schedule
DPB reviews proposed regulations & writes economic impact analysis	45 days (established in APA)
Proposed regulation package filed with Registrar	19 days from Register cutoff to publication
Proposed comment period	60 days from Register publication (established in APA)
Extended period for Governor to comment	15 days (established in APA)
Agency reviews & responds to public comment and prepares final regulation package; a summary of the public comments & the agency's response must be sent to commenters 5 days prior to final adoption of the regulation	Requirements established in APA
Promulgating entity adopts final regulation	Timeframe depends on entity's meeting schedule
Agency files final regulation package with DPB	150 days (established in EO)
DPB reviews/approves final & forwards to Secretary & Governor	14 days (established in EO)
Secretary makes recommendation to Governor	7 days (established in EO)
Governor must grant permission to agency to file final regulation with Registrar	Established in EO; however, no timeframe specified
Final regulation filed with Registrar	19 days from Register cutoff to publication
Final regulation becomes effective	30 days from Register publication (established in APA)

MAXIMUM PROMULGATION TIME = 19.6 months

Timeframe to consider if regulation objected to by a legislative committee

Legislative Objection

- The standing committee of each house or JCAR may submit to the Register and the promulgating agency an objection to a proposed or final adoption regulation
- The Registrar shall publish the objection as soon as practicable with the Register
- Within 21 days of the receipt of the legislative objection, the promulgating agency shall file a response with the Register, the objecting committee or JCAR, and the Governor
- The regulation shall become effective either on a date specified by the agency after the 21 day legislative objection period or at the conclusion of the 30 day public comment period, depending on whether the regulation was in the final adoption phase

Innovative Approaches

Regulation Information System

- ❑ Implemented July 3, 2007
- ❑ Falls under the LIS umbrella
- ❑ Web-enabled application that allows state agencies to file regulations and related items for publication in the Virginia Register
- ❑ Linked with the Virginia Regulatory Town Hall to facilitate the process agencies use for filing regulatory actions with Town Hall for executive branch review and then filing such actions with the Registrar's office for publication in the *Virginia Register*

Innovative Approaches

Regulation Information System Cont.

- ❑ Integration was a collaborative effort between executive and legislative branches of state government. The Virginia Code Commission, the Division of Legislative Services, the Division of Legislative Automated Systems, and the Virginia Department of Planning and Budget were all involved
- ❑ Agencies that do not file through Town Hall submit projects directly from RIS
- ❑ Through RIS, the Virginia Administrative Code is updated daily, thus RIS provides citizens with an always current and up-to-date Administrative Code

Legislative Oversight

□ Pro's

- Keep legislative finger in pie (is agency doing what was intended by statute)
- Put legislative pressure on executive agency to review it's policy
- Even though in Virginia legislative oversight cannot halt the process, it can slow the process down and through publicity, enhance focus on an issue.

□ Con's

- Constitutional constraints
 - Separation of Powers Issue
- Only allows another forum for debate without authority to do anything definitive unless (in Virginia) the Governor is in agreement with the General Assembly