

**FINAL**  
SAFETY AND HEALTH CODES BOARD  
PUBLIC MEETING MINUTES  
Monday, September 18, 2023

On September 18, 2023, the Safety and Health Codes Board (“Board”) held a public meeting at Fairfield Public Library on 1401 N Laburnum Road, Richmond, VA 23223. The Board held a hybrid in person meeting with the option for the public to attend virtually, however the board members were required to attend in-person with a quorum.

Notice of the public meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 19 (2022). The notice invited the public to witness the meeting remotely via Microsoft Teams. Notice was provided on the Virginia Regulatory Town Hall’s website here:

[Virginia Regulatory Town Hall View Meeting](#)

A recording of the meeting in its entirety is available on the Virginia Department of Labor and Industry website: [To be posted when available.](#)

**BOARD MEMBERS PARTICIPATING:**

Mr. Kelly Bundy, Acting Chair  
Mr. Jay Abbott  
Mr. Kevin Battle  
Mr. Lee Biedrycki  
Mr. Joel Canady (DEQ)  
Mr. Michael Everett  
Ms. Julie Henderson (VDH)  
Mr. Larry James  
Mr. Jeffrey Rowe  
Ms. Lutheria Smith  
Mr. James “Lou” Spencer

**BOARD MEMBERS ABSENT:**

Mr. Robert Buchler  
Mr. Robert Smith

**STAFF PRESENT:**

Mr. Gary Pan, Commissioner of Dept. of Labor & Industry  
Mr. Chuck Stiff, Assistant Commissioner  
Mr. David Johnson, Deputy Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, & OWB  
Ms. Princy R. Doss, Director, Policy, and Planning  
Ms. Cristin Bernhardt, Regulatory Coordinator  
Mr. Ron Graham, Director of VOSH Health Compliance

**OTHERS PARTICIPATING:**

Mr. Joshua Laws, Assistant Attorney General  
Ms. Lois Boyle, Court Reporter

**CALL TO ORDER**

Acting Chair Kelly Bundy called the meeting to order at 10:30 AM. A quorum was present. Acting Chair Ms. Bundy opening remarks informing the public that this meeting was being held in person for the participating board members with virtual attendance available through Microsoft Teams.

**BOARD MEMBER ROLE CALL**

<b>BOARD MEMBER</b>	<b>Present</b>	<b>Absent</b>			
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler		x			
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith		x			
Mr. James "Lou" Spencer	x				
VACANT					
<b>TOTALS</b>	<b>11</b>	<b>2</b>			

Commissioner Pan welcomed the board members to the meeting and thanked them for their service to the safety and health of the Virginia workforce.

**APPROVAL OF AGENDA**

Acting Chair Bundy asked the Board if there was any discussion on the agenda. There was none. There was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of Agenda</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki					
Mr. Robert Buchler				x	
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x			x	
Mr. James "Lou" Spencer	x				
VACANT					
<b>TOTALS</b>	<b>11</b>			<b>2</b>	

**ELECTION OF OFFICERS**

Acting Chair Bundy introduced Chuck Stiff, Assistant Commissioner, to address the board for election of officers. Mr. Stiff shared context of the Chair and Vice Chair roles and responsibilities and the process for the election of officers. The positions of Chair and Vice Chair will be before the board at this meeting and the Secretary will be appointed by the Chair in accordance with the bylaws at the next SHCB meeting.

Next, Acting Chair Bundy called for nominations for the Chair position. Board member Julie Henderson nominated Robert Smith (Boiler representative for Industry) and discussed his qualifications. Acting Chair Bundy called for any other Chair nominations. None were made. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Election of Chair – Robert Smith</b>	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler				x	
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith				x	
Mr. James “Lou” Spencer	x				
VACANT					
<b>TOTALS</b>	<b>11</b>			<b>2</b>	

Next, Acting Chair Bundy called for nominations for the Vice Chair position. Board member Julie Henderson nominated Kelly Bundy (Construction representative for Industry) and discussed her qualifications. Acting Chair Bundy called for any other Vice Chair nominations. None were made. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Election of Vice Chair – Kelly Bundy</b>	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler				x	
Ms. Kelly Bundy			x		
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				

Mr. Robert Smith	x			x	
Mr. James “Lou” Spencer	x				
VACANT					
TOTALS	10		1	2	

**APPROVAL OF MEETING MINUTES**

Vice Chair Bundy then called for discussion and motion for approval of the June 27, 2023 meeting minutes. She asked the Board if there was any discussion on the June 27, 2023 minutes. There was none. There was a request for a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of June 27, 2023 Minutes</b>	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	X				
Mr. Lee Biedrycki	X				
Mr. Robert Buchler				x	
Ms. Kelly Bundy	X				
Mr. Joel Canady (DEQ)	X				
Mr. Michael Everett	X				
Ms. Julie Henderson (VDH)	X				
Mr. Larry James	X				
Mr. Jeffrey Rowe	X				
Ms. Lutheria Smith	X				
Mr. Robert Smith				x	
Mr. James “Lou” Spencer	x				
VACANT					
TOTALS	11			2	

**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

Vice Chair Bundy called the next item on the agenda, which was the opportunity for the public to address the Board. No members of the public registered to speak by the deadline of June 26, 2023.

Vice Chair Bundy moved to the next item on the agenda, which was Old Business. He introduced Cristin Bernhardt, Regulatory Coordinator for Department of Labor & Industry, to address the Board.

**OLD BUSINESS**

**(a) Status of Periodic Reviews of Certain Regulations**

Ms. Bernhardt addressed the Board to provide an update to the Board on the periodic reviews that were approved by the Board at the November 14, 2022 meeting to proceed with the periodic review process of the Board’s regulations listed below pursuant to the Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#).

**(a) Notice of Periodic Reviews for 2022**

1. [16VAC25-50](#): Boiler and Pressure Vessel Regulation
2. [16VAC25-60](#): Administrative Regulation for the Virginia Occupational Safety and Health Program
3. [16VAC25-145](#): Safety Standards for Fall Protection in Steel Erection, Construction Industry
4. [16VAC25-200](#): Virginia Voluntary Protection Program (VPP)

At this time, the Department is completing the Economic Analysis Forms for these four regulations that are now required by ORM in order to begin the periodic review process and open a public comment forum. These periodic review regulations will be completed by the Department and a report with recommendations presented to the Board at the next SHCM meeting.

Vice Chair Bundy moved to the next item on the agenda which was New Business. She introduced Princy Doss, Director, OPPPI to address the Board.

## **NEW BUSINESS**

Ms. Doss requested the Board consider for adoption of federal OSHA's final rule to Improve Tracking of Workplace Injuries and Illnesses, as published on July 21, 2023, in Volume 88 Federal Register (FR) No. 139,<sup>1</sup> And as authorized by Virginia Code §§ 40.1-22(5)<sup>2</sup> and 2.2-4006.A.4(c)<sup>3</sup>, with an effective date of January 1, 2024. The Virginia State Plan must adopt an identical standard with sufficient time for the effective date to be January 1, 2024, because employer recordkeeping obligations (e.g., OSHA 300 log use) begin on January 1<sup>st</sup> of each year.

Ms. Doss summarized the updates to existing recording and reporting requirements in Part 1904. The final rule outlines several changes to the recordkeeping requirements for employers listed under Part 1904. This rule further delineates the list of establishments that are required to report records to OSHA electronically once a year and builds on the types of OSHA records and employer information required for reporting:

1. Establishments with 250 or more employees that are currently required to keep OSHA injury and illness records must electronically submit information from OSHA Form 300A – *Log of Work-Related Injuries and Illnesses*, only.
2. Establishments with 20 to 249 employees that are classified in certain industries with historically high rates of occupational injuries and illnesses (identified in Appendix A) must electronically submit annually information from OSHA Form 300A only.
3. Establishments with 100 or more employees that are classified in certain industries with

---

<sup>1</sup> OSHA "Improve Tracking of Workplace Injuries and Illnesses" Federal Register Vol. 88, No. 139, Friday, July 21, 2023. [www.osha.gov/sites/default/files/laws-regs/federalregister/2023-07-21.pdf](http://www.osha.gov/sites/default/files/laws-regs/federalregister/2023-07-21.pdf)

<sup>2</sup> § 40.1-22. Safety and Health Codes Commission continued as Safety and Health Codes Board. <https://law.lis.virginia.gov/vacode/40.1-22/>

<sup>3</sup> § 2.2-4006. Exemptions from requirements of this article. <https://law.lis.virginia.gov/vacode/2.2-4006/>

historically high rates of occupational injuries and illnesses (identified in Appendix B) must electronically submit annually information from OSHA Forms 300 and 301- *Injury and Illness Incident Report*.

4. The list of establishments in Appendix A has been updated to accurately reflect the 2017 edition of the North American Industry Classification System's (NAICS) codes.
5. Establishments with fewer than 20 employees at all times during the year do not have to routinely submit information to OSHA. OSHA requires all employers who receive notification from OSHA, regardless of establishment size, to electronically submit the requested information from their injury and illness records to OSHA or OSHA's designee.
6. OSHA intends to post the data from these submissions on its secure, publicly accessible website at [www.osha.gov](http://www.osha.gov). It will also remove any Personally Identifiable Information (PII) on the website before the data are released to the public.
7. All of the eligible employers listed above are required to include their legal company name alongside their establishment name and Employer Identification Number (EIN)<sup>4</sup> on each submission.
8. Implementation Schedule - VOSH would comply with OSHA's new reporting requirements by January 21, 2024. Virginia will match federal OSHA's timeline:
  - a. January 1, 2024 – Rule becomes effective
  - b. January 2, 2024 – Data collection begins
  - c. January 21, 2024 – Rule becomes effective for States
  - d. March 2, 2024 – First annual deadline for timely, electronic submission of data from OSHA Form 300 Log and OSHA Form 301 Incident Report

Ms. Doss discussed the impacts and benefits on employers, employees, DOLI, and other interested parties that was included in the Briefing Package given to the Board and posted on Virginia Regulatory Town Hall [Virginia Regulatory Town Hall View Meeting](#).

Ms., Doss presented the recommendation by the Staff of the Department of Labor and Industry that the Safety and Health Codes Board adopt federal OSHA's Final Rule to Improve Tracking of Workplace Injuries and Illnesses, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 21, 2024\*. This recommendation will allow DOLI to proceed with the regulatory action to amend 16VAC 25-85 Federal Identical; Recording and Reporting Occupational Injuries and Illnesses.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

---

<sup>4</sup> Employer ID Numbers (EIN). <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers>

\*Jay Withrow, Senior Fellow of the Department addressed the Board to correct the effective date of the federal standard in Virginia. The briefing package and recommendation incorrectly indicate a January 21, 2024 effective date, however, the correct effective date would be January 1, 2024.

Vice Chair Bundy then called for discussion on the recommendation by DOLI for the Board to adopt federal OSHA’s Final Rule to Improve Tracking of Workplace Injuries and Illnesses with the corrected effective date of January 1, 2024. There was none. There was a request for a motion to approve the recommendation. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approve recommendation by DOLI for the Board to adopt federal OSHA’s Final Rule to Improve Tracking of Workplace Injuries and Illnesses</b>	Yes	No	Abstain	Absent	
Mr. Jay Abbott	x				
Mr. Kevin Battle	x				
Mr. Lee Biedrycki	x				
Mr. Robert Buchler				x	
Ms. Kelly Bundy	x				
Mr. Joel Canady (DEQ)	x				
Mr. Michael Everett	x				
Ms. Julie Henderson (VDH)	x				
Mr. Larry James	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith				x	
Mr. James “Lou” Spencer	x				
VACANT					
<b>TOTALS</b>	<b>11</b>			<b>2</b>	

Vice Chair Bundy moved to the next item on the agenda, which was Items of Interest from the Department of Labor and Industry.

**ITEMS OF INTEREST FROM THE DEPARTMENT OF LABOR AND INDUSTRY**

Vice Chair Bundy asked for items of interest from the Department. There was none.

**ITEMS OF INTEREST FROM MEMBERS OF THE BOARD**

Vice Chair Bundy asked for items of interest from the Members of the Board. Ms. Bundy had a question for the Department regarding the regulatory advisory panel (RAP) schedule for the construction industry sanitation regulatory review discussed at the June 27, 2023 meeting. Mr. Doss indicated that there is not currently a schedule but the Department is working on it.

**MEETING ADJOURNMENT**

Vice Chair Bundy adjourned the meeting at 10:52 am.