

# VIRGINIA CODE COMMISSION

*Monday, May 6, 2019 - 10:00 a.m.  
Richmond, Virginia 23219*

## Minutes

*Approved August 19, 2019*

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

**Members Absent:** Samuel T. Towell

**Staff Present:** Scott Meacham, David Barry, Amigo Wade, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Stephanie Kerns, Division of Legislative Services (DLS)

**Others Present:** Tom Lisk, Chair, Administrative Law Advisory Committee; Brian Kennedy, LexisNexis; Michael Skiffington and Larry Corkey, Department of Mines, Minerals and Energy

**Call to order; welcome and introduction of new member:** Senator Edwards, chair, called the meeting to order at 10:00 a.m. He introduced former Senator and Judge Malfourd Trumbo, who joins the Commission to replace former Senator Robert Calhoun, and welcomed him to the Commission.

Senator Edwards announced that E.M. Miller's appointment will end June 30, 2019, and thanked him for his service to the Commission, both as Executive Director of the Division of Legislative Services and as a member. Mr. Miller thanked Senator Edwards and expressed his gratitude to the Commission and Division of Legislative Services (DLS) staff. He stated that he had thoroughly enjoyed working with the Commission and staff, noting that he has been with the Commission for almost 30 years.

**Approval of minutes:** The minutes of the October 15, 2018, meeting of the Commission, as printed and distributed to the members, were approved without objection.

**Administrative Law Advisory Committee (ALAC); members and work plan:** Tom Lisk requested that the Commission reappoint two members of ALAC whose terms expire in May: Michael Quinan, attorney with Christian and Barton, LLP, and Paul Kugelman, Senior Assistant Attorney General, Office of the Attorney General. On motion of Senator Edwards, seconded by Mr. Nolen, the Commission approved the reappointments.

Mr. Lisk presented ALAC's work plan to continue the examination of executive branch review of regulatory actions and guidance documents. On motion of Mr. Nolen and duly seconded, the Commission approved the work plan.

**Recodification of Title 45.1, Mines and Mining:** Scott Meacham and David Barry presented a draft work plan and proposed organization of new Title 45.2 (a recodification of the existing Title 45.1) and a timeline for the project. The draft work plan provides for review of approximately half of the sections in Title 45.1 this year and completion of the recodification in 2020 with submission of a bill in the 2021 Session of the General Assembly. The new title will be divided into five subtitles: Administration, Coal Mines, Mineral Mines, Oil and Gas, and Other Forms of Energy. Upon motion of Delegate Leftwich, duly seconded, the work plan and proposed organization was approved.

**Code of Virginia publication contract update:** At its October 15, 2018, meeting, the Commission authorized staff to prepare a contract with LexisNexis for publication of the Code of Virginia beginning in November 2020, upon expiration of the current contract. Mr. Vucci reported that the new contract is complete and will be sent to LexisNexis and Senator Edwards for signature.

**Renewal of contract for publication of the Virginia Administrative Code:** Ms. Perrine stated that the current contract with Thomson Reuters-West for publication of the Virginia Administrative Code

expires April 30, 2020. The contract provides for renewal of the contract for a period of four years, and staff recommends renewal on the same terms as the current contract. On motion of Mr. Vucci, seconded by Ms. Davis, the Commission approved renewal of the contract until April 30, 2024.

**Status of Code Commission bills for the 2019 Session of the General Assembly:** Ms. Perrine stated that the three bills recommended by the Commission were enacted into law at the 2019 Session. The bills were: Recodification of Title 55 (SB 1080, Chapter 712), Title 15.2 "not set out" provisions with locality descriptions replaced with localities names (HB 2305, Chapter 632), and employment of the Registrar clarification (SB 1377, Chapter 362). Ms. Perrine said that all Title 15.2 (Counties, Cities and Towns) sections that are currently not set out will be set out in the July 2019 update of the Code of Virginia as previously approved by the Commission.

**2019 Code Commission work plan:** Ms. Perrine reviewed the Commission's 2019 draft work plan. The proposed plan included the Title 45.1 recodification, continued review of "not set out" sections in the Code of Virginia, and review of other sections of the Code that may benefit from restructuring. On motion of Delegate Leftwich, seconded by Mr. Trumbo, the work plan was approved.

**Other business:**

- At the request of Ms. Davis, Mr. Vucci reviewed criteria for a statute to be considered obsolete, such as a statute that has been deemed unconstitutional by the Virginia Supreme Court or the United States Supreme Court or a statute that has an expiration date that has passed. During the recodification or review of "not set out" or other Code sections, a section may be identified as obsolete and recommended for repeal pursuant to § 30-151 of the Code.

- Ms. Perrine reviewed the chart of Section 1 bills and enactment clauses from the 2019 Session of the General Assembly that were assigned a section number or placed in an existing section by the Executive Committee. The patron of each bill was notified of the codification. Staff explained the basis for codifying cc. 91, 97, and 294, which expressly mandated that the State Board of Social Services adopt into regulation certain specific requirements regarding assisted living facilities. Placing grants of regulatory authority into the Code of Virginia adds transparency and clarity to the agency's regulatory process and removes any doubt about whether the regulation remains within the parameters of its authority. Codification of acts that grant agencies the authority to adopt particular regulations also occurred in 2017 and 2018.

- Mr. Vucci introduced Stephanie Kerns, Administrative and Training Coordinator, DLS, who will be attending Commission meetings as the liaison between the Commission and DLS.

**Public comment, adjournment:** Senator Edwards opened the floor for public comment. As there was no public comment and no further business to discuss, the meeting adjourned at 11:00 a.m.