

VIRGINIA CODE COMMISSION

Monday, December 5, 2022 - 10:00 a.m.

Electronic Meeting

**Approved
June 14, 2023**

Meeting Minutes

Members Present Electronically: John. S. Edwards, Ward L. Armstrong, Nicole S. Cheuk, Richard E. Gardner, Jennifer L. McClellan, Christopher R. Nolen, Steven G. Popps Charles S. Sharp, Malfourd W. Trumbo, Amigo R. Wade, Wren M. Williams

Members Absent: James A. Leftwich, Jr.:

Staff Present Electronically : Holly Trice, Anne Bloomsburg, Nikki Clemons, Division of Legislative Services; Maryanne Horch, Senate IT; Tom Lisk, ALAC; Andrew Kubicanek, DLS/ALAC

Call to order: Senator Edwards, chair, called the meeting to order at 10:14 a.m. A quorum of the Commission was present electronically.

Election of Vice Chair: Senator Edwards called for nominations for Vice Chair. A motion was made to elect Delegate Leftwich as Vice Chair. The motion was properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Elect Delegate Leftwich Vice Chair	Yea	Nay	Abstain	Absent
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	11			1

Virginia Code Commission Meeting Minutes

December 5, 2022

Page 2 of 3

Review and approval of November 21, 2022, meeting minutes: Chair Edwards asked for a motion to approve the draft November 2022 meeting minutes. A motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Motion to Approve November Minutes	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Judge Gardiner	1			
James Leftwich				1
Jennifer McClellan	1			
Christopher R. Nolen	1			
Steven Pops	1			
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams	1			
John Edwards	1			
Total	11			1

Administrative Law Advisory Committee (ALAC) End of the Year Report:

Tom Lisk thanked Judge Gardiner for directing the Code Commission members to the case, *Forbes v. Rapp*, where the VA Supreme Court articulated the doctrine of harmless error. Mr. Lisk presented the recommendation of ALAC to adopt the same standard for any appeal to the circuit court from any administrative agency final decision. Mr. Lisk explained that currently, the Virginia APA only allows the harmless error doctrine for procedural matters, but not in the case of substantive matters. ALAC found other states and the federal APA have adopted the harmless error doctrine for both procedural and substantive matters. Mr. Lisk then reported that ALAC recommended unanimously that the Virginia APA be amended to allow for the harmless error doctrine to all appeals.

More discussion followed with Judge Trumbo noting that he was concerned that were this recommendation from the Virginia Code Commission be put forward, it would contradict the tradition of the Code Commission refraining from making substantive legal changes to the Code.

Following more discussion, members determined that the Code Commission would not move forward with this recommendation from ALAC.

Public Notice Work Group Legislation:

Director Wade described the bill that resulted from the Public Notice Workgroup to the commission. Director Wade reported Delegate Williams had already indicated that he would be willing to carry the bill in the House and Senator Edwards offered to carry the bill in the Senate. There was no further discussion.

LexisNexis Report:

Holly Trice reported that the data from the Special Session that Lexis sent was much better than the July 1 data. There were minimal errors in the data; the agency just planned to work with Lexis to improve the "TOSA" (Table of sections affected) so that information that DLS did not need was not placed on the TOSA. Director Wade echoed that DLS was pleased with the most recent batch of data.

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 10:31 a.m.