

VIRGINIA CODE COMMISSION

Monday, November 17, 2021 - 10:00 a.m.

Senate Room 3- The Capitol

Approved May 16, 2022

Meeting Minutes

Members Present in Person: Ward L. Armstrong; Nicole S. Cheuk; Joanne Frye; Jennifer L. McClellan; Christopher R. Nolen; Charles S. Sharp; Marcus B. Simon; Malfourd W. Trumbo; Amigo Wade.

Members Present Electronically: John S. Edwards; Leslie L. Lilley

Members Absent: Don L. Scott, Jr.

Staff Present: Connor Garstka, Taylor Mey, Ryan Brimmer, Sarah Stanton, Julia Carlton, Holly Trice, Anne Bloomsburg, Nikki Clemons, Stephanie Kerns, Division of Legislative Services; Maryann Horch, Senate Technology

Others Present: Tom Lisk, ALAC; Cindy Wilkinson, Virginia Retirement System

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 October 18, 2021, meeting of the Commission, as distributed to the members, were approved.

Administrative Law Advisory Committee (ALAC) End of Year Report: *Tom Lisk*

Tom Lisk shared that ALAC had three workgroups in 2021. The workgroups addressed electronic records of final administrative agency orders. Section 2.2-4023 of the Code of Virginia requires that agencies retain physical signed final orders. The workgroup suggested allowing agencies to maintain the signed final orders in forms other than as hard copies, including as electronic records.

Chair Edwards asked for a motion to approve the draft language to amend § 2.2-4023 of the Code of Virginia. 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			
Joanne Frye	1			
Leslie L. Lilley	1			
Jennifer McClellan	1			
Christopher R. Nolen	1			

Don L. Scott Jr.				1
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon	1			
John Edwards	1			
Total	11			1

The workgroup also discussed the Hearing Officer Deskbook. The Deskbook is provided to attorneys appointed by the Supreme Court. The workgroup updated sections of the Deskbook with amendments that will be presented at the annual Hearing Officer Training in December, 2021. No action was required of the Commission.

The workgroup also discussed the executive review process. The workgroup studied and sought out input regarding ways to make the executive review process more accessible in a way that would allow agencies to adopt new regulations quicker. Currently, it takes 23 months on average for agencies to go through the executive review process. The workgroup will work with the new administration to explore ways to improve the process.

Obsolete laws review:

Title 51.1 (Pensions, Benefits, and Retirement) - Connor Garstka

Mr. Garstka reviewed obsolete laws in Title 51.1. Mr. Garstka pointed to the meeting materials, which had two versions of draft language for the Title for the Commission to consider. The first version of the draft came from the Division of Legislative Services, which recommended setting out the section but removing language that is in the Constitution of Virginia. The rest of the section the agency recommended removing was similar to a statement of purpose. Language that establishes purpose or legislative intent has been removed in the past by the Commission due to its duplicative nature. Senator McClellan expressed concern over removing language that establishes purpose or legislative intent and asked why the Commission allows statements of policy but not of purpose. Senator Edwards explained that that's what the Code Commission has done in the past to avoid confusion or duplicative language, but noted the second version of the draft provided in the meeting materials came from the Virginia Retirement System (VRS), the agency that would have to enforce the section.

Cindy Wilkinson from VRS addressed the Commission and stated that the agency preferred to keep in the language establishing purpose as it defines and documents VRS as an independent agency. Ms. Wilkinson stated the agency uses the language in the section during litigation cases regarding VRS's independence and views it as substantive law.

Chair Edwards asked for a motion to adopt the Virginia Retirement System recommendations for Title 51.1. 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			
Joanne Frye	1			
Leslie L. Lilley	1			
Jennifer McClellan	1			
Christopher R. Nolen	1			
Don L. Scott Jr.				1
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon	1			
John Edwards	1			
Total	11			1

Title 22.1 (Education) - Ryan Brimmer

Mr. Brimmer reviewed the obsolete laws in Title 22.1 of the Code of Virginia. All of the suggested changes were technical in nature. Ms. Cheuk asked about the repeal of § 22.1-89.3, asking who the stakeholders consulted were. Mr. Brimmer stated that the division consulted with the Virginia School Board Association, which confirmed that the section had never been utilized.

Chair Edwards asked for a motion to adopt the recommendations for Title 22.1. 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			
Joanne Frye	1			
Leslie L. Lilley	1			

Jennifer McClellan	1			
Christopher R. Nolen	1			
Don L. Scott Jr.				1
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon	1			
John Edwards	1			
Total	11			1

Recodification of Title 32.1 - outline and proposed workgroup members:

Sarah Stanton and Julia Carlton addressed the Commission regarding recodifying Titles 32.1 and 35.1. Title 32.1 has not been recodified since 1979 and Title 35.1 has not been recodified since the 1980s. The division suggested the titles be addressed together because both are administered by the Commissioner of Health and the State Board of Health. The division provided a list of stakeholders that could be appropriate for a workgroup in the Spring of 2022. Ms. Stanton drew attention to Chapters 9 through 13.1 of Title 32.1, which are administered by the Department of Medical Assistance Services and address Medicaid. Ms. Stanton said the Commission will have to consider pulling those chapters out of the title and into another. Mr. Nolen asked how the stakeholder groups would be broken down, and Ms. Stanton stated that the title will be broken down into narrow subject matters and workgroup meetings would be broken into topics for interested stakeholders. Mr. Nolen asked how long the recodification would take and Ms. Stanton said it would likely take two years.

Chair Edwards asked for a motion to approve the recodification outline and proposed workgroup members. 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			
Joanne Frye	1			
Leslie L. Lilley	1			
Jennifer McClellan	1			

Christopher R. Nolen	1			
Don L. Scott Jr.				1
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Marcus B. Simon	1			
John Edwards	1			
Total	11			1

Other business:

The Commission discussed the breakdown of the bills that would be addressed in the upcoming legislative session. The Commission agreed to cover who would carry which bill outside of the meeting.

Public comment, adjournment: Senator Edwards opened the floor for public comment. There was no 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 Approve 2022 Code of Virginia pricing and replacement volumes proposal	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Joanne Frye	1			
Leslie L. Lilley	1			
Jennifer McClellan	1			
Christopher R. Nolen	1			
Don L. Scott Jr.				1
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			

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Marcus B. Simon	1			
John Edwards	1			
Total	11			1

As there was no public comment and no further business to discuss, the meeting adjourned at 11:18 a.m.

Next meeting: Next year's meeting schedule will be established in 2022.