

VIRGINIA CODE COMMISSION

Tuesday, June 16, 2020 - 10:00 a.m.

Electronic Meeting

Meeting Minutes

Approved
July 7, 2020

Members Present: John S. Edwards; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Ryan T. McDougle; Thomas M. Moncure, Jr.; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Marcus B. Simon; Samuel T. Towell

Members Absent: Malfourd W. Trumbo

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

Others Present: Cindy Berghuis, Shannon Petersen, Mark Petty, Steve Praska, Thomson Reuters West Codes; 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 10:02 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 December 16, 2019, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Election of Vice-Chair: Senator Edwards welcomed Delegates Don L. Scott, Jr, and Marcus B. Simon as the newest members of the Commission. Delegate Scott nominated Delegate Simon for the position of vice chair. Mr. Nolen seconded the motion. Delegate Simon was elected as vice chair with a unanimous vote.

Virginia Administrative Code contract changes: Mr. Wade informed the Commission that legal publisher Thomson Reuters West (West) had three suggestions for amendments to the Virginia Administrative Code contract. Steve Praska from West stated that the publisher was looking for ways to save on the publication of the Administrative Code while retaining quality. The first proposed contract revision was to allow for the keying of data, in addition to the current programmatic process, in order to improve efficiency while maintaining accuracy. The process would put the Virginia Administrative Code's process in line with those of other states.

The second proposed revision to the contract was to end the production of amendment notes, written by attorney editors and editors at West. The amendment notes are high-level descriptions of what changes were made to the Administrative Code. West suggested discontinuing notes, or considering the alternative of only using amendment notes for higher-trafficked titles.

The third proposed revision to the contract was a partial change to no longer include research and practice references such as law reviews, American Jurisprudence, and Annotated Law Reports. Mr. Praska stated that the references did not have particular value for the Administrative Code, and that to maintain the cross references to them was costly and time-consuming for West staff.

Senator McDougle moved the Commission approve the contract changes. Delegate Scott seconded the motion. The motion passed unanimously.

Recodification of Title 45.1, Mines and Mining - Chapter 10, Virginia Coal Surface Mining Control and Reclamation Act of 1979 (existing §§ 45.1-226 through 45.1-270.7): Mr. Meacham, from the Division of Legislative Services (DLS) recodification team, said most of the changes to Chapter 10 were grammatical changes, but he outlined five larger changes being proposed.

The first change was reorganization. Mr. Meacham explained the chapter needed to be rearranged to a more logical fashion, including moving definitions to the definitions section. The changes are not expected to be controversial.

The second change was to create a new section for an existing non-reverting fund, titled "Coal Surface Mining Regulatory Fund" (line 298 on page 11 of the Agenda Item 5 - Recodification of Title 45.1, meeting materials). Mr. Meacham stated that the existing fund is referenced in other Code sections, but how the fund ran was never laid out in the Code. DLS added boilerplate language about the fund based off of existing information from the Department of Mines, Minerals and Energy. Mr. Meacham stated this was the kind of change often done during recodification. Judge Lilley expressed concern regarding the substance of this amendment and asked if it should be in a separate bill from the recodification bill. Senator McDougle shared the concern. Mr. Meacham and Mr. Barry will research how other funds were handled during recodifications to assist in determining whether to place this amendment into a separate bill or to leave it in the recodification bill.

The third change was a revision to antiquated language in existing 45.1-262 (line 1494 on page 54). The revision would clarify what provisions were being referred to in the language. In response to a question from Senator Edwards, Mr. Meacham stated that the recodification workgroup had been consulted and that the work group supported the change.

The fourth change was to remove the policy statement in existing 45.1-227 (line 17 on page 1). Mr. Meacham said this was regularly done during recodifications. Because this chapter is unusual in having two policy statements, the revision would remove the first, as it is not legally binding, but keep the second policy statement, which is legally binding. Mr. Nolen asked if a federal act required that some type of language be adopted by the General Assembly in the policy statement in order for the Commonwealth to enforce the federal act. Mr. Skiffington offered to research the topic for Mr. Nolen, but stated the Department of Mines, Minerals and Energy did not believe there would be negative consequences from removing the policy statement.

The fifth change was to remove obsolete dates from the chapter. A number of sections were written under the assumption that new regulations would be adopted. Those regulations now exist, making these sections obsolete. Examples of such sections are on pages 13, 49, and 50 of the meeting materials.

Mr. Meacham said the last chapters for the recodification were nearing completion in drafting and were being discussed by the work group, with hopes to have a final report and bill by the end of the year.

Asked by Delegate Simon about who served on the work group, Mr. Meacham stated it was created from a broad invitation to numerous environmental groups, as well as industry representatives. The work group is comprised of industry representatives, individual mining companies, staff of the Department of Mines, Minerals and Energy, and is open to representatives from environmental groups.

The Commission will consider and discuss approving the amendments to Chapter 10 at the next Commission meeting.

Work plan for 2020: The work plan will be considered and discussed at the Commission's next meeting.

Other business:

- Report on 2020 Code Commission bills. Mr. Wade reviewed the nine bills from the Code Commission package: Delegate Jay Leftwich carried the bills regarding the Title 55.1 technical corrections and § 36-85.4 of the Code of Virginia. Senator McDougle carried 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 carried the bills regarding the restructuring of Code of Virginia sections regarding polling place activities, provisional voting, and recounts and amending § 57-39.2 of the Code of Virginia. Of the nine bills introduced, all nine passed. One bill was introduced by Delegate Jerrauld C. "Jay" Jones that would have asked the Code Commission to conduct a study on the comprehensive revision of the Code for gender-neutral language, but the bill was left in the House Committee on Rules.

- Codification of certain acts and enactment clauses. Mr. Meacham reviewed the 21 enactment clauses and Section 1 bills the Code Commission codified pursuant to § 30-148 of the Code of Virginia. Mr. Meacham stated the number of changes was minimal, and that there were no amendments to text, only to the numbering of sections.

- The Commission thanked and commended DLS staff for their extraordinary work during the 2020 Session.

- Anne Bloomsburg, Assistant Registrar, informed the Commission that the August 3, 2020, meeting time was moved from 10:00 a.m. to 1:30 p.m.

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 11:07 a.m.

Next meeting: Next meeting is July 7, 2020, at 10:00 a.m. by electronic means.