



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

To: LeGrand Northcutt
Senior Policy Analyst
Department of Housing and Community Development

From: Justin I. Bell
Assistant Attorney General

Date: September 27, 2024

Subject: Regulation of Procedures Concerning Fiscally distressed Localities, 1 VAC 50-30

I have reviewed the emergency regulations concerning Regulation of Procedures Concerning Fiscally distressed Localities, 1 VAC 50-30.

Based on that review, it is my view that the Commission on Local Government (the “Commission”), pursuant to §§ 15.2-2903 and 15.2-2512.1, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that emergency regulations are “[r]egulations that an agency finds are necessitated by an emergency situation.” The regulations will provide new remedies to localities experiencing fiscal distress, which the Commission determined is an emergency situation.

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Commission must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the Agency Background Document found on Virginia’s Regulatory Town Hall. In addition, the regulations shall be effective for no more than 18 months from the emergency regulatory action on this subject matter. If the Commission intends to continue regulating the subject matter governed by this emergency regulation beyond 18 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the Administrative Process Act.

A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.