

VIRGINIA CODE COMMISSION

Monday, September 20, 2021 - 10:00 a.m.

Senate Room 3- The Capitol

**Approved
October 18, 2021**

Meeting Minutes

Members Present in Person: John S. Edwards; Marcus B. Simon; Nicole S. Cheuk; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Samuel T. Towell; Malfourd W. Trumbo; Amigo Wade.

Members Present Electronically: John S. Edwards; Don L. Scott, Jr.

Members Absent: Ward L. Armstrong; Charles S. Sharp

Staff Present: Sarah Stanton, Marvi Ali, Tom Stevens, Kristen Walsh, Brittany Olwine, Anna Moir, Ashley Binns, Taylor Mey, Sabrina Miller-Bryson, Charles Quagliato, Julia Carlton, Ryan Brimmer, Anne Bloomsburg, Nikki Clemons, Karen Perrine, Holly Trice, Stephanie Kerns, Andrew Kubincanek, Division of Legislative Services (DLS); Maryann Horch, Senate Technology

Others Present: Tom Lisk, Chair, Administrative Law Advisory Committee

Call to order: Senator Edwards, chair, called the meeting to order at 10:07 a.m. Pursuant to § 2.2-3708.2, the meeting was held electronically. A quorum of the Commission was present. Senator Edwards presided over the meeting virtually.

Approval of minutes: The minutes of the May 17, 2021, meeting of the Commission, as distributed to the members, were approved.

Administrative Law Advisory Committee (ALAC) workplan and report: Tom Lisk shared the three items on the 2021 ALAC work plan. The first item was to study requested legislation related to electronic records of final orders. The second item was to discuss recommendations on ensuring the efficiency and effectiveness of the executive review process. ALAC plans to search for ways to improve the regulatory process to shorten the average time period it takes for an agency to promulgate regulations. The third item was to form a workgroup to work with the Supreme Court and update the Hearing Officer Deskbook with any legislative changes since the Deskbook was last updated. The committee will give the Code Commission a report from the workgroup during the November Code Commission meeting.

Judge Lilley asked why regulations take 22 months on average to become effective under the current promulgating process. Mr. Lisk stated the biggest causes of delay are in the executive review process, with many final regulations waiting for executive review for over a year. Mr. Lisk acknowledged these regulations with longer wait times may be of lower priority, but stated the length of the process leads many interest groups to go to legislators rather than state agencies for changes to be instilled.

There was a motion made to approve the ALAC 2021 workplan. The motion was properly seconded and the motion passed unanimously.

Not-set out laws review:

Title 63.2 (Welfare (Social Services)) - Sarah Stanton presented two sections from Title 63.2. The first section, § 63.2-1400, was not set out and staff recommended it to be repealed by way of a bill as the section does not create substantive law. There was a motion made to approve repealing the section

by way of bill. The motion was properly seconded and the motion passed unanimously. The second section in Title 63.2 for review was § 63.2-1500. Ms. Stanton recommended this section be repealed by way of a bill, as the section has no substantive law and the policy that the section would have set out regarding the Commonwealth receiving investigation reports on abuse and neglect is established in Chapter 15. There was a motion made to approve repealing the section by way of bill. The motion was properly seconded and the motion passed unanimously.

Title 13.1 (Corporations) - Tom Stevens and Marvi Ali presented sections in Title 13.1 that were not set out. Section 13.1-312 was recommended to be set out as amended in the meeting materials. The section contains substantive law, and Ms. Ali recommended the section be revised to read as a "public interest" introductory statement rather than legislative intent and policy, as it currently reads. There was a motion made to approve the recommendations. The motion was properly seconded and the motion passed unanimously.

Section 13.1-542 was recommended for repeal, as the section does not create substantive law. Mr. Towell asked a procedural question about whether all the bills related to Title 13.1 could be incorporated with the bills to repeal the sections presented from Title 63.2 or if each title's bills would have to be promulgated separately. Karen Perrine responded that each title would have to be amended in separate bills because the bills will be going to different committees for review. There was a motion made to approve the recommendations. The motion was properly seconded and the motion passed unanimously.

Title 56 (Public Service Companies) - Section 56-509 was recommended to be set out as amended in the meeting materials. The section contains aspects of substantive law, such as identifying which utility services are considered essential. Amendments included changing "state" or "Virginia" to "Commonwealth" and updating the catchline. Senator McClellan asked if the amendments were meant to be substantive. One of the recommended changes was changing "people of Virginia" to "resident," which Senator McClellan pointed out would change whether businesses were included and the intent behind what kind of services are provided. Senator McClellan suggested the amendments use the term "customers" rather than "residents" as the term "customers" would have the same meaning as "people."

Delegate Scott asked if bills would be assigned to Commission members before the next legislative session. Senator Edwards stated they would be.

Senator McClellan suggested the Commission keep the term "people of Virginia," for the time being and sort it out with the Division of Legislative Services later. Mr. Nolen asked to abstain from the vote as he works for a corporation that represents a number of utility companies. Mr. Towell asked to abstain for the same reason. Senator McClellan disclosed that she works for a communication company, but as the amendments in the section would affect all companies rather than a certain industry she would be participating in the vote.

Mr. Trumbo made a motion to approve the recommendations as amended, except for the suggested amendment language change of "people of Virginia" which Mr. Trumbo moved to keep as is. The motion was properly seconded and the motion passed, with Mr. Nolen and Mr. Towell abstaining from the vote.

Section 56-537 was recommended to be set out as the section contains substantive elements such as articulating that encouraging construction is in the public interest and that the use of public funds is appropriate for implementing the chapter. There was a motion made to approve the recommendations as amended. The motion was properly seconded and the motion passed unanimously.

Obsolete laws review:

Title 12.1 (State Corporation Commission) - Tom Stevens and Marvi Ali presented the obsolete law review for Title 12.1 and stated there were no obsolete laws found in the title. There were also no cross references to be updated, so the recommendation was the title be left alone.

Title 34 (Homestead and Other Exemptions) - Kristen Walsh and Brittany Olwine presented the obsolete law review for Title 34. There were no obsolete sections found and so no changes were recommended.

Title 37.2 (Behavioral Health and Developmental Services) - Anna Moir and Sarah Stanton reviewed Title 37.2. Section 37.2-315 was found to be obsolete. The section was added in 1998 as the Department of Behavioral Health and Developmental Services biennially produced and updated a comprehensive six-year plan. Since 1998, other reporting requirements have rendered the section obsolete. Sections 37.2-308, 37.2-504, and 37.2-605 were recommended for amendment to update the cross-references to § 37.2-315. Mr. Towell recognized the information in the section could be duplicative but shared concerns that the changes to the section did not fall under the obsolete law review. Ms. Perrine shared that historically the Commission's obsolete law reviews encompassed recommendations like this and the Commission could make the amendments if adopted.

Mr. Trumbo asked if repealing the section would still cover the required reporting requirements. Ms. Stanton said that the Department of Behavioral Health and Developmental Services said that the information in the report addressed in § 37.2-315 was covered by other reports mandated in other sections. Mr. Trumbo asked if it was accurate to say that the repeal of the section would enhance the other sections of Code that covered reports and repealing the section alleviate confusion on reporting requirements. Ms. Stanton said yes, and that repealing this section would free staff resources and time as it would lessen the number of required reports while still getting in depth information from the remaining reports.

Senator Edwards asked if the Department of Behavioral Health and Developmental Services recommended the section be repealed and Ms. Stanton said yes. There was a motion made that the recommendations be accepted. The motion was properly seconded and the motion passed unanimously.

Title 42.1 (Libraries) - Ashley Binns reported on Title 42.1. Ms. Binns addressed Article 4 of Chapter 1 in Title 42.1 and stated that all the sections in the article had not been amended since 1998. The article addressed historical material relating to World War II and all of the historical material discussed in the article has been transferred to the Library of Virginia, and is accessible to the public. Because all the duties and documents referenced in this section have been moved, and the Virginia World War II History Commission has been abolished, the article was recommended for repeal. There was a motion made to approve the recommendation to repeal the article. The motion was properly seconded and the motion passed unanimously.

Ms. Binns reported on Article 5 of Chapter 1, which was recommended for repeal. Ms. Binns explained that the sections in the article were first created when library automation was just beginning in 1983. The state was never able to procure funding for a library and information network, and since then technology has evolved and libraries have developed local and regional solutions to connect libraries via the Internet; therefore, the article is obsolete. Mr. Trumbo asked if repealing the article would preclude the General Assembly from trying to establish an information system like intended in the article by other means. Ms. Binns stated it would not; it would just repeal the system proposed in 1983 that is no longer viable. There was a motion made to approve the recommendation. The motion was properly seconded and the motion passed unanimously.

Chapter 2 of Title 42.1 was also recommended for amendment. Section 42.1-36.1 was recommended for amendment to fix cross references for definitions that were moved to other sections. Section 42.1-43 was recommended for amendment to update cross references. There was a motion made to approve the recommendations. The motion was properly seconded and the motion passed unanimously.

Section 42.1-60 was recommended for amendment as it referenced a law library in Staunton County that has not existed since 1971. The amendments would remove the references to this library branch. Section 42.1-61, which has not been amended since 1970, was recommended for amendment to remove references to the same library branch, as well as to amend the definition of "books" to align with other definitions used by the Library of Virginia. Section 42.1-63 was recommended for amendment as it referenced use of computer research services that are not currently offered by local libraries, including subscriptions to LexisNexis or West Law for public use. Section 42.1-65 was recommended for amendment as it also references computer research services that were never put in place. Section 42.1-70 was recommended for amendment as the last sentence in the section references computer research services referenced in § 42.1-65 that are recommended for removal.

Mr. Trumbo abstained from the vote as he was previously a chief justice in Staunton County. There was a motion made to approve the recommendations. The motion was properly seconded and the motion passed, with Mr. Trumbo abstaining.

Section 42.1-77 was recommended for amendment as it had definitions that were not used elsewhere in the Code. Those unused definitions were recommended for removal. Ms. Binns suggested the definition of "private record" in this section be integrated into the definition of "public record" to give clarity as to what qualifies as a public record and what does not. Ms. Cheuk noted that the meeting materials said that "archival record" was recommended to be removed, but that the term was used in the definition of "archives." Ms. Binns clarified that the draft bill in the meeting materials was incorrect and the term "archival quality" would be removed in the amendment, not "archival record." There was a motion made to approve the recommendations. The motion was properly seconded and the motion passed unanimously.

Ms. Binns addressed the possibility of amending the term "book," with an option for amendment to be changing the term "book" where it appears to "collections," as "collections" may mean books, magazines, newspapers, other printed matter, digital subscriptions, and databases. The other option for amendment would be to leave the terminology as is, but broaden the definition of "book" to include the same items encompassed by "collections."

Mr. Nolen asked if that type of amendment is one that would normally be made in the course of a recodification. Mr. Wade said yes, but recommended the amendment be carried as a separate bill from the other Title 42.1 amendments. There was a motion made to pass by the issue of amending the term "books." The motion was properly seconded and the motion passed unanimously.

Title 52. Police (State) - Sabrina Miller-Bryson, Taylor Mey, and Charles Quagliato reviewed Title 52. Chapter 2 was recommended for amendment. The amendments strike references to private line typewriters and teletype communication systems no longer used by Virginia State Police, and include various technical changes. Judge Lilley asked if the term "electronic communication" was defined, and Ms. Miller-Bryson said it was not currently defined in the title. Judge Lilley asked that a definition be added. Mr. Wade asked if the Virginia State Police reviewed the recommendations presented, and Ms. Miller-Bryson stated the department did and agreed with the recommendations. It was agreed that title 52 would be revisited at the October meeting, once a definition of "electronic record" was added.

Mr. Towell asked about language that was being stricken in § 52-20 regarding "an allegation that [...] person is likely to flee the jurisdiction of the Commonwealth," stating concerns that striking that requirement would change the way the department enforces the section. Charles Quagliato stated the language only refers to communication, rather than enforceable practices. The Commission agreed to push the matter to the October meeting to give staff time to research whether removing the language would have unforeseen effects.

Obsolete laws and Not Set Out reviews of Title 22.1 (Education): Julia Carlton and Ryan Brimmer presented on the obsolete laws and Not Set Out reviews in Title 22.1. Section 22.1-57:3:1.2 was recommended to be set out as the section is cross-referenced in two other Code sections. There was a motion made that § 22.1-57:3:1.2 be set out, and the motion passed unanimously. The Commission decided to approve all of the recommendations for not set out sections. There was a motion made to approve the recommendations for not set out sections in Title 22.1. The motion was properly seconded and the motion passed unanimously.

Mr. Towell asked that the Commission consider not voting on the presented obsolete laws as the amended text of the bills was not included in the meeting materials. The Commission agreed and the matter would be moved to the October or November Code Commission meetings.

Other business:

- Judge Lilley asked if LexisNexis published a paperback, updated version of the Criminal Code that would be available. Brian Kennedy stated there was a stand-alone Criminal Code with all of the 2021 updates available.

- Mr. Wade shared that Ms. Perrine would be retiring from the Division of Legislative Services in October, and that Holly Trice would be the new Registrar of Regulations. There was a motion made to commend Karen for her hard work and expertise over the years, and the motion passed unanimously.

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 11:53 a.m.

Next meeting: Monday, October 18, 2021, at 10:00 a.m.