

VIRGINIA CODE COMMISSION

Monday, November 16, 2020 - 10:30 a.m.

Electronic Meeting

Meeting Minutes

Approved
December 7, 2020

Members Present: John S. Edwards; Marcus B. Simon; Ward L. Armstrong; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Jennifer L. McClellan; Don L. Scott, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo

Members Absent: Christopher R. Nolen

Staff Present: Amigo Wade, Scott Meacham, Anne Bloomsburg, Nikki Clemons, Karen Perrine, Division of Legislative Services (DLS); Maryann Horch, Senate Technology

Others Present: Anne Barnard, Steve Praska, Thomson Reuters; Michael Skiffington, Director of Policy and Planning, Department of Mines, Minerals and Energy

Call to order: Senator Edwards, chair, called the meeting to order at 10:35 a.m. Pursuant to Item 4-0.01 of Chapter 1289 of the 2020 Acts of Assembly and due to the COVID-19 pandemic state of emergency, the meeting was held electronically over Zoom. Senator Edwards explained the procedures for voting for the meeting.

Approval of minutes: The minutes of the October 6, 2020, meeting of the Commission, as distributed to the members, were approved without objection.

Virginia Administrative Code contract changes: Amigo Wade stated that in April of this year, the United States Supreme Court decided the case of Georgia et al v. Public.Resource.Org, Inc. The defendant made the Official Code of Georgia Annotated (OCGA) public. In Georgia, the official statutory code is not only the statutes, but also includes the annotations. Georgia, through its Revision Commission, held copyright in the OCGA and sued on the basis of copyright infringement. The Supreme Court, in affirming the Eleventh Circuit Court of Appeals decision, held that officials empowered to speak with the force of law cannot be the authors of the works they create in the course of their official duties. Therefore, the Georgia legislature could not copyright the OCGA.

Mr. Wade said that a copyright has never been requested on behalf of the Commonwealth in the Code of Virginia or the regulations in the Virginia Administrative Code (VAC). Thomson Reuters, the official publisher of VAC, creates the annotations. The publication contract needs to be amended to align with the Supreme Court decision.

Karen Perrine stated that the Commission has had a contract with Thomson Reuters for about 25 years to publish the administrative code. The current contract provides that Thomson Reuters will register a copyright on behalf of the Commonwealth that includes the annotations and other Thomson Reuters work product. The proposed new subsection C, as shown in Amendment 3 in the materials, adjusts the language and clarifies the copyright interests of the publisher. Ms. Perrine noted that Code of Virginia states that the publisher can copyright its own work product. The new provisions are similar to the Code of Virginia contract provisions, which were written with the Georgia case in mind.

Ms. Perrine informed the Commission that Anne Barnard and Steve Praska from Thomson Reuters were at the meeting and available for questions.

Judge Lilley inquired as to reason for including paragraph 4, which did not directly address copyright. Ms. Perrine explained that subsection C in the current contract contained a number of provisions regarding copyright and other interests that were intertwined, including the text in paragraph 4. Replacement of all of subsection C seemed clearer and more straightforward, even if provisions not necessarily directly related to copyright were included.

Upon motion of Delegate Simon, seconded by Judge Sharp, the Commission unanimously approved Amendment 3.

Recodification of Title 45.1, Mines and Mining: Scott Meacham, from the Division of Legislative Services (DLS) recodification team, presented Chapter 12, Permits for Certain Mining Operations; Reclamation of Land, and the Recodification Report.

Mr. Meacham stated that most of the recommended changes are technical in nature or update language, titles, or citations. However, Chapter 12 contains four special funds, all of which are currently in existence, and he will review each fund with the Commission. For each fund, the changes in the recodification report formalize those sections that do not have the correct or standard references but do not create the fund.

Mr. Meacham noted that subsections A through D in § 45.2-1201 (former § 45.1-180.2) regarding a statement of legislative findings and a declaration of policy are stricken in accordance with the Commission's policy that purpose statements do not have general and permanent application and should not be included in the Code. The provisions regarding interpretation of the chapter and property right disputes are retained.

Mr. Meacham reviewed each of the four funds as follows:

Permit Fee Fund - § 45.2-1204. The section is added to accommodate the fund referenced in existing § 45.1-181 and to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Fees related to operating a permitted mineral mine are placed in this fund.

Special Reclamation Fund - § 45.2-1207. The fund handles bonds that are collected; if a mining operation fails to restore the land upon completion of mining, the bond is used for that purpose by the Department of Mines, Minerals and Energy.

Orphaned Lands Reclamation Fund - § 45.2-1228. At the beginning of the second sentence, the language does not say that the earned interest is to be paid into the fund, but that an "amount equal" to the interest is paid. This language is unusual but there is no reason to alter the intention of the General Assembly. The language is noted for the Commission due to the use of different language in the Minerals Reclamation Fund, where the recommendation is to strike the sentence regarding interest.

Minerals Reclamation Fund - § 45.2-1234. This fund is different from most because a mining operator pays a fee into the fund each year. If the operator fails to perform the required reclamation at the end of mining operations, the Department uses the moneys to reclaim the land. The fee is returned to the mining operator if the reclamation is properly performed by the operator. Mr. Meacham recommended to strike the fourth sentence of § 45.2-1234, which states "Interest earned on moneys in the Fund shall remain in the Fund and be credited to it." Removal of the sentence does not negatively impact the fund and removes the potential conflict with the Orphaned Lands Reclamation Fund. No other provisions address disposition of the interest on the fund. Senator Edwards asked if there was a motion to approve this

specific change. On motion of Mr. Armstrong, seconded by Delegate Scott, the motion passed unanimously.

Mr. Meacham discussed the new provision in § 45.2-2119 that requires all civil penalties be deposited into the Minerals Reclamation Fund. This directive regarding the funds is added as the existing provision in § 45.1-282 did not address where the monies would be deposited.

Mr. Meacham stated that at the Commission's meeting in December, the text of the actual bill will be presented. He suggested that the Commission adopt the Recodification Report that was before it. Delegate Simon moved, seconded by Mr. Towell, that the Commission approve the Recodification Report. The motion passed unanimously.

Senator Edwards thanked Mr. Meacham and Mr. Barry for their work on this project. He also thanked the members of the workgroup, reading aloud the name of each member as noted in the report. He noted that the report was massive and important work as Title 45. 1 was last revised in 1996.

Other business: None.

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 11:08 a.m.

Next meeting: Monday, December 7, 2020, at 10:00 a.m. by electronic means.