

**Virginia Code Commission
Meeting Materials
June 14, 2023**

VIRGINIA CODE COMMISSION

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

Electronic Meeting

DRAFT

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. Popp, 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 Adopt the Public Notice Work Group's recommendations	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Judge Gardiner	1			
James Leftwich				1
Jennifer McClellan	1			
Christopher R. Nolen	1			
Steven Popp	1			
Charles S. Sharp	1			
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams	1			
John Edwards	1			
Total	11			1

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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 Adopt the Public Notice Work Group's recommendations	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Judge Gardiner	1			
James Leftwich				1
Jennifer McClellan	1			
Christopher R. Nolen	1			
Steven Popp	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.

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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 am.

2023 Session of the General Assembly

Code Commission Bills

Bill No. and Patron	Subject	Status
SB 1151 Sen. Edwards	Local Government; standardization of public notice requirements for certain intended actions.	Enacted - Chapter 506
HB 2161 Del Williams	Local Government; standardization of public notice requirements for certain intended actions.	Enacted - Chapter 507
SB 1150 Sen. Edwards	2011 district descriptions; legal boundaries	Enacted - Chapter 455

Virginia Code Commission Public Notice Work Group

Overview of Proposed 2023 Work Plan

Senate Bill 1151 and House Bill 2161, passed during the 2023 legislative session, provide for the Code Commission to reconvene the Public Notice Work Group to review requirements throughout the Code of Virginia for localities to provide public notice for intended actions, including business meetings, creation of taxation zones, proposed amendments to existing planning and zoning ordinances, and consideration of budgets. The Commission is required to submit a report to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology summarizing the work and any recommendations of the work group by November 1, 2023.

I. Scope of Work Group Review and Recommendations

A. Uniformity and Efficiency of Notices. Continue review of notices applicable to localities and determine the scope of review for regional and state entities. Recommendations will designate placement of selected notices in one of the following groups:

Group 3- Notice to run three successive weeks with the first notice appearing no more than 21 days before meeting or intended action.

Group 2- Notice to run two successive weeks with the first notice appearing no more than 14 days before meeting or intended action.

Group 1- Notice to run once at least seven days before meeting or intended action.

B. Information Required in Notices. Continue the review of information required in notices relating to certain zoning and land use ordinances. The sub-work group will continue with its review of the descriptive summary required by § 15.2-2204 and the statement of general usage required by § 15.2-2285.

C. Senate Bill 859 (2023). Review the legislation and make recommendations regarding publication of notice of a Request for Proposal by local public bodies.

II. Composition of Work Group

The 2023 work group will consist of representatives from the same stakeholder groups established in 2022. Additions will be made based on the scope adopted by the 2023 work group.

Virginia Press Association Aimee Seibert Betsy Edwards, Executive Director, VPA Bruce Potter	Coalition for Open Government Megan Rhyne
Virginia Association of Counties Phyllis Errico	Virginia Electoral Board Association Jim Nix
Virginia Municipal League Michelle Gowdy	Commissioners of the Revenue Association of VA Eric Maybach
Commission on Local Government Diane Linderman, PE LeGrand Northcutt	VA Chapter of the American Planning Association Tyler Klein
Virginia Assoc. of Government Purchasing Officials Elizabeth B. Dooley William Hefty	Residential Builders/Developers Andrew Clark
Virginia School Boards Association Elizabeth Ewing	Commercial Builders/Developers Abigail Thompson
Local Government Attorneys of Virginia, Inc. Adam R. Kinsman	Voter Registrars Association of Virginia
Treasurers' Association of Virginia	
Candidates for membership*	Department of General Services State Corporation Commission Department of Agriculture and Consumer Svcs Department of Transportation

III. Schedule of Work Group Meetings/Submission of Recommendation

It is anticipated that four to five meetings of the work group will be necessary. These meetings will be virtual with some in-person meetings possible. The overall objective will be to have any recommendations finalized to allow review and approval by the Commission at its October 2023 meeting for submittal to the two legislative committees. Here is a broad outline of the anticipated schedule:

First Meeting

- Introduction of members; determine additional members
- Review of proposed work plan
- Determine scope; assign review
- Reaffirm methodology of review and format of recommendations

Second Meeting

- Review notice uniformity and efficiency working document developed by staff
- Incorporate input from stakeholders
- Receive update from sub-work group's review of information required in notices
- Review SB 859; develop recommendation(s)

Third Meeting

- Continue moving through working document
- Receive update from sub-work group's review of information required in notices
- Develop recommendations

Fourth Meeting

- Finalize recommendations for uniformity and efficiency of notices
- Finalize recommendations for information required in notices
- Format recommendations for submittal to Commission

Fifth meeting (if needed)

Code Commission Meeting - October/November 2023

Report submitted to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology.

2023 Uncodified Acts and Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections


Uncodified Acts Assigned Code Section Numbers or Placed in Existing Code Sections	
Chapter number	Text - changes to add catchline or conform to Code of Virginia style are denoted in red
443	<p><i>Codify enactment clause 2 as second paragraph of §8.01-471</i></p> <p>2. <u>2.</u> That the <u>The</u> Office of the Executive Secretary of the Supreme Court of Virginia shall annually report on or before September 1 to the Chairmen of the Senate Committee on the Judiciary, the Senate Committee on General Laws and Technology, the House Committee for Courts of Justice, the House Committee on General Laws, and the Virginia Housing Commission on the number of executed writs returned pursuant to this section. The first report shall be made by September 1, 2024, and shall include writs executed between July 1, 2023, and June 30, 2024.</p>
728	<p><i>Codify § 1 as §56-596.2:2</i></p> <p><u>56-596.2:2. Energy efficiency savings targets for certain customers.</u></p> <p>1. §1 The State Corporation Commission (the Commission) <u>A. The Commission</u> shall establish for Phase II Utilities annual energy efficiency savings targets for customers who are low-income, elderly, disabled, or veterans of military service to be achieved through utility energy efficiency programs (low-income energy efficiency savings programs) designed to benefit such customers, provided that each year's target shall be measured by the total combined kilowatt-hour savings achieved by electric utility energy efficiency and demand response programs and measures installed for such customers in that program year, as well as savings still being achieved by measures and programs implemented for such customers in prior years, and that such annual targets shall be at least one percent of the average annual energy retail sales by that utility to those customers, to the extent that the potential exists and is reasonably achievable as determined by the Commission. In establishing such targets, the Commission shall seek to optimize energy efficiency and the health and safety benefits of utility energy efficiency programs.</p> <p><u>B.</u> In advance of the effective date of such annual energy efficiency targets, the first of which shall be for 2025, the Commission shall, after notice and opportunity for hearing, initiate proceedings to establish such targets and the appropriate retail sales against which the energy efficiency targets will be measured. In setting such targets, the Commission shall consider the impact and savings of energy efficiency programs authorized by subdivision C 2 of § 10.1-1330 of the Code of Virginia. The Commission shall also consider federal loan guarantees, grant funds, and rebates made available pursuant to the federal Inflation Reduction Act (P.L. 117-169) or other similar federal legislation that facilitates energy efficiency projects.</p>

2023 Uncodified Acts and Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections

	<p>The Commission shall, for the period <u>C. For the time period</u> 2028 through 2030, the Commission shall review and, at its discretion, revise such minimum annual targets to ensure continued consistency with the provisions of this section. All savings from low-income energy efficiency programs shall be applied to the energy efficiency savings set forth in subsection B of § 56-596.2.</p> <p><u>D.</u> In providing such low-income energy efficiency programs, Phase II Utilities shall make best efforts to coordinate such energy efficiency programs with any health and safety upgrades provided through energy efficiency programs authorized by subdivision C 2 of § 10.1-1330 of the Code of Virginia, when reasonably feasible to do so and at the utility's sole discretion.</p> <p><u>E.</u> For the purposes of this act section, "Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1 of the Code of Virginia.</p>
732	<p><i>Codify § 1 as new subsection I in 56-585.5 (with remaining subsections re-lettered)</i></p> <p>1. § 1 I. In any petition by a Phase I or Phase II Utility , as those terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, for a certificate of public convenience and necessity to construct and operate an electrical generating facility that generates electric energy derived from sunlight submitted pursuant to § 56-580 of the Code of Virginia, such utility shall demonstrate that the proposed facility was subject to competitive procurement or solicitation as set forth in subdivision D 3 of the Code of Virginia.</p> <p>H. Nothing in this section shall apply to any entity organized under Chapter 9.1 (§ 56-231.15 et seq.).</p>

2023 Uncodified Acts and Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections

	<p>J.K. The Commission shall adopt such rules and regulations as may be necessary to implement the provisions of this section, including a requirement that participants verify whether the RPS Program requirements are met in accordance with this section.</p>
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Commonwealth of Virginia		
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Administrative Law Advisory Committee		

2023 Work Plan Draft Administrative Law Advisory Committee

Executive Review Process

ALAC will continue to monitor changes to the executive review process for rules and regulations.


Hearing Officer Deskbook

ALAC will form a work group to update the Hearing Officer Deskbook to account for any recent changes. ALAC conducts this review every two years on behalf of the Office of the Executive Secretary of the Supreme Court.

Thomas A. Lisk, Chair
 John Daniel
 Michelle Gowdy
 Paul Kugelman

Eric M. Page
 Jeffrey S. Palmore
 Mike Quinan
 Alexander F. Skirpan, Jr.

Brooks Smith
 Holly Trice
 Jennifer Williamson
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Administrative Law Advisory Committee		

Administrative Law Advisory Committee

2023 Reappointments

Thomas A. Lisk - Chair

John Daniel

Michelle Gowdy

Paul Kugelman

Eric M. Page

Jeffrey S. Palmore

Michael Quinan

Alexander F. Skirpan, Jr

Brooks M. Smith

Holly Trice

Jennifer Williamson

Kristi S. Wright

Cozen O'Connor

Alcoholic Beverage Control

Virginia Municipal League

Department of Wildlife Resources

Eckert Seamans

Reed Smith

Thompson McMullan

State Corporation Commission

Troutman Pepper

Division of Legislative Services

Office of the Attorney General

Office of the Executive Secretary of
the Supreme Court

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Thomas A. Lisk - Tom Lisk focuses his practice on regulatory matters before agencies, boards, and commissions of the Commonwealth, including the State Corporation Commission. In addition, he is a registered lobbyist in Virginia, providing legislative representation of business interests and trade associations before the Virginia General Assembly since 1980.

John Daniel - John Daniel is the government affairs officer and general counsel for the Virginia Alcoholic Beverage Control Authority, in which capacity he advises members of the authority's executive team on relevant legislative and regulatory matters. He previously served as a member of the Division of Legislative Services and the Office of the Attorney General and was the Commonwealth's first secretary of natural resources.

Michelle Gowdy - Michelle Gowdy is the executive director of the Virginia Municipal League. A former prosecutor, she previously served as county attorney for New Kent County and James City County and worked for the Virginia Department of Forensic Science.

Paul Kugelman - Paul Kugelman currently serves as legal compliance officer of the Department of Wildlife Resources, assisting the department with regulatory and legislative matters. He previously worked for the Office of the Attorney General, where he reviewed APA bills and served as regulatory coordinator. He also previously represented numerous state agencies and entities in regulatory matters.

Eric M. Page - Eric Page represents regulated and non-regulated utilities such as telecommunications carriers, natural gas distribution and pipeline companies, electric utilities, and water and sewer companies. He handles a wide range of regulatory and administrative matters for insurance companies, producers, and agencies in licensing, enforcement, and registration proceedings.

Jeffrey S. Palmore - Jeff Palmore joined Reed Smith in 2013 after serving as a senior legal and policy advisor for the Governor of Virginia. His practice focuses on representing clients before the Virginia General Assembly, executive branch agencies, and local governments. He also advises clients on federal and state campaign finance issues, lobbying law, election law, and government ethics.

Michael Quinan - Mike Quinan practices in the areas of business litigation, administrative law, and public utility regulation. He has handled cases at state agencies, as well as in state and federal courts throughout the Commonwealth, and he maintains a wide range of expertise in regulatory matters.

Alexander F. Skirpan, Jr. - Alex Skirpan serves as a senior hearing officer for the State Corporation Commission and serves as treasurer of the Virginia Association of Administrative Law Judges and Hearing Officers.

Brooks M. Smith - Brooks Smith is an environmental and natural resources partner at Troutman Pepper. He is deeply involved in matters arising under the Clean Water Act, including national rulemakings, policies and litigation, state permit proceedings and appeals, complex civil and criminal investigations, enforcement actions, and citizen lawsuits.

Holly Trice - Holly Trice was an attorney for the Department of Labor and Industry for more than eight years and served the agency in numerous capacities. She joined the Division of Legislative Services in 2021 and currently serves as Registrar of Regulations, overseeing publication of the Virginia Register and maintenance of the Virginia Administrative Code.

Jennifer Williamson - Jennifer Williamson serves the Commonwealth as a senior assistant attorney general in the Office of the Attorney General and has served as chair of the agency's APA committee.

Kristi S. Wright - Kristi S. Wright is an attorney in the Office of the Executive Secretary of the Supreme Court of Virginia. The Executive Secretary maintains a list of attorneys who serve as hearing officers authorized to preside over certain formal hearings and promulgates rules for the administration of the hearing officer system.

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