

VIRGINIA CODE COMMISSION

Monday, December 16, 2019 - 10:00 a.m.

*Pocahontas Building, 6th Floor
Speaker's Conference Room
900 East Main Street
Richmond, Virginia 23219*

**Approved
June 16, 2020**

Meeting Minutes

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

Members Absent: Charles S. Sharp; Mark Vucci

Staff Present: David Barry, Brooks Braun, Emma Buck, Scott Meacham, Amigo Wade, Karen Perrine, Anne Bloomsburg, Stephanie Kerns, Division of Legislative Services (DLS)

Others Present: Brian Kennedy, LexisNexis; Michael Skiffington, Department of Mines, Mineral and Energy; Melissa Velazquez, Department of Motor Vehicles

Call to order: Senator Edwards, chair, called the meeting to order at 10:03 a.m. Karen Perrine stated that Mark Vucci resigned as Director of the Division of Legislative Services (DLS) to join the House of Delegates Clerk's Office effective at the start of the 2020 Session of the General Assembly. Section 30-145 of the Code of Virginia regarding membership on the Commission does not provide for a designee of the director to represent the director. Until a new director is appointed, Amigo Wade, Deputy Director of DLS, will attend the Commission meetings to assist the Commission in its work, but Mr. Wade will not be a voting member of the Commission.

Ms. Perrine requested that the agenda be amended to include consideration of setting out § 46.2-341.2 of the Code of Virginia, which was presented at the September 16, 2019, meeting and continued for receipt of additional information. Hearing no objection, Senator Edwards approved amending the agenda.

Approval of minutes: The minutes of the October 21, 2019, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Renewal of contract to publish Virginia Register of Regulations: Karen Perrine stated that the current contract with LexisNexis for publication of the Virginia Register of Regulations will expire June 1, 2020. The contract provides for renewal every two years upon mutual agreement. Staff recommends renewal on the same terms as the current contract. Brian Kennedy advised that LexisNexis is pleased to renew the contract and continue its relationship with the Commission and Division of Legislative Services. On motion of Senator Edwards, duly seconded, the Commission approved renewal of the contract until June 1, 2022.

Chris Nolen abstained from participation in this item and the vote, as Mr. Nolen's law firm represents the parent company of LexisNexis, although Mr. Nolen does not do any work for the parent company.

Follow-up: Review of codified sections in Title 46.2 (Motor Vehicles) currently shown as "Not Set Out": At the September 16, 2019, meeting, the Commission considered § 46.2-341.2 of the Code of Virginia as part of its ongoing review of Code of Virginia sections that were codified but not set

out in the Code. Section 46.2-341.2 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. In accordance with the Commission's policy not to have purpose or intent sections in the Code of Virginia, the recommendation is to repeal this section, which does not create substantive law. 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. The Commission deferred a decision on this item pending receipt of additional information.

Emma Buck stated that, immediately after the September meeting, Melissa Velazquez of the Department of Motor Vehicles (DMV) requested guidance from the Federal Motor Carrier Safety Administration (FMCSA) on that agency's interpretation of the repeal of § 46.2-341.2 and repeatedly followed up on her first contact. Just before today's meeting, DMV received confirmation from FMCSA that repealing this section would not be interpreted as detrimental to the federal act being effective in the Commonwealth. Staff recommends and DMV supports the repeal of § 46.2-341.2. Upon motion of Judge Lilley, seconded by Mr. Moncure, the Commission approved recommendation of a bill for the 2020 Session of the General Assembly to repeal § 46.2-341.2.

Follow-up on review of codified sections in Title 36 (Housing) currently shown as "Not Set Out" in the Code of Virginia: At the August 18, 2019, meeting, the Commission considered §§ 36-19.1, 36-19.4, and 36-27.1 of the Code of Virginia as part of its ongoing review of Code of Virginia sections that were codified but not set out in the Code. Staff recommended setting out all three sections and replacing the population brackets with the name of the affected city or county. A question was raised as to other localities that may have grown into the bracket, and the Commission deferred a decision pending receipt of additional information.

Amigo Wade stated that in researching this matter to provide the requested information, he discovered that a 1975 Act of Assembly already replaced the population bracket with the name of the locality. Therefore, a bill is unnecessary, and the section may be set out under the Commission's authority. Upon motion of Judge Lilley, seconded by Mr. Trumbo, the Commission approved setting out §§ 36-19.1, 36-19.4, and 36-27.1. Mr. Moncure voted no.

Follow-up on review of codified sections in Title 57 (Religious and Charitable Matters; Cemeteries) currently shown as "Not Set Out" in the Code of Virginia: At the August 18, 2019, meeting, the Commission considered § 57.2-39.2 of the Code of Virginia as part of its ongoing review of Code of Virginia sections that were codified but not set out in the Code. The section addresses how an owner of certain cemeteries may acquire abandoned cemetery lots. Staff recommended setting out this section and replacing the population brackets with the name of the affected city or county. A question was raised as to other localities that may have grown into the bracket, and the Commission deferred a decision pending receipt of additional information.

Brooks Braun reported that originally only Scott and Wythe Counties were in the population bracket in § 57.2-39.2. Subsequently, Botetourt, Dinwiddie, and Isle of Wight Counties grew into and out of the bracket. Lee County grew into but not out of the bracket. A request was sent out to all counties through the Virginia Association of Counties for comment on setting out the sections and listing specific counties instead of using a population bracket. Of the affected counties, Isle of Wight responded and requested being included in the list of counties in the statute. Representatives of Isle of Wight County indicated that the county has not exercised the authority included in § 57.2-39.2 but expects to do so in the future.

The Commission discussed the use and effect of population brackets in the Code as well the options for recommendations to the General Assembly. Mr. Trumbo moved that the Code Commission recommend a bill for the 2020 Session of the General Assembly to replace the population bracket with the names of Scott and Wythe Counties only. Upon a second by Judge Lilley, the motion passed with seven ayes and three nays.

Recodification of Title 45.1, Mines and Mining: The Division of Legislative Services (DLS) recodification team, Scott Meacham and David Barry, presented this item. Sections are referenced by existing Title 45.1 numbers as Title 45.2 section numbers have not been finalized.

Mr. Meacham reviewed questions raised at the October meeting regarding proposed Chapter 7 of Title 45.2. He stated that each question was discussed and presented the Commission with the result agreed to by the work group, as follows:

§ 45.1-161.109: Retain the grandfather clause, which states: "This section shall not apply to roof control systems installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face and ribs."

§ 45.1-161.162: Retain the date "July 1, 1999."

§ 45.1-161.159 A: Retain the word "person"; do not replace with "miner"

§ 45.1-161.161: Use the word "component" instead of "piece."

Mr. Meacham then reviewed proposed Chapters 8, 14, and 15 of Title 45.2.

Chapter 8 of Title 45.2 - Requirements Applicable to Underground Coal Mines (existing §§ 45.1-161.105 through 45.1-161.252).

Mr. Meacham explained that proposed Chapter 8 is composed of existing Articles 4, 10, 11, 12, 13, and 14 of Chapter 14.3 of Title 45.1. Most of the changes in Chapter 8 are grammatical corrections or modernization or clarification of existing language. At the Commission's request, items for clarification or follow-up are:

§§ 45.1-161.125 and 45.1-161.186 F (lines 3 and 54, respectively): Removal of the dates in these sections will be reconsidered after additional research.

§ 45.1-161.188 C: The name of the referenced national standard will be clarified.

§ 45.1-161.225: The name of the referenced national standard will be clarified.

Chapter 14 of Title 45.2 - Requirements Applicable to Underground Mineral Mines (existing §§ 45.1-161.293 through 45.1-161.303).

Mr. Meacham explained that proposed Chapter 14 is composed of the provisions of existing Chapter 14.5 of Title 45.1. Most of the changes in Chapter 14 are grammatical corrections or modernization or clarification of existing language.

Upon a question from Mr. Towell regarding the stricken language in § 45.1-161.298 B regarding regulations, Mr. Meacham explained that the stricken text provided standards in the statute that were effective only until final regulations were adopted. The text is unnecessary as the Department of Mines, Minerals and Energy has adopted permanent regulations. Also, the remaining text of the section requires the department to continue updating regulations.

Chapter 15 - Requirements Applicable to Surface Mineral Mining (existing §§ 45.1- 161.304 through 45.1-161.309).

Mr. Meacham explained that proposed Chapter 15 is composed of the provisions of existing Chapter 14.6 of Title 45.1. Most of the changes in Chapter 15 are grammatical corrections or modernization or clarification of existing language.

Regarding § 45.1-161.307 B (line 85), Senator McDougle asked whether changing "a copy of parts" to "copies" before "of the maps and plans required" had an unintended adverse consequence. Mr. Meacham stated that the work group will address the question when it meets again in the spring of 2020.

Judge Lilley commended Mr. Meacham and Mr. Barry for their work on the title recodification.

Other business:

- Review of the Code Commission legislative package for the 2020 Session of the General Assembly and selection of bill patrons. Karen Perrine presented the list of bills approved as Code Commission sponsored bills and requested a patron for each bill. Delegate Leftwich will carry the bills regarding the Title 55.1 technical corrections and § 36-85.4 of the Code of Virginia. Senator McDougle will carry the bills regarding §§ 46.2-1106, 46.2-1107, 46.2-1580, 46.2-1582, and 46.2-341.2 of the Code of Virginia. Senator Edwards will carry the bills regarding restructuring of Code of Virginia sections regarding polling place activities, provisional voting, and recounts and amending § 57-39.2 of the Code of Virginia.

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 11:23 a.m.

Next meeting: Next year's schedule will be established early in 2020.