

FINAL
SAFETY AND HEALTH CODES BOARD
PUBLIC MEETING MINUTES
Monday, March 21, 2022

On March 21, 2022, the Safety and Health Codes Board (“Board”) held a public meeting at the Patrick Henry State Building in Richmond, Virginia. 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 14 (2018). The notice invited the public to witness the meeting remotely via WebEx. Notice was provided on the Virginia Regulatory Town Hall’s website here:
<https://townhall.virginia.gov/L/ViewMeeting.cfm?meetingid=34943>

A recording of the meeting in its entirety is available here:
<https://www.doli.virginia.gov/wp-content/uploads/2022/03/Safety-and-Health-Codes-Board-Meeting-March-21-2022.mp4>

BOARD MEMBERS PARTICIPATING:

Mr. Chuck Stiff, Acting Vice-Chair
Mr. Robert Buchler
Ms. Kelly Bundy
Mr. John Fulton
Dr. Colin Greene
Ms. Elizabeth (Beth) Lohman

BOARD MEMBERS ABSENT:

Mr. Jay Abbott
Mr. Lou Cernak
Mr. Michael Luce
Ms. Lutheria Smith
Mr. Travis Parsons
Mr. Thomas Thurston

STAFF PRESENT:

Mr. Gary Pan, Commissioner of Dept. of Labor & Industry
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, & OWB
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information
Mr. Richard White, IT Project Manager
Ms. Cristin Bernhardt, Regulatory Coordinator
Ms. Diane Duell, Director of Litigation
Mr. Alex West, Senior Staff Attorney
Ms. Marta Fernandes, Director of VOSH Safety Compliance
Mr. Ron Graham, Director of VOSH Health Compliance
Ms. Zahra Qarni, Policy & Planning Specialist
Ms. Kaitlin Hopingardner, Staff Attorney

OTHERS PARTICIPATING:

Mr. Joshua Laws, Assistant Attorney General
Ms. Lisa Wright, Court Reporter, Chandler & Halasz

CALL TO ORDER

Vice-Chair Stiff called the meeting to order at 10:00 AM. A quorum was present. Vice-Chair Stiff made opening remarks informing the public that this meeting was being held in person for the participating board members with virtual attendance available for the public via WebEx.

BOARD MEMBER ROLE CALL

BOARD MEMBER	Present	Absent			
Mr. Jay Abbott		x			
Mr. Robert Buchler	x				
Ms. Kelly Bundy	x				
Mr. Louis (Lou) Cernak		x			
Mr. John Fulton	x				
Dr. Colin Greene	x				
VACANT	-	-			
Ms. Elizabeth (Beth) Lohman	x				
Mr. Michael Luce		x			
Mr. Travis Parsons		x			
VACANT	-	-			
Ms. Lutheria Smith		x			
Mr. Charles ("Chuck") Stiff	x				
Mr. Thomas Thurston		x			
TOTALS	6	6			

APPROVAL OF AGENDA

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

TIME STAMP OF RECORDING: 00:01:45

Motion #1: Approval of Agenda	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				1	
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. John Fulton	1				
Dr. Colin Greene	1				
VACANT	-	-	-	-	
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce				1	
Mr. Travis Parsons				1	
VACANT	-	-	-	-	
Ms. Lutheria Smith				1	
Mr. Charles ("Chuck") Stiff	1				
Mr. Thomas Thurston				1	
TOTALS	6	0	0	6	

APPROVAL OF MEETING MINUTES

Vice-Chair Stiff then called for discussion and motion for approval of the February 16, 2022 Meeting minutes. Vice-Chair Stiff asked the Board if there was any discussion on the February 16, 2022 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.

TIME STAMP OF RECORDING: 00:02:45

Motion #2: Approval of SHCB February 16, 2022 Meeting Minutes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				1	
Mr. Robert Buchler	1				
Ms. Kelly Bundy			1		
Mr. Louis (Lou) Cernak				1	
Mr. John Fulton	1				
Dr. Colin Greene	1				
VACANT	-	-	-	-	
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce				1	
Mr. Travis Parsons				1	
VACANT	-	-	-	-	
Ms. Lutheria Smith				1	
Mr. Charles ("Chuck") Stiff	1				
Mr. Thomas Thurston				1	
TOTALS	5	0	1	6	

Vice-Chair Stiff then called for discussion and motion for approval of the March 14, 2022 Public Hearing minutes. Vice-Chair Stiff asked the Board if there was any discussion on March 14, 2022 Public Hearing 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.

TIME STAMP OF RECORDING: 00:04:00

Motion #3: Approval of SHCB March 14, 2022 Public Hearing Minutes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				1	
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. John Fulton	1				
Dr. Colin Greene	1				
VACANT	-	-	-	-	
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce				1	
Mr. Travis Parsons				1	
VACANT					
Ms. Lutheria Smith				1	

Mr. Charles ("Chuck") Stiff	1				
Mr. Thomas Thurston				1	
TOTALS	6	0	0	6	

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Vice-Chair Stiff 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 virtually using WebEx to address the Board on the revocation of the Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID19, 16VAC25-220 ("Virginia Standard") that will be presented to the Board under Old Business. Two speakers came to the meeting and signed up to speak in person to the Board.

IN PERSON SPEAKERS:

Ben Traynham (Attorney, on behalf of Virginia Wholesalers Association)
 Robert Melvin (Virginia Restaurant, Lodging & Travel Association)

Vice-Chair Stiff moved to the next item on the agenda, which was Old Business. He introduced Jay Withrow, Director of Legal Services for the Department of Labor & Industry, to address the Board.

OLD BUSINESS

Mr. Withrow presented the recommended actions before the Board today. The VOSH Program recommends that the Safety and Health Codes Board ("Board") make a final finding that the SARS-Cov-2 virus no longer poses a "grave danger" to employees under Va. Code §40.1-22(6a) and consider final revocation of the Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 (Virginia Standard) to become immediately effective upon publication in a newspaper of general circulation published in the city of Richmond, Virginia. The proposed effective date is March 23, 2022.

Mr. Withrow began presenting the briefing package to provide information that has been updated since the February 16, 2022 meeting when the Board adopted the proposal of the revocation of the VA Standard. He discussed Attachment P Guidance Document for Employers to Mitigate the Risk of COVID-19 to Workers dated March 1, 2022. He explained the publication in the *Virginia Register* will be in the March 28, 2022 issue with a Town Hall public comment forum opening 3/28/22 and ending 4/27/2022. He expressed that although this guidance document requires this publication and 30 day public comment period, employers may rely on this guidance document as of March 23, 2022 should the revocation of the VA Standard be adopted today by the Board. No Board action is necessary for the Guidance Document process.

Mr. Withrow explained the Town Hall public comment forum for the proposed revocation of the VA Standard was opened from February 17, 2022 through March 19, 2022. There were over 1300 comment received and overwhelming number of comments came within the first 15 days of the comment period. The Board was given a summary of the public comments received for the first 15 days of the comment period at the beginning of March and the updated summary with all comments after the public comment forum ended March 19, 2022. Mr. Withrow went through the main topics that were raised by the public comments and the VOSH responses to those comments. The 400 page summary is included in the agenda document posted to Town Hall for this meeting.

Mr. Withrow discussed recent updates on the status of the COVID-19 virus and variants that have been discovered since the last Board meeting when the proposed revocation was adopted. He discussed the February 25, 2022 CDC updated mask guidance based on new metrics of hospitalization and related factors. He outlined the low, medium and high community levels and the CDC recommendations for mask wearing based on those levels.

Mr. Withrow continued with briefing the Board on the current national, state and specific Virginia COVID studies, trends and statistics. Virginia vaccination and hospitalization demographic statistics and trends along with other various COVID metrics and modeling were presented to the Board. Mr. Withrow advised the Board that they that the ability to develop a COVID regulation to be adopted through the APA process without the existence of “grave danger” that would involve the 18-24 month regulatory process if they felt that would be necessary in the future. Current VOSH workplace statistics regarding Virginia workplace inspections, penalties, fatalities and injuries were also provided to the Board.

Mr. Withrow explained that there will remain legal protections for employees in Virginia if the Virginia Standard were to be revoked and went through the mandatory VOSH standards that protect workers from infections. In addition, he discussed the discrimination protections in place for employees who wish to continue with COVID protocols to protect themselves. He also discussed the guidance document: “Protecting Workers, Guidance on Mitigating and Preventing the Spread of Covid-19 in the Workplace” (Attachment P discussed earlier) that was developed in the event of revocation of the Virginia Standard.

Mr. Withrow discussed the federal OSHA Healthcare Standard that is being worked on at the federal level and the requirement that Virginia adopt a standard “at least as effective as” the federal standard. The Board will have the choice to either adopt the federal Healthcare Standard or promulgate their own healthcare standard that is “at least as effective as” the federal OSHA standard that is eventually adopted.

Mr. Withrow asked if the Board members had any questions about the presentation. With no more questions from the Board, Mr. Withrow presented the Board with the Department’s recommendations below.

Staff of the Department of Labor and Industry recommend that the Virginia Safety and Health Codes Board make a final finding that there is no longer a continued need for the Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19, 16VAC25-220, based on scientific and medical evidence that the current widespread variants of the virus no longer constitute a grave danger to employees in the workplace under Va. Code §40.1-22(6a), and as discussed in the U. S. Supreme Court’s decision in National Federation of Independent Businesses, et al., Applicants v. Department of Labor, Occupational Safety and Health Administration, et al.

Vice-Chair Stiff asked if there was any discussion on the recommendation that was presented. There was none. Vice-Chair Stiff asked if there was a motion to accept Recommendation 1 of the Department. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

TIME STAMP OF RECORDING: 1:25:00

Motion #4: Approve the Department Recommendation (1) Final finding that there is no longer a continued need for the Virginia Standard	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				1	
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. John Fulton	1				
Dr. Colin Greene	1				
VACANT	-	-	-	-	
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce				1	
Mr. Travis Parsons				1	
VACANT					
Ms. Lutheria Smith				1	
Mr. Charles ("Chuck") Stiff	1				
Mr. Thomas Thurston				1	
TOTALS	6	0	0	6	

Mr. Withrow presented the Board with the Department’s Recommendation 2 if Recommendation 1 (above) was adopted.

If the Board finds that there is no longer a continued need for the standard, Staff of the Department of Labor and Industry recommend that the Virginia Safety and Health Codes Board adopt a final revocation of the Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19, 16VAC25-220, to become immediately effective upon publication in a newspaper of general circulation published in the city of Richmond, Virginia. The proposed effective date is March 23, 2022.

The Department also recommends that the Board state in any motion it may make to revoke this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.

Vice-Chair Stiff asked if there was discussion on the matter. There was none. Vice-Chair Stiff asked if there was a motion to accept the Recommendation 2 of the Department. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

TIME STAMP OF RECORDING: 1:26:00

Motion #5: Approve the Department Recommendation (2) to adopt a final revocation of the Virginia Standard.	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott				1	

Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. John Fulton	1				
Dr. Colin Greene	1				
VACANT					
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce				1	
Mr. Travis Parsons				1	
VACANT					
Ms. Lutheria Smith				1	
Mr. Charles ("Chuck") Stiff	1				
Mr. Thomas Thurston				1	
TOTALS	6	0	0	6	

NEW BUSINESS

There were no items of new business.

ITEMS OF INTEREST FROM THE DEPARTMENT OF LABOR AND INDUSTRY

Vice-Chair Stiff asked for items of interest from the Department of Labor and Industry. Commissioner Gary Pan addressed the Board and thanked them for their service to the Safety & Health Codes Board. He also thanked the public for their input and interest in the safety of the workplace in Virginia.

ITEMS OF INTEREST FROM MEMBERS OF THE BOARD

Vice-Chair Stiff asked for items of interest from the Members of the Board. There were none. Vice-Chair Stiff thanked the Department staff for all their hard work preparing for the SHCB meeting and for compiling the impressive briefing package. Vice-Chair Stiff addressed the Board and thanked them for their time and service to the Board and for bringing their expertise to the Board and the decision making process.

Meeting Adjournment

Vice-Chair Stiff adjourned the meeting at 11:35 am.

Mr. Jay Abbott <i>Representative for Agricultural Employers</i>
Mr. Robert Buchler <i>Industrial Representative Knowledgeable in Chemical and Toxic Substances</i>
Ms. Kelly Bundy <i>Representative from Construction Industry Employers</i>
Mr. Louis (Lou) Cernak <i>Representative from Labor in the Construction Industry</i>
Mr. John Fulton <i>Employer Representative of the Boiler and Pressure Vessel Industry</i>
Dr. Colin Greene <i>Virginia Department of Health</i>
VACANT <i>Representative for Agricultural Employees</i>
Ms. Elizabeth (Beth) Lohman <i>Environmental Specialist II Department of Environmental Quality</i>
Mr. Michael Luce <i>Representative of an Insurance Company</i>
Mr. Travis Parsons <i>Representative from Labor in the Construction Industry</i>
VACANT <i>Labor Representative Knowledgeable in Chemical and Toxic Substances</i>
Ms. Lutheria Smith <i>Representative for the General Public</i>
Mr. Charles L. (Chuck) Stiff <i>Representative for Industrial Employers</i>
Mr. Thomas Thurston <i>Representative for Labor in the Manufacturing Industry</i>