



Virginia Code Commission

September 16, 2019, at 10:00 a.m.

Pocahontas Building, Speaker's Conference Room

codecommission.dls.virginia.gov/

The Virginia Code Commission (the Commission) met in Richmond with Senator John S. Edwards, chair, presiding.¹ The meeting began with introductions and opening remarks followed by presentations and discussion. Materials presented at the meeting are accessible through the [Commission's meetings webpage](#).

Review of Codified Sections Currently Shown as "Not Set Out"

Charles Quagliato, Section Manager; Emma Buck, Senior Attorney, Division of Legislative Services (DLS)

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. Based on decisions made in the past by the Code Commission, the text of these sections is currently not set out in the Code.

Title 19.2 - Criminal Procedure

Charles Quagliato presented § 19.2-309.1, Sentence of confinement to jail farms maintained by the Cities of Danville, Martinsville and Newport News, and recommended that the section be set out. He stated that Danville and Martinsville still operate jail farms but the jail farm in Newport News currently is closed. As the closure may not be permanent, Mr. Quagliato recommended leaving Newport News in the section. The Commission approved setting out the section under the Commission's authority.

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 include purpose or intent sections in the Code of Virginia. 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 VDOT. Senator Edwards deferred a decision on this item pending a response from VDOT regarding the necessity of the first sentence for federal funding.

¹ **Members Present:** Senator John S. Edwards, chair; Delegate James A. Leftwich, Jr., vice-chair; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Chris Nolen; Senator Ryan T. McDougle Thomas M. Moncure, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo; Mark Vucci

§ 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. 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 Ryan T. 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. The Commission determined to sponsor a bill for introduction in the 2020 Session of the General Assembly to repeal §§ 46.2-1106 and 46.2-1107.

§ 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. The Commission approved setting out § 46.2-1138, with the technical changes shown in the draft, under the Commission's authority.

§ 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. The Commission approved setting out this section, with technical changes, under the Commission's authority.

§ 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. The Commission approved sponsoring a bill in the 2020 Session of the General Assembly to repeal § 46.2-1580 and amend § 46.2-1582.

Restructuring of Article 1 of Chapter 8 of Title 24.2, consisting of §§ 24.2-800 through 24.2-802, of the Code of Virginia

Brooks Braun, Attorney, DLS

At the Commission's August 19, 2019, meeting, Brooks Braun presented a proposal to restructure §§ 24.2-800 through 24.2-802 to improve the cohesiveness and clarity of these sections. The Commission deferred a decision, and requested additional information as to whether there was a more appropriate placement for the text that is being moved from § 24.2-802



B, last paragraph, second sentence, given the cross-reference in that text to § 24.2-803. The text is designated as new subsection E in §§ 24.2-801 and 24.2-801.1 and 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. The Commission approved an alternate proposal 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.

Recodification of Title 45.1, Mines and Mining

Scott Meacham, Senior Attorney, and David Barry, Attorney, DLS

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. 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."



Next Meeting

The next meeting is October 21, 2019, at 10:00 a.m.

For more information, see the [*Commission's website*](#) or contact the Division of Legislative Services staff:

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