

# VIRGINIA CODE COMMISSION

***Monday, November 21, 2022 - 10:00 a.m.***

*Senate Room A - Pocahontas Building*

**Approved  
December 5, 2022**

## **Meeting Minutes**

**Members Present:** John. S. Edwards, Jennifer L. McClellan, Malfourd W. Trumbo, Ward L. Armstrong, Charles S. Sharp, Nicole S. Cheuk, Christopher R. Nolen, Richard E. Gardner, Amigo R. Wade

**Members Absent:** James A. Leftwich, Wren M. Williams, Steven Popp

**Staff Present:** Holly Trice, Anne Bloomsburg, Nikki Clemons, Division of Legislative Services; Maryanne Horch, Senate IT; Brian Kennedy, LexisNexis; Tom Lisk, ALAC

**Call to order:** Senator Edwards, chair, called the meeting to order at 10:09 a.m. A quorum of the Commission was present in person.

**Election of Vice Chair:** Senator Edwards welcomed Judge Gardiner to the Commission. Delegate Leftwich was nominated for Vice Chair, but not present at the meeting. The election of Vice Chair was tabled until the next Code Commission meeting.

**Review and approval of October 3, 2022, meeting minutes:** Chair Edwards asked for a motion to approve the draft October 2022 meeting minutes. A motion was made, properly seconded, and a voice vote was conducted. The motion carried.

**Publication of the Code of Virginia: 2022 Review:** *Brian Kennedy, LexisNexis*

Mr. Kennedy reviewed the situation as he presented it to the Commission at the October 3, 2022, meeting. Mr. Kennedy reiterated that there were issues in the data transfer between the Division of Legislative Automated Services (DLAS) and LexisNexis, which led to significant delays with updating the Law Portal with the correct information from the 2022 session.

Mr. Kennedy stressed that what happened during this data transfer was not typical and that LexisNexis has been working to prepare the data transfer for the Special Session and implementing fixes to ensure the issues do not happen again. LexisNexis issued 12 reprints of supplements for the Code of Virginia, which are scheduled to be delivered in the next week.

Senator Edwards asked what date the Special Session data was required to be delivered. Mr. Wade stated that the contract with LexisNexis for a regular session requires that the data be transferred by June 23 of each year, but that data from a special session should be delivered "within a reasonable amount of time." Mr. Wade stated that during the Commission's last meeting, LexisNexis said that testing of the data transfer fixes would take place in the spring. Mr. Wade asked if the Special Session data transfer would act as a test of fixes implemented in lieu of that spring testing. Mr. Kennedy said it would and that the spring time testing was suggested before LexisNexis knew that there would be the Special Session data transfer to act as a test run.

Senator Edwards asked Mr. Wade to expand on the work that Division of Legislative Services (DLS) staff had to do to fix the corrupt data transfer. Mr. Wade shared that 18 DLS staff members manually went through every chapter of the Acts of Assembly and checked it against the data sent. The process took three to four days. Mr. Kennedy said that DLS staff effort was heroic but hopefully will not be needed again.

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Mr. Trumbo asked if Mr. Kennedy had heard from any practicing attorneys who tried to use the Law Portal when the data was incorrect. Mr. Kennedy said they had not heard from any. Senator McClellan asked if there was any kind of notice on the Law Portal that there were issues, and Mr. Wade said that there was. The note on the Law Portal alerted users that the data may not be correct and directed people to the Acts of Assembly. The Law Portal was correct by July 18. Mr. Trumbo voiced concern that rural attorneys without ready access to the Internet and may have to rely on print copies of the Code of Virginia would not know that the print materials sent were incorrect. Mr. Kennedy assured that the replacement pamphlets had been sent out and should arrive in the next week and that LexisNexis had not received any notice of people having issues.

Senator McClellan asked how the ongoing Special Session would affect the transfer of the data and if Special Session would end once regular session began in the New Year. Mr. Wade said that that issue was uncharted territory and that DLS would conduct research and report back to the Commission at a future meeting. Ms. Trice said that once DLS receives the data from LexisNexis, the sections will be set out twice in the Law Portal until the Special Session laws take effect.

Mr. Kennedy expressed appreciation at everyone's understanding with the issues and shared that LexisNexis decided to not increase the price of replacement volumes this year as amends for the problems. LexisNexis recommended that the Commission replace volumes 1A, 2B, 5A, 7B, and 9A of the Code of Virginia in the next batch of replacement volumes.

A motion was made to approve the suggested replacement volumes, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Motion to Adopt the Public Notice Work Group's recommendations</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Ward Armstrong	1			
Nicole Cheuk	1			
Judge Gardiner	1			
James Leftwich				1
Jennifer McClellan	1			
Christopher R. Nolen			1	
Steven Popps				1
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams				1

John Edwards	1			
Total	8		1	3

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

Mr. Lisk presented ALAC's end of the year report. The report included the committee's work on the current executive review process. The committee met with the Office of Regulatory Management and discussed the ongoing work to streamline the regulatory process, and intends to continue that work in the next year.

The committee also reported on the Harmless Doctrine Workgroup, following *Chesapeake Hospital Authority v. State Health Commissioner*. The workgroup suggested amending § 2.2-4027 of the Code of Virginia to conform the reference to harmless error in the Administrative Process Act (APA) with federal and other state laws. ALAC lacked a quorum at the final meeting so did not take a formal vote on the draft amendments. Senator Edwards asked if there was a formal definition of what constituted a harmless error. Mr. Lisk said that lies in the discretion of the court and that harmless discretion has been undefined for quite some time. Judge Sharp asked if the Commission had the authority to make the proposed amendments and Mr. Lisk said because the amendment would be in the APA, the Commission had authority. Judge Sharp asked if stakeholders weighed in on this and Mr. Lisk said that members of ALAC represent state agencies, the Supreme Court, the Office of the Attorney General, and private practitioners who all weighed in on the issue.

Judge Trumbo noted that most of the Commission members who are present at the meeting are not members of the General Assembly who would have to advocate for a bill to make the amendments, and suggested tabling the issue until the next meeting. The Commission agreed, and Mr. Lisk said ALAC would look into what extents courts in Virginia have tried to define harmless error for the next meeting.

**Other business:**

Mr. Wade clarified an issue regarding workgroup decisions. At the October meeting, the Commission voted to accept and made a motion on public notice workgroup decisions. These decisions were sent to the Senate and House committee chairs. Mr. Wade clarified that these were sent as recommendations of the Commission and that these recommendations would not count towards the Commission's bill introduction limit.

**Public comment, adjournment:** Senator Edwards opened the floor for public comment. There was no public comment.

**Adjourn:** Chair Edwards asked for a motion to adjourn the meeting. The motion was made, properly seconded, and a voice vote was conducted. The motion carried.

Chair Edwards adjourned the meeting adjourned at 11:13 a.m.

**Next meeting:** December 5, 2022, 10:00 am.