

VIRGINIA CODE COMMISSION

Monday, September 16, 2019 - 10:00 a.m.
Richmond, Virginia 23219

Minutes

Approved

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

Members Absent: none

Staff Present: David Barry, Brooks Braun, Emma Buck, Scott Meacham, Charles Quagliato, Karen Perrine, Anne Bloomsburg, Lilli Hausenfluck, Division of Legislative Services (DLS)

Others Present: Melissa Velazquez, Department of Motor Vehicles; Michael Skiffington, Department of Mines, Minerals and Energy

Call to order: Senator Edwards, chair, called the meeting to order at 10:00 a.m.

Approval of minutes: The minutes of the August 19, 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, referred to as "not set out," DLS staff presented sections for consideration by the Commission to be set out in the Code of Virginia. The text of these sections does not appear in the Code based on previous decisions of the Code Commission.

Mark Vucci reviewed the standard for inclusion of a section in the Code of Virginia. Under § 30-148 of the Code of Virginia, the Commission has the responsibility to codify and incorporate into the Code all "general and permanent statutes." Otherwise, the section is not set out, which means that the section number and catchline appear in the Code, but the text of the section does not. Lilli Hausenfluck provided general background regarding why sections were not set out, and now in the age of information, the emphasis on transparency.

Title 19.2 - Criminal Procedure:

§ 19.2-309.1, Sentence of confinement to jail farms maintained by the Cities of Danville, Martinsville and Newport News: Charles Quagliato presented § 19.2-309.1 and recommended that the section be set out. He stated that Danville and Martinsville still operate jail farms but the jail in Newport News currently is closed. As the closure may not be permanent, Mr. Quagliato recommended leaving Newport News in the section. Motion by Senator Edwards to set out the section under the Commission's authority was duly seconded and passed, with Mr. Nolen and Mr. Moncure voting no.

Title 46.2 - Motor Vehicles:

Emma Buck presented §§ 46.2-341.2, 46.2-1106, 46.2-1138, 46.2-1235, 46.2-1580, and 46.2-1582.

§ 46.2-341.2, Statement of intent and purpose: Ms. Buck explained that this section states the intent of the Commercial Driver's License Act; however, that intent is accomplished through the substantive provisions of the other sections in the act. The recommendation is to repeal this section, which does not create substantive law, in accordance with the Commission's policy not to have purpose or intent sections in the Code of Virginia. The Commission agreed that the second sentence could be repealed; however, a question was raised as to whether repealing the first sentence of the section would impact

federal funding. Melissa Velazquez, Department of Motor Vehicles (DMV), indicated that the department has no concerns with repealing the section. She explained that the department collects the associated fees and passes the funds to the Department of Transportation (VDOT), and that she could not speak for that department. Senator Edwards deferred a decision on this item pending a response from VDOT regarding the necessity of the first sentence for federal funding.

§ 46.2-1106, Bus widths in Arlington County: The recommendation is to set out this section. Although the section is specific to only one locality, the section also addresses the Commonwealth Transportation Board's authority to permit the operation of certain size buses in Arlington County. The Arlington County Attorney's Office advised that the county does not rely on this section and had no objection to setting it out. DMV supports setting out the section as it is difficult for staff and the public to know about it. Ms. Buck reviewed §§ 46.2-1107 and 46.2-1108, which authorize the Commissioner of Highways to permit the operation of certain size buses throughout Virginia. She explained that this authority was transferred from the Commonwealth Transportation Board to the Commissioner in 2013, and the same change should have been made to § 46.2-1106. Senator McDougle asked if there was any reason not to repeal §§ 46.2-1106 and 46.2-1107 in light of the general statute, which is § 46.2-1108. Ms. Velazquez stated that DMV did not object to the repeal.

Senator McDougle moved that the Commission sponsor a bill to repeal §§ 46.2-1106 and 46.2-1107, duly seconded by Mr. Towell. Ms. Davis asked for the language of § 46.2-1107, which was read by Ms. Buck. The motion passed unanimously.

§ 46.2-1138, County ordinances fixing weight limits on roads that have been withdrawn from secondary system: The recommendation is to set out this section. The section is necessary because the Counties of Arlington and Henrico maintain their own secondary roads. The Department of Motor Vehicles had requested that § 46.2-1138 be set out because (i) the Division of Motor Carrier Services refers to that section frequently, (ii) the section is cross-referenced in two other sections of the Code of Virginia, and (iii) DMV issues overweight permits on behalf of other localities. Henrico County and Arlington County have no objection to setting it out. The Commission briefly discussed replacing the names of the counties with a generic description of the county government or withdrawal from secondary system. Upon a motion by Senator Edwards, seconded by Mr. Trumbo, the Commission approved setting out § 46.2-1138, with the technical changes shown in the draft, under the Commission's authority. Mr. Moncure voted no.

§ 46.2-1235, Authority of Chesterfield County law-enforcement personnel to issue tickets: Ms. Buck stated that Chesterfield County reported that the County usually writes tickets based on the Chesterfield County Code of Ordinances rather than this section of the Code of Virginia. After a brief discussion, Mr. Trumbo moved, seconded by Delegate Leftwich, that the Commission approve setting out this section, with technical changes, under the Commission's authority. The motion passed, with Mr. Nolen and Mr. Moncure voting no.

§ 46.2-1580, Legislative findings: Ms. Buck stated that this section is mainly legislative findings and does not create substantive law. Other text in this section is incorrect because the Commissioner of DMV is no longer solely responsible for the enforcement of provisions related to motor vehicle dealer advertising; enforcement is handled by the Motor Vehicle Dealer Board. The last sentence regarding the Consumer Protection Act should be retained, and Ms. Buck recommended moving that sentence to § 46.2-1582 (Enforcement; regulations) as new subsection B. With that amendment to § 46.2-1582, § 46.2-1580 is recommended for repeal. Mr. Towell moved that the Commission sponsor a bill to

repeal § 46.2-1580 and amend § 46.2-1582 as presented by Ms. Buck. The motion was duly seconded by Delegate Leftwich and passed.

Restructuring of certain sections of the Code of Virginia: At the August 19, 2019, meeting, the Code Commission considered a proposal to restructure Article 1 (Recounts) of Chapter 8 (Recounts and Contested Elections) of Title 24.2 (Elections), consisting of §§ 24.2-800 through 24.2-802, so that the sections are more cohesive. At that meeting, the Commission requested that Brooks Braun review and report to the Commission whether there was a more appropriate placement for the text that is being moved from § 24.2-802 B, last paragraph, second sentence, and designated as new subsection E in §§ 24.2-801 and 24.2-801.1, given the cross-reference to § 24.2-803. Subsection E states "Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election."

Mr. Braun explained the structure of existing law regarding discovery and disclosure in recounts. Section 24.2-802 applies to all elections, and § 24.2-803 addresses contested elections to the General Assembly. The Commission discussed the possible effects and implications of the proposed subsection E. An alternate proposal was made to move the text to be the last sentence of § 24.2-802.2 C, which is where the first sentence of the last paragraph of § 24.2-802 B was moved (lines 628 and 698). Upon a motion by Delegate Leftwich, seconded by Mr. Trumbo, the Commission approved the alternate proposal.

Recodification of Title 45.1, Mines and Mining: The DLS recodification team, Scott Meacham and David Barry, presented this item. Mr. Meacham reviewed the revised title outline and provided background information on Title 67, the Virginia Energy Plan. He explained the recommendation to move some sections of existing Title 67 into new Title 45.2 and other sections into other titles of the Code, appropriate for the agencies involved. For example, Chapter 4, Clean Coal Projects, of Title 67 will move to new Article 4 in Chapter 13, Air Pollution Control Board, of Title 10.1, Conservation. Although the Code provisions regarding the plan will no longer be in a separate title, the Department of Mines, Minerals and Energy (DMME) will continue to oversee the plan. Upon a motion by Mr. Vucci, seconded by Mr. Trumbo, the Commission approved the revised outline.

Mr. Meacham provided a handout with revised text to address questions from the August 19 meeting regarding Chapter 5 and other editorial changes made since the meeting: (i) instead of using "rules and regulations," the text will use "regulations" for consistency with current Code of Virginia text; (ii) in § 45.1-161.24, the Board of Coal Mining Examiners is established as a policy board rather than a supervisory board as each is defined in § 2.2-2100 of the Code because the board is not responsible for agency operations; (iii) remove "guidelines" and clarify whether provisions should be in regulation or lessened to "parameters"; (iv) regarding § 45.1-161.57 B, DMME has no concerns with the proposed changes; and (v) in § 45.1-161.57 C, the amount of the fee is changed to \$350 to reflect the budget bill. Mr. Towell inquired whether the change in subsection B creates a gap in licensure so that a mine may be operating unlicensed. Michael Skiffington of DMME will check with appropriate staff at DMME and report back to the Commission.

Next, Mr. Meacham reviewed Chapters 6 (Coal Mining Property, Interests, Adjacent Owners, and Dams) and 9 (Surface Coal Mines).

Chapter 6: Mr. Meacham stated that existing Chapters 14.7 (Rights of Owners of Land Adjacent to Coal Mines), 14.7:2 (Trust for Coal Interests), 14.8 (Emergency Seizure of Coal Properties by Commonwealth), and 18 (Coal Mining Refuse Piles, Water and Silt Retaining Dams) will be

Articles 1 through 4, respectively, of Chapter 6 in new Title 45.2. In § 45.1-161.311:3 A, new clause (i), the Commission modified the proposed text by replacing "at least" with "more than."

Chapter 9: Surface Coal Mines. Upon a question by the Commission, Mr. Meacham will review and clarify § 45.1-161.256 D (line 87); a possible redraft is to use "on each day upon which any person works at such location."

Other business: No other business was presented.

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 12:18 p.m.