

VIRGINIA CODE COMMISSION

Monday, October 15, 2018 - 10 a.m.

Richmond, Virginia 23219

Minutes

Approved May 6, 2019

Members Present: John S. Edwards; Rita Davis; Leslie L. Lilley; Charles S. Sharp; Ryan T. McDougle; James A. Leftwich, Jr.; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Samuel T. Towell; Mark Vucci

Members Absent: None

Staff Present: Scott Meacham, Jeff Sharp, Amigo Wade, Kristen Walsh, Brittany Olwine, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Division of Legislative Services (DLS)

Others Present: Eric Page, Administrative Law Advisory Committee; Brian Kennedy, LexisNexis; Michael Skiffington, Department of Mines, Minerals and Energy

Call to order; welcome and introduction of new members: Senator Edwards, chair, called the meeting to order at 10:00 a.m.

Approval of minutes: The minutes of the August 6, 2018, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Report of activities and reappointment of members of the Administrative Law Advisory Committee (ALAC): Eric Page reported the hearing officer handbook has been updated and the work group to review the executive branch review process for state regulatory actions has reconvened. Mr. Page requested that the Commission reappoint the following members to ALAC: Roger L. Chaffe, Jeffrey S. Gore, Karen W. Perrine, and Kristi S. Wright. The Commission approved the appointments and accepted the annual report.

Report of the Code of Virginia contract work group - update on Request for Information and closed session: Mr. Vucci reported that the Request for Information regarding the contract to publish the Code of Virginia, which had been approved by the Commission at its August 6, 2018, meeting, had been issued. The deadline for responding to the request was October 1, 2018. Mr. Vucci reviewed several differences between the current contract and the proposed new contract, including that the new contract will be a six-year contract with two three-year renewal periods and the database deadline is June 23. Mr. Vucci then moved that the Commission convene in a closed session pursuant to § 2.2-3711 A 29 of the Code of Virginia to discuss the award of a public contract for the publication of the Code of Virginia. Upon a second by Mr. Miller, the Commission approved the closed session and that Karen Perrine, Anne Bloomsburg, and Lilli Hausenfluck attend the closed session as their presence is necessary or will reasonably aid the Commission in its consideration of this matter.

The Commission reconvened in open session, and by roll call, all members of the Commission certified that to the best of his or her knowledge that (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion for the closed session were heard, discussed, or considered in the closed meeting by the Commission.

Mr. Vucci moved that the Commission direct the Division of Legislative Services to develop a contract with LexisNexis on the terms outlined in the Request for Information with an additional term regarding provision of eight copies of the Acts of Assembly to LexisNexis. The motion was seconded properly and passed unanimously.

Recodification of Title 45.1, Mines and Mining: approval of members of work group: Scott Meacham, Division of Legislative Services, gave an overview of Title 45.1 and the expected approach

for recodification. Michael Skiffington of the Department of Mines, Minerals and Energy was present to answer any technical questions that might arise. Mr. Meacham explained that the recodification was mainly renumbering and reorganization. The goal is to complete the recodification in 2020 for introduction of a bill into the 2021 Session of the General Assembly. Mr. Meacham reviewed the Work Group Composition Proposal, which includes representatives of state government, industry, conservation and environmental groups, academics, and attorneys. Senator McDougle moved approval of the work group composition and members. The motion was seconded properly and passed unanimously.

Not Set Out - Title 15.2, Counties, Cities and Towns: At its June 4, 2018, meeting, the Commission received and reviewed a report by Jeff Sharp, Division of Legislative Services, regarding the codified provisions in Title 15.2 of the Code of Virginia that currently show as "not set out." At the conclusion of Mr. Sharp's presentation, the Commission deferred a decision to receive input from Judge Lilley, a former president of the Local Government Attorneys Association, who was not able to attend the June meeting. The matter is back before the Commission at this meeting.

Mr. Sharp went over his report and recommendations with the Commission. The Commission determined not to recommend that § 15.2-6201 be repealed because it related to bonds; the section will be set out.

After a brief discussion regarding codifying only rules of general application, Judge Lilley moved to accept the staff recommendations to set out the provisions in Title 15.2 as provided in the report. The motion was seconded properly and passed, with Mr. Moncure voting no. For the sections that have population brackets that will be replaced with locality names, the Commission also approved a draft bill for introduction into the 2019 Session of the General Assembly.

2019 Code of Virginia pricing and replacement volume proposal: Brian Kennedy, LexisNexis, presented the proposed 2019 replacement volumes and pricing. Three volumes are recommended for replacement due to the size of the supplement: Volumes 6 (Titles 33.2-37.2), 7B (Title 54.1), and 9 (Titles 59.1-64.2). Volume 8 (Titles 55-57) will be replaced due to the recodification of Title 55, for a total of four replacement volumes. The Publisher's Price Index increase for professional books is 5.75%; LexisNexis is recommending only a 5% increase. After a review of recent price increases, Mr. Miller moved to approve a 5% increase. The motion was seconded properly and voted upon. Ms. Davis voted no, stating that the prices listed in the materials differed slightly from a 5% increase. The Commission reconsidered Mr. Miller's motion. Mr. Kennedy explained that the differences are due to rounding. Ms. Davis moved that the Commission approve the prices as listed in the materials. The motion was seconded properly and passed unanimously. Upon a motion by Senator McDougle, properly seconded, the Commission approved the four recommended replacement volumes - 6, 7B, 8, and 9.

Proposed legislation to amend the Code of Virginia: Mark Vucci presented two proposed bills for recommendation by the Commission to the General Assembly. The first amends the Code of Virginia to reflect the current practice with respect to employment of the Registrar of Regulations. Mr. Vucci moved that the draft bill be approved for introduction in the 2019 Session of the General Assembly. The motion was seconded properly and passed unanimously. The other bill amends the Code of Virginia to allow the Commission to fulfill its statutory responsibilities in publishing the Code of Virginia, Virginia Administrative Code, and the Virginia Register of Regulations by means of either an online publication or actual printing. After a brief discussion, the draft bill was tabled.

Recodification of Title 55, Property and Conveyances: Amigo Wade, Kristen Walsh, and Brittany Olwine, Division of Legislative Services, presented the final matters regarding the recodification of Title 55 for consideration by the General Assembly at its 2019 Session. Mr. Wade described the materials previously approved by the Commission and reviewed in detail the proposed cover letter and executive summary for the Report of the Commission to the General Assembly. The executive summary includes the organization of the new title, statutory provisions proposed for repeal, chapters being moved to other titles of the Code of Virginia for better topical fit, explanation of technical changes, and commission-approved substantive changes. He also explained the 13 proposed enactment clauses for the recodification bill and the comparative tables. Mr. Miller suggested that sections repealed be added as substantive action and that copies of the executive summary be provided to the General Assembly members serving on the committee to which the bill is referred.

Mr. Vucci personally thanked Mr. Wade, Ms. Walsh, and Ms. Olwine for their diligent efforts and fine work. He also thanked the work group. The Commission concurred with Mr. Vucci's remarks. Ms. Walsh thanked Chip Dicks, a member of the work group. Upon a motion by Mr. Vucci, properly seconded, the Commission unanimously approved the report and the draft bill. Mr. Nolen stated that while he is voting in favor of the report and draft bill, he is abstaining from the portion of the report and recodification pertaining to timeshares because of his firm's representation of the American Resort Development Association.

Mr. Vucci also moved that Mr. Wade, Ms. Walsh, and Ms. Olwine be presented with a bound copy of the report, as is tradition with previous recodifications. The motion was seconded properly and passed unanimously.

Other business:

Election of Vice Chair: Senator Edwards moved that Delegate Leftwich be elected as Vice Chair of the Commission. The motion was seconded properly and passed.

Review of 2019 Code Commission legislative package and selection of bill patrons: Senator Edwards will carry the recodification of Title 55 bill, Delegate Leftwich will carry the bill regarding Title 15.2 not set out provisions, and Senator McDougle will carry the bill regarding employment of the Registrar of Regulations.

Memorandum of understanding to continue Publisher's Forum: Karen Perrine, Division of Legislative Services, reviewed the memorandum of understanding for participation in the electronic Publisher's Forum of the Commission. The current memorandum will expire November 21, 2018. Ms. Perrine requested that the Commission approve renewal, with future extensions approved by the Commission Chair. Upon a motion by Mr. Nolen, properly seconded, the Commission granted approval.

Remarks on the Boyd-Graves Conference: Mr. Vucci stated that the Conference issued a report regarding the use of "shall" v. "may" in the Code of Virginia. The report recommends a prospective review and replacement of "shall" in cases where it is misused with the accurate word. Mr. Vucci stated that there are over 20,000 sections of the Code of Virginia that use "shall." The current Division of Legislative Services drafting policy is to use "shall" only when the requirement is mandatory. Judge Sharp stated that each instance of "shall" would need to be studied to determine its meaning in a particular section before making a replacement. The Commission discussed other concerns with prospective incorporation. Delegate Leftwich indicated that Boyd-Graves will have a committee study this matter for next year's conference.

Versioning for the Virginia Administrative Code: Previously, Thomson Reuters-West advised that CDs of the administrative code would be phased out, and Commission staff would be given access to WestLaw instead. The Commission had approved a contract modification reflecting this change. Ms. Perrine reported that Alex Medrano, West, has informed her that West is not going to phase out CDs for at least several years. Therefore, the contract does not need to be modified at this time. Mr. Medrano also indicated that West is filling in historical data and will provide information as to versioning at a later date.

Public comment, adjournment: Senator Edwards opened the floor for public comment. No member of the public asked to be heard.

As there was no further business to discuss, the meeting was adjourned at 12:05 p.m.