

VIRGINIA CODE COMMISSION

Monday, October 18, 2021 - 10:00 a.m.

Senate Room 3- The Capitol

Approved
November 17, 2021

Meeting Minutes

Members Present in Person: Marcus B. Simon; Nicole S. Cheuk; Ward L. Armstrong; Jennifer L. McClellan; Christopher R. Nolen; Samuel T. Towell; Malfourd W. Trumbo; Amigo Wade.

Members Present Electronically: John S. Edwards; Don L. Scott, Jr.

Members Absent: Leslie L. Lilley; Charles S. Sharp

Staff Present: Taylor Mey, Sabrina Miller-Bryson, Charles Quagliato, Connor Garstka, Stephen Kindermann, Scott Meacham, Anne Bloomsburg, Nikki Clemons, Holly Trice, Stephanie Kerns, Andrew Kubincanek, Division of Legislative Services (DLS); Maryann Horch, Senate Technology

Others Present: Brian Kennedy, LexisNexis

Call to order: Senator Edwards, chair, called the meeting to order at 10:07 a.m. Pursuant to § 2.2-3708.2, the meeting was held electronically. A quorum of the Commission was present. Senator Edwards presided over the meeting virtually.

Approval of minutes: The minutes of the September 20, 2021, meeting of the Commission, as distributed to the members, were approved.

2022 Code of Virginia pricing and replacement volumes proposal: Brian Kennedy stated that every year LexisNexis did an analysis on the Code of Virginia and its supplements. Mr. Kennedy suggested replacing five volumes of the Code in 2022, based on the sizes of the supplements, how old the volume is, and any recodification efforts. Volumes 1, 4A, 7, 8, and 8A were recommended for replacement. Mr. Kennedy covered the new pricing recommendation, with a 5% price increase recommended for 2022.

Chair Edwards asked for a motion to approve the 2022 Code of Virginia pricing and replacement volumes proposal. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve 2022 Code of Virginia pricing and replacement volumes proposal	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			

Charles S. Sharp				1
Samuel T. Towell	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Obsolete laws review:

Title 52 (Police - State) - Charles Quagliato addressed the question that the Commission had about § 52-20 of the Code of Virginia regarding the definition of "electronic communication" during the September 20, 2021, meeting. Mr. Quagliato stated that a new definition was provided in the meeting materials. The definition is the same definition of "electronic communication" that is used in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

Mr. Quagliato addressed the second question the Commission had at the September 20 meeting regarding proposed stricken language at the end of § 52-20, where language dealing with allegations of a person fleeing is stricken. The Commission was concerned that striking that language would count as a substantive change and might affect law enforcement's ability to arrest without a warrant. Mr. Quagliato noted subsection E of § 19.2-81 of the Code of Virginia, where the Code dictates when law enforcement can make arrests without warrants. Mr. Quagliato said the proposed stricken language would bring § 52-20 in alignment with other sections of the Code of Virginia and would not qualify as a substantive change.

Chair Edwards asked for a motion to adopt the recommendations for Title 52. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Adopt the recommendations for Title 52	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			
Charles S. Sharp				1

Samuel T. Towell	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Title 51.1 (Pensions, Benefits, and Retirement) - Connor Garstka presented Title 51.1 and recommended that § 51.1-124.1 of the Code of Virginia be set out as amended. The section establishes that the Virginia Retirement System exists as an independent agency, independent of the executive, legislative, and judicial branches of state government. Mr. Garstka noted that other sections of the Code of Virginia, such as for the Virginia Lottery and the Alcoholic Beverage Control Authority, have similar language establishing the agencies as independent. Mr. Garstka said the other language in the section restates legislative intent, but stated that the Virginia Retirement System staff preferred to preserve more of the language. Mr. Garstka spoke on behalf of the agency and stated that the language recommended to be stricken was important in describing the nature of the Virginia Retirement System. The agency preferred to preserve most of the language in lines 6 to 14, and to add language on lines 12 and 13 to state that the Virginia Retirement System is also for employees that participate in the system, rather than for the state itself.

Chair Edwards asked if the Commission had been provided the language as the agency would like it to be amended, and Mr. Garstka said they did not. Chair Edwards preferred to see the proposed revised language before the Commission made a decision. Mr. Nolen asked if there was other language in the section that effectuates the policy statement that was recommended to be stricken on lines 12 through 14. Mr. Garstka said the remaining provisions in Title 51.1 were much more specific about stance and what the Virginia Retirement System was required to provide; the language on lines 12 through 14 was much more general and removing it would not affect the requirements that were expanded upon further in the Title.

Mr. Trumbo pointed out that lines 6 through 12 in the meeting materials discussed how the General Assembly determined each year how the General Assembly would fund the Virginia Retirement System. Lines 6 through 12 were there to indicate that the whole benefit of the Virginia Retirement System was for the employees, so Mr. Trumbo voiced concern about striking the language in case that intent was impacted.

Mr. Garstka stated the language in the section was lifted from Article X of the Constitution of Virginia, a provision which states that the General Assembly shall maintain a retirement system and that funds for the retirement system shall be separated from other funds. Mr. Garstka stated that Article X would prevail over other statutory language if that statutory language is contrary to what's in the Constitution.

Cynthia Wilkinson from the Virginia Retirement System shared the agency's preference that the language proposed as stricken be kept as is. Chair Edwards asked the agency to present their revised language at the next Commission meeting.

Not set out laws review:

Title 58.1 (Taxation) - Stephen Kindermann reviewed § 58.1-815.3 of the Code of Virginia, which was not set out at the direction of the Code Commission when no qualifying appropriation was passed in 2000 and it appears no appropriation was made thereafter. Mr. Kindermann spoke to the Virginia Department of Transportation and recommended the section be repealed by way of bill.

Mr. Kindermann reviewed § 58.1-3229, which is a declaration of policy and does not create substantive law. The policy intent in the section is laid out in substantive provisions in Article 4, which follow the section. Mr. Kindermann recommended the section be repealed by way of bill.

Mr. Kindermann reviewed § 58.1-3506.8, which does not create substantive law. The intent in the section is laid out in Article 10.1 which follows the section, and Mr. Kindermann recommended the section be repealed by way of bill.

Mr. Kindermann reviewed Chapter 38 of Title 58.1, which did not include the Counties of Henry or Stafford when first composed in 1988. Mr. Kindermann recommended setting out § 58.1-3814.1 to include the Counties of Henry and Stafford, and stated that representatives from those counties preferred the same action be taken.

Mr. Kindermann reviewed §§ 58.1-3820 and 58.1-3821, which were formally repealed by Chapters 1214 and 1263 of the 2020 Acts of Assembly. The repeal became effective on May 1, 2021. Therefore, no further action is recommended.

Chair Edwards asked for a motion to approve the recommendations for Title 58.1. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve recommendations for Title 58.1	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			
Charles S. Sharp				1
Samuel T. Towell	1			
Malfourd W. Trumbo	1			

Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Title 28.2 (Fisheries and Habitat of the Tidal Waters) - Scott Meacham reviewed §§ 28.2-1309 and 28.2-1409 of the Code of Virginia and recommended the sections be set out with included technical amendments. The amendments made no substantive changes and Mr. Meacham discussed the recommendations with representatives from the Marine Resources Commission and the City of Virginia Beach who agreed with the recommendations.

Chair Edwards asked for a motion to approve the recommendations for Title 28.2. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve recommendations for Title 28.2	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			
Charles S. Sharp				1
Samuel T. Towell	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Title 29.1 (Wildlife, Inland Fisheries and Boating) - Scott Meacham reviewed § 29.1-610 of the Code of Virginia, and suggested the section be set out with technical amendments as presented.

Chair Edwards asked for a motion to approve the recommendations for Title 29.2. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve recommendations for Title 29.2	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			
Charles S. Sharp				1
Samuel T. Towell	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Title 62.1 (Waters of the State, Ports and Harbors) - Scott Meacham reviewed §§ 62.1-44.19:1 and 62.1-44.19:2 of the Code of Virginia and recommended both sections be set out by way of bill. Mr. Meacham proposed new catchlines and a few technical amendments.

Chair Edwards asked for a motion to approve the recommendations for Title 62.1. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve recommendations for Title 62.1	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			

Charles S. Sharp				1
Samuel T. Towell	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Revision of the Scenic Rivers Act, Chapter 4 (§ 10.1-400 et seq.) of Title 10.1

Scott Meacham reviewed three sections of the Scenic Rivers Act that required clean up and updating. Mr. Meacham reviewed § 10.1-408, which needs to be updated to remove references to the Embrey Dam and its reservoir in the City of Fredericksburg because the dam no longer exists. Mr. Meacham reviewed § 10.1-411.1 and suggested technical revisions to the description of the Guest State Scenic River to eliminate a duplicate designation of a portion of the Clinch State Scenic River. Current law combines the Guest State Scenic River with a portion of the Clinch State Scenic River as the Clinch-Guest State Scenic River. The referenced portion of the Clinch State Scenic River, however, is encompassed within the Clinch State Scenic River as designated in § 10.1-410.2. Mr. Meacham reviewed § 10.1-412 of the Code of Virginia, and proposed revising the section the description in line with the conventions of the Scenic Rivers Act by describing the river from upstream to downstream and by indicating the length of the designated portion of the river. Mr. Meacham recommended these amendments all be made by way of a bill.

Chair Edwards asked for a motion to approve the revisions of the Scenic Rivers Act. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve revisions of the Scenic Rivers Act	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			
Charles S. Sharp				1
Samuel T. Towell	1			

Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon				1
John Edwards	1			
Total	9			3

Other business:

There was no other business.

Public comment, adjournment: Senator Edwards opened the floor for public comment.

Chair Edwards asked for a motion to adjourn the meeting. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to adjourn the meeting	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Leslie L. Lilley				1
Jennifer McClellan	1			
Christopher R. Nolan	1			
Don L. Scott Jr.	1			
Charles S. Sharp				1
Samuel T. Towell	1			
Malfourd W. Trumbo	1			
Amigo R. Wade			1	
Marcus B. Simon	1			
John Edwards	1			
Total	9		1	2

As there was no public comment and no further business to discuss, the meeting adjourned at 11:02 a.m.

Next meeting: Wednesday, November 17, 2021, at 10:00 a.m.