

**Virginia Code Commission
Meeting Materials
May 17, 2021**

VIRGINIA CODE COMMISSION

Monday, December 7, 2020 - 10:00 a.m.

Electronic Meeting

Meeting Minutes

Members Present: John S. Edwards; Marcus B. Simon; Ward L. Armstrong; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Don L. Scott, Jr.; Samuel T. Towell

Members Absent: Jennifer L. McClellan; Christopher R. Nolen; Charles S. Sharp; Malfourd W. Trumbo

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

Others Present: 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 10:05 a.m. Pursuant to Item 4-0.01 of Chapter 56 of the 2020 Acts of Assembly, Special Session I, and due to the COVID-19 pandemic state of emergency, the meeting was held electronically via Zoom. Senator Edwards explained the procedures for voting for the meeting.

Approval of minutes: The minutes of the November 16, 2020, meeting of the Commission, as distributed to the members, were approved without objection.

Recodification of Title 45.1, Mines and Mining: Mr. Meacham, from the Division of Legislative Services (DLS) recodification team, presented the draft bill for introduction into the 2021 Session of the General Assembly. He stated that the changes enact new Title 45.2, Mines, Minerals, and Energy; move sections from Title 67, Virginia Energy Plan, into proposed Title 45.2 or other Code of Virginia titles; and repeal Title 45.1 as well as the sections from Title 67 that were not moved into other Code titles. The sections from Title 67 that were moved into other Code of Virginia titles are included in the bill. Mr. Meacham reviewed the structure and subtitles of Title 45.2 and noted the inclusion of the necessary enactment clauses, including the clause establishing the effective date as October 1, 2021. Delegate Scott moved to present the bill to the General Assembly in the 2021 Session as a recommendation of the Commission. The motion was seconded and passed unanimously.

Other business:

- Select patron for the recodification of Title 45.1 bill. Senator Edwards will carry the recodification bill with Senator McClellan. Delegates Simon and Scott will handle the bill before the House of Delegates.
- Select patron for repeal of a not set out section, § 5.1-178 of the Code of Virginia. Senator Edwards will carry this bill with Senator McClellan. Delegates Simon and Scott will handle the bill before the House of Delegates.
- Renumbering of a Code of Virginia section. Ms. Perrine stated that a section 1 bill codified in 2019 was not placed in the optimal place in the Code of Virginia. The bill required the State Board of Behavioral Health and Developmental Services to amend regulations regarding licensed providers. The section should have been placed in Title 37.2, the title for Behavioral Health and Developmental Services. Instead, the section was placed in Chapter 10 of Title 32.1, Health, which is the chapter

regarding the Department of Medical Assistance Services. Staff recommends that the Code section be renumbered as § 37.2-203.1. The Department of Behavioral Health and Developmental Services fully supports the change, and the Department of Medical Assistance Services has no objections. Delegate Simon moved to renumber the section under the Commission's statutory authority as presented by Ms. Perrine. The motion was seconded and passed unanimously.

- Statistics regarding viewership of Commission meetings. Ms. Perrine stated that in a previous meeting, Mr. Armstrong asked how many viewers there were for Commission meetings. Senate Information Systems provided an estimate of 30 to 50 viewers on average. Ms. Perrine thanked Maryann Horsch, Glenn Robertson, Kyle Blankenship and the rest of the Senate Information Services staff for their support, assistance, and guidance in the sudden change to electronic meetings. Senator Edwards expressed appreciation for their expertise and professionalism.

- Mr. Wade thanked Mr. Meacham and David Barry for their hard work and efforts on the recodification of Title 45.1, especially pivoting to all electronic work group and Commission meetings. Senator Edwards expressed appreciation for their hard work, expertise, and dedication.

- Delegate Simon inquired as to the next title for recodification. Ms. Perrine explained that the Commission had approved Title 32.1, Health; however, given the circumstances of 2020, it may not be possible to begin the recodification as planned. Instead, the proposal may be to restart the obsolete title review project. In that project, DLS staff reviews various titles of the Code for obsolete sections or language to update and presents findings to the Commission for its approval and recommendation to the General Assembly for appropriate updates through legislation. Review of the titles for obsolete language is a statutory obligation of the Commission. Mr. Wade stated that staff will present a recommendation to the Commission next year regarding recodification and obsolete law review.

- Senator Edwards thanked the Commission members for their participation and staff for their hard work and expertise.

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 was adjourned at 10:20 a.m.

Next meeting: Next year's meeting schedule will be established in early 2021.

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Recodification - The Code Commission previously approved Title 32.1 (Health) to begin mid-way through the 2020 interim and continue through 2021 for introduction into the 2022 Session of the General Assembly. Due a number of unforeseen circumstances, however, staff was not able to begin the recodification last year. Staff proposes to complete the chapter outline and organize a work group for approval by the Code Commission later this year. The recodification of Title 32.1 will continue in 2022.

In 2017, the Commission approved Title 24.2 (Elections) for recodification beginning in the 2022 interim based on the belief that redistricting would be completed by then and staff would be available. Given a number of factors related to redistricting and the new campaign financing reform study, staff may not be available to start on the Title 24.2 recodification until late 2022 or 2023.

Obsolete laws and "Not Set Out" sections.

Obsolete laws: Section 30-151 of the Code of Virginia requires a review of the Acts of Assembly and the Code of Virginia to identify obsolete provisions no less than every 4 years. The Code Commission is responsible for this study and makes recommendations to the General Assembly through proposed legislation. Staff will review various titles of the Code and present recommendations this year regarding obsolete sections.

Not Set Out: The Commission is reviewing Code of Virginia sections that were codified and assigned a Code of Virginia section number, but only the catchline and historical notes appear in the Code; the text of the section is not included. For an example, see § 63.2-1400.

The sections were treated this way based on the general policy of the Code Commission to exclude (i) policy statements and provisions that establish legislative purpose and intent and (ii) the full text of sections determined not to be general and permanent in nature. Most "not set out" sections currently found in the Code were designated as such 10 or more years ago and mainly consist of (i) legislative findings, purpose, intent, and policy statements and (ii) provisions with local applicability only. The review is to establish whether the section should be set out, repealed, or amended or should remain not set out. Approximately 21 "not set out" sections remain to be reviewed.

The obsolete laws and not set out projects were combined in 2017.

Restructuring of § 54.1-3408 and related sections - A review to reorganize these sections was started in 2019 and is targeted for completion in 2021. Staff is working with the Board of Pharmacy and other stakeholders on the reorganization.

Code of Virginia; pricing and replacement volumes - Lexis will present for the Commission's approval a recommendation regarding which volumes of the Code of Virginia should be replaced in 2022 and the cost of volumes/supplements.

Administrative Law Advisory Committee - ALAC was established to assist the Code Commission with oversight authority over the operation and effectiveness of the regulation promulgation process pursuant to the Virginia Administrative Process Act and Virginia Register Act. The Commission appoints the members of ALAC and makes reappointments as necessary.

Rules of evidence - Staff monitors updates to Virginia Supreme Court Rules of Evidence for modification of Code of Virginia catchlines when necessary to include in the catchline of

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a Code section from which a rule in the Rules of Evidence has been derived a notation specifying that rule (per enactment clause 6 of **c. 688** (2012 Acts)).

Example: § 18.2-67.7:1. Evidence of similar crimes in child sexual offense cases (Supreme Court Rule 2:413 derived from this section).

Contract expiration dates:

Code of Virginia (LexisNexis): expires August 31, 2026; renewable.

Virginia Administrative Code (West): expires April 30, 2024; renewable.

Virginia Register of Regulations (LexisNexis): expires June 2, 2022; renewable.

Code of Virginia Publishers Forum Access Agreement (West and LexisNexis): expires November 21, 2022; renewable. *Allows access to the Code Publishers Forum so noncontract publishers have access to the same information as the contract publisher. Chair approves renewals.*

2021 Session of the General Assembly

Code Commission Bills

Bill No. and Patron	Subject	Status
SB 1214 Sen. Edwards	Recodification of Title 45.1 of the Code of Virginia	Enacted - Chapter 387
SB 1453 Sen. Edwards	Repeal of § 5.1-178 of the Code of Virginia; not set out and obsolete	Enacted - Chapter 377

2021 Uncodified Acts and Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections

Uncodified Acts Assigned Code Section Numbers or Placed in Existing Code Sections	
Chapter number	Text - changes to add catchline or conform to Code of Virginia style are denoted in red
173	<p><i>Codify § 1 as subdivision 6 of § 22.1-214.4, which was created by Chapters 451 and 452 (identical).</i></p> <p>§ 1. 6. In order to (i) address variation in rates of determinations of student eligibility for special education and related services both across local school divisions in the Commonwealth and based on specific student disabilities, (ii) promote consistency in such eligibility determinations, and (iii) ensure equal access to special education and related services across local school divisions, the Department of Education shall (a) update its special education eligibility worksheets as necessary, including clarifying any ambiguity or vagueness in eligibility criteria, and (b) provide to each local school division the appropriate level of guidance on eligibility determinations for special education and related services.</p>
268	<p><i>Codify § 2 as § 56-585.1:13.</i></p> <p>§ 2. 56-585.1:13. Recovery of costs associated with investment in transportation electrification.</p> <p>Beginning July 1, 2021, any approved costs of any investor-owned electric utility associated with investment in transportation electrification, other than those costs approved prior to July 1, 2021, shall be recovered only through the utility's rates for generation and distribution, shall not be recovered through a rate adjustment clause pursuant to subdivision A 6 of § 56-585.1 of the Code of Virginia, and shall not be eligible for a customer credit reinvestment offset pursuant to subdivision A 8 d of § 56-585.1 of the Code of Virginia. To the extent that the provisions of this aet section are inconsistent with the provisions of § 56-585.1 of the Code of Virginia, the provisions of this aet section shall control.</p>

Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections	
Chapter number	Text - changes to add catchline or conform to Code of Virginia style are denoted in red
233	<p><i>Codify enactment clause 3 as subsection E of § 32.1-127.</i></p> <p>3. That hospitals <u>E. Hospitals</u> in the Commonwealth may enter into agreements with <u>the</u> Department of Health for the provision to uninsured patients of naloxone or other opioid antagonist <u>antagonists</u> used for overdose reversal.</p>
443	<p><i>Codify enactment clause 3 by placing its text at the end of the first paragraph of subsection C of § 22.1-253.13:3.</i></p> <p>3. That with <u>With</u> such funds and content as are available for such purpose, the <u>such</u> through-year growth assessment system set forth in subsection C of § 22.1-253.13:3 of the Code of Virginia, as amended by this act, shall provide accurate measurement of a student's performance, through computer adaptive technology, using test items at, below, and above the student's grade level as necessary.</p>
451	<p><i>Codify enactment clauses 4 through 10 as follows:</i></p> <p><i>Clause 4 as a new next-to-last paragraph in subsection B of § 22.1-253.13:4.</i></p> <p>4. That the <u>The</u> Department of Education shall develop guidance, in multiple languages, for students and parents conveying (i) the limitations of the applied studies diploma, (ii) key curriculum and testing decisions that reduce the likelihood that a student</p>

2021 Uncodified Acts and Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections

will be able to obtain a standard diploma, and (iii) a statement that the pursuit of an applied studies diploma may preclude a student's ability to pursue a standard diploma.

Clauses 5 and 6 as subsections F and G of § 22.1-298.2.

~~5. That the F. The~~ Board of Education shall review and amend its regulations governing general education teacher preparation programs for kindergarten through twelfth grade to ensure graduates are required to demonstrate proficiency in (i) differentiating instruction for students depending on their needs; (ii) understanding the role of general education teachers on the individualized education program team; (iii) implementing effective models of collaborative instruction, including co-teaching; and (iv) understanding the goals and benefits of inclusive education for all students.

~~6. That the G. The~~ Board of Education shall review and amend its regulations governing administrator preparation programs to ensure graduates are required to demonstrate comprehension of (i) key special education laws and regulations, (ii) individualized education program development, (iii) the roles and responsibilities of special education teachers, and (iv) appropriate behavior management practices.

Clauses 7 through 10 as subdivisions 6 through 9 of § 22.1-214.4.


~~7. That the Department of Education shall 6.~~ (i) ~~develop~~ Develop criteria for what constitutes "exceptional circumstances" that warrant extension of the 60-calendar day regulatory timeline for complaint investigations and include the criteria in its publicly available complaint resolution procedures, (ii) consistently track the ~~Department of Education's~~ Department's receipt of each sufficient complaint and its issuance of the respective letter of findings, and (iii) require staff to report at least quarterly to the Superintendent of Public Instruction on the specific reasons for granting an extension due to "exceptional circumstances" and the amount of time it took to complete each investigation beyond the 60-calendar day regulatory timeline.

~~8. That the Department of Education shall develop 7.~~ Develop policies and procedures for considering and addressing credible allegations of local education agency (LEA) noncompliance with the requirements of the Individuals with Disabilities Education Act (P.L. 101-476) that do not meet the current regulatory standard for state complaints. Such policies and procedures shall include expectations and mechanisms for collaboration between the Office of Dispute Resolution and Administrative Services and the Office of Special Education Program Improvement in the Division of Special Education and Student Services at the Department of Education to investigate and resolve such credible allegations of noncompliance that do not qualify for state complaint investigations.

~~9. That the Department of Education shall elevate 8.~~ Elevate the position of parent ombudsman for special education to report to the Superintendent of Public Instruction. The parent ombudsman for special education shall systematically track and report questions and concerns raised by parents to the Superintendent of Public Instruction. The Department ~~of Education~~ shall develop a one-page comprehensive summary of the roles and responsibilities of the parent ombudsman for special education, the specific supports the parent ombudsman for special education can provide to parents, and how to contact the parent ombudsman for special education. The Department of Education shall make the summary available in multiple languages on its website.

2021 Uncodified Acts and Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Sections

	<p>10. That the Department of Education shall develop <u>9. Develop</u> and implement a process for systematically auditing and verifying school divisions' self-determinations of compliance with all Individuals with Disabilities Education Act (P.L. 101-476) performance indicators. The verification process shall include a random sample of school divisions each year and ensure that all school divisions' self-determinations are reviewed and verified no less frequently than once every five years.</p>
491	<p><i>Codify enactment clause 2 as subdivision 12 of § 18.2-340.18.</i></p> <p>2. That beginning <u>12. Beginning</u> July 1, 2024, and at least once every five years thereafter, the Department of Agriculture and Consumer Services shall convene a stakeholder work group to review the limitations on prize amounts and provide any recommendations to the General Assembly by November 30 of the year in which the stakeholder work group is convened.</p>
493	<p><i>Codify enactment clause 3 as subsection F of § 67-1902 (effective until October 1, 2021) and subsection F of § 45.2-1728 (effective October 1, 2021).</i></p> <p>3. That the F. The Department of Mines, Minerals and Energy, in consultation with the Electric Vehicle Rebate Program Advisory Council, as created by this act, shall develop and implement a process for verifying eligible purchasers and shall ensure that such process (i) is capable of being administered at the point of sale or lease of a vehicle, (ii) allows for the immediate determination of purchaser eligibility and the total amount of the rebate to which the purchaser is entitled, and (iii) confirms the rebate to the participating dealer.</p> <p><i>Codify enactment clause 4 as § 67-1907 (effective until October 1, 2021) and § 45.2-1733 (effective October 1, 2021).</i></p> <p>4. That the § 67-1907. The provisions of this aet chapter shall expire on January 1, 2027.</p> <p>4. That the § 45.2-1733. The provisions of this aet chapter shall expire on January 1, 2027.</p>
553	<p><i>Codify enactment clause 2 as subsection C of 58.1-433.1.</i></p> <p>2. That if C. If tax credits were earned under the provisions of § 58.1-433.1 of the Code of Virginia this section prior to January 1, 2022, such credits may continue to be claimed on a return for taxable years on and after January 1, 2022, but only pursuant to the applicable carryover period specified in § 58.1-433.1 of the Code of Virginia this section. A taxpayer claiming credits pursuant to the provisions of this enactment subsection shall not claim more than \$1 million in credits for a single taxable year. No taxpayer shall amend a return for a taxable year prior to January 1, 2022, to claim more in credits earned under the provisions of § 58.1-433.1 of the Code of Virginia this section than such taxpayer stated on such return before amending it.</p>

Commonwealth of Virginia		
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Administrative Law Advisory Committee		

Administrative Law Advisory Committee

2021 Reappointments

Thomas A. Lisk - Chair Paul Kugelman Eric M. Page Jeffrey S. Palmore Karen Perrine Michael Quinan Alexander F. Skirpan, Jr Brooks M. Smith Kristi S. Wright	Cozen O'Connor Department of Wildlife Resources Eckert Seamans Reed Smith Division of Legislative Services Thompson McMullan State Corporation Commission Troutman Pepper Office of the Executive Secretary, Supreme Court of Virginia
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2021 New Appointments

John Daniel Michelle Gowdy Jennifer Williamson	Alcoholic Beverage Control Virginia Municipal League Office of the Attorney General
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Thomas A. Lisk - Tom Lisk focuses his practice on regulatory matters before agencies, boards, and commissions of the Commonwealth, including the State Corporation Commission. In addition, he is a registered lobbyist in Virginia, providing legislative representation of business interests and trade associations before the Virginia General Assembly since 1980.

John Daniel - John Daniel is the government affairs officer and general counsel for the Virginia Alcoholic Beverage Control Authority, in which capacity he advises members of the authority's executive team on relevant legislative and regulatory matters. He previously served as a member of the Division of Legislative Services and the Office of the Attorney General and was the Commonwealth's first secretary of natural resources.

Michelle Gowdy - Michelle Gowdy is the executive director of the Virginia Municipal League. A former prosecutor, she previously served as county attorney for New Kent County and James City County and worked for the Virginia Department of Forensic Science.

Paul Kugelman - Paul Kugelman currently serves as legal compliance officer of the Department of Wildlife Resources, assisting the department with regulatory and legislative matters. He previously worked for the Office of the Attorney General, where he reviewed APA bills and served as regulatory coordinator. He also previously represented numerous state agencies and entities in regulatory matters.

Eric M. Page - Eric Page represents regulated and non-regulated utilities such as telecommunications carriers, natural gas distribution and pipeline companies, electric utilities, and water and sewer companies. He handles a wide range of regulatory and administrative matters for insurance companies, producers, and agencies in licensing, enforcement, and registration proceedings.

Jeffrey S. Palmore - Jeff Palmore joined Reed Smith in 2013 after serving as a senior legal and policy advisor for the Governor of Virginia. His practice focuses on representing clients before the Virginia General Assembly, executive branch agencies, and local governments. He also advises clients on federal and state campaign finance issues, lobbying law, election law, and government ethics.

Karen Perrine - A member of the Division of Legislative Services, Karen Perrine maintains the Code of Virginia and the Virginia Administrative Code as Registrar of Regulations. She also staffs the Joint Commission on Administrative Rules, the primary means of legislative oversight on the regulatory process.

Michael Quinan - Mike Quinan practices principally in the areas of business litigation, administrative law, and public utility regulation. He regularly handles cases at the Virginia State Corporation Commission and other state agencies, as well as in state and federal courts throughout the Commonwealth, and he maintains a wide range of expertise in regulatory matters.

Alexander F. Skirpan, Jr. - Alex Skirpan serves as a senior hearing officer for the State Corporation Commission and serves as treasurer of the Virginia Association of Administrative Law Judges and Hearing Officers.

Brooks M. Smith - Brooks Smith is an environmental and natural resources partner at Troutman Pepper. He is deeply involved in matters arising under the Clean Water Act, including national rulemakings, policies and litigation, state permit proceedings and appeals, complex civil and criminal investigations, enforcement actions, and citizen lawsuits.

Jennifer Williamson - Jennifer Williamson serves the Commonwealth as a senior assistant attorney general in the Office of the Attorney General and was recently elected as chair of the agency's APA committee.

Kristi S. Wright - Kristi S. Wright is the director of the Department of Legislative and Public Relations for the Office of the Executive Secretary of the Supreme Court of Virginia. She helps manage legislative matters and handles media and public relations for Virginia's Judicial System. The Department also provides staff support for the development of legislative proposals recommended by the Judicial Conferences of Virginia.