

VIRGINIA CODE COMMISSION

*Monday, August 19, 2019 - 10:00 a.m.
Richmond, Virginia 23219*

Minutes

Draft

Members Present: John S. Edwards; James A. Leftwich, Jr.; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Malfourd W. Trumbo; Mark Vucci

Members Absent: Ryan T. McDougale; Samuel T. Towell

Staff Present: David Barry, Brooks Braun, Meg Lamb, Scott Meacham, Sarah Stanton, Amigo Wade, Karen Perrine, Anne Bloomsburg, Lilli Hausenfluck, Division of Legislative Services (DLS)

Others Present: Brian Kennedy, LexisNexis

Call to order; welcome and introduction of new member: Senator Edwards, chair, called the meeting to order at 10:00 a.m. He introduced Nicole "Nikki" Cheuk, who joins the Commission as a nonlegislative citizen member with legal knowledge and experience in the codification of session laws and recodification of statutes, and welcomed her to the Commission.

Approval of minutes: The minutes of the May 6, 2019, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Review of codified sections currently shown as "Not Set Out":

As part of the Commission's 2019 work plan and ongoing review of sections that appear in the Code of Virginia with only a section number, DLS staff presented sections for consideration by the Commission to be set out in the Code of Virginia. The text does not appear based on previous decisions of the Code Commission. DLS staff will present reports and recommendations regarding approximately 11 individual sections that are currently not set out.

Title 2.2 - Administration of Government and Title 36 - Housing:

Amigo Wade presented §§ 2.2-4503 and 2.2-5500 in Title 2.2 and §§ 36-19.1, 36-19.4, 36-27.1, 36-72, and 36-85.4 in Title 36 of the Code of Virginia.

Section 2.2-4503: Mr. Wade explained that Fairfax County has a finance director instead of a treasurer, and this section provides the finance director with the same authority as a treasurer. The Commission concurred with the recommendation to set out the section.

Section 2.2-5500: Mr. Wade suggested removing the purpose and intent language in sentences 1, 3, and 4 as shown in the materials. After a brief discussion, Delegate Leftwich moved that the Code section be set out with only technical changes. Ms. Davis seconded and the motion carried, with Mr. Moncure and Mr. Trumbo voting no.

Sections 36-19.1, 36-19.4, and 36-27.1: Mr. Wade explained that under the Commission's policy to replace population brackets with the name of the affected city or county, the population bracket language is replaced with the appropriate city name as follows: Roanoke in § 36-19.1, Portsmouth in § 36-19.4, and Waynesboro in § 36-27.1. Upon a question from Judge Lilley, Mr. Wade indicated that he will check for other localities that may have grown into the bracket for all three sections. The Commission asked Mr. Wade to prepare a bill for consideration by the Commission at a later meeting reflecting the requested information.

Section 36-72: The Commission concurred with the recommendation to set out this section.

Section 36-85.4: The Commission concurred with the recommendation to proceed with a bill for introduction into the 2020 Session of the General Assembly that includes the deletion of the first sentence of the section.

Title 57 - Religious and Charitable Matters; Cemeteries:

Brooks Braun presented §§ 57.2-39.2 through 57-39.7 (Article 1) of Title 57 of the Code of Virginia, which addresses how an owner of certain cemeteries may acquire abandoned cemetery lots. Mr. Braun said that most of the changes are technical and explained that references to a court of equity are updated to reflect the current structure of the Virginia judicial system. The Commission concurred with the recommendation to set out §§ 57.2-39.3 through 57-39.7.

Section 57-39.2 contains a population bracket, and other counties may have grown into this bracket. Mr. Braun will contact the localities involved and report to the Commission at a meeting later this year. The Commission asked Mr. Braun to prepare a bill for consideration by the Commission at a later meeting reflecting the requested information.

Restructuring of certain sections of the Code of Virginia: The Commission's work plan for 2019 included consideration of certain sections of the Code of Virginia to be restructured and reorganized. Staff of DLS presented proposals for sections in Titles 54.1 and 24.2 of the Code of Virginia.

Title 54.1 - Professions and Occupations:

Sarah Stanton presented a proposal for restructuring § 54.1-3408. Ms. Stanton explained that this section has become very long and unwieldy, containing subsections A through Z. New subsections are proposed each year, and this section will likely continue to grow. Section 54.1-3408 includes provisions relating to (i) prescribing, (ii) dispensing, and (iii) administering drugs and devices by numerous categories of health care providers and other individuals. Ms. Stanton explained that prescribing, dispensing, and administering are subject to different statutory requirements and restrictions. The lack of organization makes this section difficult to navigate.

Under the proposal regarding § 54.1-3408 and related sections, § 54.1-3408 will retain only the provisions related to the administration of drugs and devices, which make up the most substantial portion of the section and are not addressed elsewhere in a cohesive fashion. Provisions related to the prescription and dispensation of drugs and devices in § 54.1-3408 will be moved to Chapter 33, which contains provisions governing the practice of pharmacy, or other sections of Chapter 34, which is the Drug Control Act.

Ms. Stanton indicated that changes to other related sections brings diverse provisions relating to prescribing together in a cohesive group of sections governing the requirements for a prescription to be valid, the form of prescriptions, and the transmission of prescriptions. As these provisions are most appropriate for and consistent with the Drug Control Act, provisions related to prescribing currently found in Chapter 33 (Pharmacy) are moved to Chapter 34 (Drug Control Act), so that only sections dealing with the practice of pharmacy are in Chapter 33.

The proposal sets out the provisions governing the dispensing of drugs and devices by various categories of health care providers and other individuals in a new section separate from the provisions governing the dispensing of drugs and devices by a pharmacist.

If the Commission approves this approach, Ms. Stanton will contact stakeholders and prepare a draft bill for the Commission's review at a meeting later this year.

In response to a question from Ms. Davis, Ms. Stanton identified possible downsides to this effort including that the scope and size of the restructuring may appear to be a major change and that there is risk of inadvertently leaving something out in moving language around.

Hearing no objection, Senator Edwards directed Ms. Stanton to proceed with drafting a bill per her presentation and contacting stakeholders.

Title 24.2 - Elections:

Meg Lamb presented a proposal and draft bill to restructure existing § 24.2-604, relating to polling place activities, which currently addresses (i) prohibited activities within a certain distance outside of a polling place, (ii) prohibited activities within a polling place, (iii) presence of authorized representatives of political parties or candidates, (iv) presence of candidates, (v) presence of authorized neutral observers, (vi) presence of news media, (vii) electioneering, (viii) simulated election activities, and (ix) penalties, making individual requirements often difficult to find.

Ms. Lamb explained that the proposed restructuring will limit the scope of § 24.2-604 to (i) prohibited activities within a certain distance outside of the polling place and (ii) prohibited activities within the polling place. The other provisions currently in § 24.2-604 will be moved to new sections as follows: presence of authorized representatives of political parties or candidates to § 24.2-604.4, presence of authorized neutral observers and news media to § 24.2-604.5, and simulated election activities to § 24.2-604.6. At the request of Senator Edwards, Ms. Lamb will check to see if the provisions on simulated elections are obsolete. Penalties are included in each section as appropriate.

Ms. Lamb next presented a proposal regarding existing §§ 24.2-652 and 24.2-653, relating to provisional voting. Currently, § 24.2-652 contains the conditions that must be met for a voter whose name is not in the poll book to cast a ballot. However, the provisions stating what happens when the conditions cannot be met are located in § 24.2-653. The proposed bill moves these provisions to § 24.2-652 as new subsection B so that the relevant provisions are in a single section.

Section 24.2-653 also currently contains (i) the process for the electoral board to determine the validity of provisional votes after election day and (ii) the reasons a voter would be permitted to vote provisionally. The proposed bill moves the language relevant to the process for the electoral board to new § 24.2-653.01 and the language relating to the reasons why a voter is permitted to vote provisionally to § 24.2-653.2, so the remaining scope of § 24.2-653 is only provisional voting procedures in the polling place.

The Commission concurred with the recommendation to introduce the bills in the 2020 Session of the General Assembly, subject to the question regarding simulated elections.

Brooks Braun presented a proposal to restructure Article 1 of Chapter 8 of Title 24.2, consisting of §§ 24.2-800 through 24.2-802, so that the sections are more cohesive. Section 24.2-802 has become lengthy, and the proposal moves certain subsections to other current or proposed new sections.

Mr. Nolen asked if the cross reference on line 114 regarding discovery in a contested election is correct. Mr. Braun will research this question and report at a subsequent meeting.

Mr. Braun noted that to reduce possible confusion regarding the multiple senses of the words "determination," "redetermination," and "recount" as currently used in the Chapter 24.2, (i) "determination" is changed to "recount" in §§ 24.2-802 A and 24.2-802.2 B and to "counting" in § 24.2-802.1 B and (ii) "redetermination" is changed to "recount" in § 24.2-802.2 D.

The Commission concurred with the recommendation to introduce a bill in the 2020 Session of the General Assembly, subject to the question regarding discovery in a contested election.

Mr. Nolen left the meeting at 11:45 a.m.

Recodification of Title 45.1, Mines and Mining: The DLS recodification team, Scott Meacham and David Barry, presented proposed Chapter 5, Coal Mine Safety Act, and reported that the work group had met three times. Mr. Meacham reviewed the revised proposed organization of new Title 45.2, which is divided into five subtitles: Administration, Coal Mines, Mineral Mines, Oil and Gas, and Other Forms of Energy. He noted that the proposal moves the majority of existing Title 67, the Virginia Energy Plan, into new Title 45.2. Other sections of Title 67 will be moved elsewhere in the Code so the plan will no longer be in a separate title.

Mr. Meacham described most of the changes in Chapter 5 as grammatical corrections or modernizations or clarifications of existing language.

Mr. Vucci asked about the change in license renewal date from 15 business days following the anniversary of the date operations began to 15 business days following the expiration of the license (lines 769-771). Mr. Trumbo stated that he could foresee a circumstance, such as a severe weather event, that might delay the opening of a mine. Mr. Meacham will review this change with the work group again and report to the Commission.

Mr. Meacham explained that the change in the license fee for operation of a coal mine fee was based on the 2019 Appropriation Act, which set the amount at \$350. Mr. Meacham will contact the Department of Mines, Minerals and Energy regarding the change in the fee.

Other business:

- Ms. Perrine stated that the Southern Legislative Conference was sponsoring a staff exchange for staff of the Arkansas Bureau of Legislative Research, which has been charged with creating an administrative code, placing it online with regular updates, and providing a search feature. Virginia was asked to host the exchange and share our experience with creating, updating daily, and publishing the Virginia Administrative Code (VAC) and operating the Regulatory Information System application used to update VAC and publish the *Virginia Register*. Several years ago, Virginia hosted a delegation from Kentucky for a similar purpose.

- Mr. Vucci explained that the supplement for Volume 5A of the Code of Virginia (Elections to Fisheries) is being reissued to clarify the 2019 amendments regarding absentee voting and to set out twice certain sections with different effective dates. The supplement is expected in late August or early September.

- Mr. Vucci reminded the Commission that the November meeting is the same day as the Special Session and every effort will be made to move all November agenda items to December 16.

- Ms. Davis stated that the Governor had issued Executive Order 32 to establish a commission to examine racial inequity in Virginia law. The Commission will review the Acts of Assembly, the Code of Virginia, and administrative regulations to identify and make recommendations to address laws that were intended to or could have the effect of promoting or enabling racial discrimination or inequity. The Commission will be assisted by law students who will review the acts.

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 12:17 p.m.