

DRAFT
SAFETY AND HEALTH CODES BOARD
PUBLIC MEETING MINUTES
Tuesday, April 9, 2024

On April 9, 2024, the Safety and Health Codes Board (“Board”) held a public meeting at Libbie Mill Public Library on 2100 Lake E Street, Richmond, VA 23230.

Notice of the public meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 19 (2022). Notice was provided on the Virginia Regulatory Town Hall’s website here: [Virginia Regulatory Town Hall View Meeting](#)

BOARD MEMBERS PARTICIPATING:

Mr. Jay Abbott
Mr. Kevin Battle
Mr. Lee Biedrycki
Mr. Robert Buchler
Mr. Joel Canady (DEQ)
Mr. Michael Everett
Ms. Julie Henderson (VDH)
Mr. Larry James
Ms. Audrey Janosik
Mr. Jeffrey Rowe
Ms. Luthera Smith
Mr. Robert Smith, Chair
Mr. James “Lou” Spencer

BOARD MEMBERS ABSENT:

Ms. Kelly Bundy

STAFF PRESENT:

Mr. Chuck Stiff, Assistant Commissioner of Dept. of Labor & Industry
Mr. David Johnson, Deputy Commissioner
Mr. Jay Withrow, Senior Fellow
Ms. Cristin Bernhardt, Regulatory Coordinator
Ms. Brittany Rawlinson, Legislative Liaison
Mr. Ron Graham, Director of VOSH Health Compliance
Ms. Jennifer Rose, Director of VOSH Cooperative Programs

OTHERS PARTICIPATING:

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

CALL TO ORDER

Chair Robert Smith called the meeting to order at 11:00 AM. Chair Smith called roll of board members present at the meeting. A quorum was present.

BOARD MEMBER ROLE CALL

BOARD MEMBER	Present	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				
Ms. Audrey Janosik	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x				
Mr. James "Lou" Spencer	x				
TOTALS	13	1			

APPROVAL OF AGENDA

Chair Smith 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.

MOTION: Approval of Agenda	Present	Absent	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				
Ms. Audrey Janosik	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x				
Mr. James "Lou" Spencer	x				
TOTALS	13			1	

APPROVAL OF MEETING MINUTES

Chair Smith then called for discussion and motion for approval of the September 18, 2023 meeting minutes. He asked the Board if there was any discussion on the September 18, 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.

Motion: Approval of September 18, 2023 meeting minutes	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				
Ms. Audrey Janosik	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x				
Mr. James "Lou" Spencer	x				
TOTALS	13			1	

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Chair Smith called the next item on the agenda, which was the opportunity for the public to address the Board. No members of the public requested to address the board.

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

OLD BUSINESS

(a) Report of Periodic Reviews of Certain Regulations

Ms. Bernhardt addressed the Board to provide a report 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](#).

16VAC25-50: Boiler and Pressure Vessel Regulation

Ms. Bernhardt presented the report on this boiler regulation. This regulation has a number of Documents Incorporated by Reference (DIBF) that have been updated by the boiler and pressure vessel industry to take advantage of the latest technical advances in safety. DOLI intends to take the time needed to carefully review these documents to identify those BPV industry documents that should be updated into this regulation. DOLI will bring a complete package back to the board at a later date with recommendations for updating those DIBF and seek approval to begin the regulatory process required to update DIBF. In addition, DOLI will also take advantage of the need for the regulatory process for the DIBR updates to take the time to carefully review some sections of the boiler regulation that could use some amendments.

Therefore, at this time DOLI is recommending to the SHCB that this regulation be retained as is for this periodic review process while DOLI takes the time needed to perform the more in-depth review of the DIBR and regulation amendments. At that time, DOLI will present the SHCB with the recommendations for amendments to this boiler regulation and request approval to begin the regulatory process.

Jay Withrow, Senior Fellow, addressed the SHCB regarding the exempt regulatory process for federal identical regulations. Board member Henderson questioned why this regulatory review and amendment process is not being done at this time. Assistant Commissioner Stiff addressed the board on this issue. He noted the work needed the boiler and pressure vessel program. It is a large undertaking, and the current regulation provides safety. DOLI is planning a major review in the near future for this boiler and pressure vessel program and would like to bring that back to the SHCB as a more comprehensive amendment before beginning the regulatory process.

Josh Laws, Asst Attorney General, mentioned that this periodic review is required by law every 4 years and that is why the boiler and pressure vessel regulation is before the SHCB at this time.

Ms. Bernhardt discussed timeline and deadline within the periodic review process for amendments to be completed. After the public comment period is complete and no later than 120 days after your notice of periodic review is published in the Register, you must complete your review. DOLI would not be able to complete the more comprehensive review and recommendations within the 120-day timeframe.

At this time, DOLI is recommending to the SHCB that this regulation be retained as is. DOLI requests that the Board vote to retain with no changes.

16VAC25-60: Administrative Regulation for the Virginia Occupational Safety and Health Program

Jay Withrow, DOLI Senior Fellow, presented the VOSH Program regulation as the operational framework of rules and procedures for such as jurisdiction, notification and posting requirements, reporting by employers, access to Information and complaint and discrimination procedures. Also included are occupational safety and health standards, inspections, citations and penalties, abatement procedures and inspection care review and settlement. The regulation is mandated by both state and federal law and is effective in achieving its goal. No comments were received during the public comment period.

Mr. Withrow also mentioned that there is a federal regulation that will be adopted within the next 6 months relating to some procedures that are covered in this VOSH program regulation. Therefore, DOLI will most likely be bringing this regulation back to the SHCB at the next meeting with some amendments to address the federal procedural regulatory changes.

At this time, DOLI is recommending to the SHCB that this regulation be retained as is. DOLI requests that the Board vote to retain with no changes.

16VAC25-145: Safety Standards for Fall Protection in Steel Erection, Construction Industry

Mr. Withrow continued with the presentation of the Steel Erection for Fall Protection regulation. He presented the history of this regulation where the Board adopted this regulation in 2004 as a Virginia unique regulation. While the regulation closely mirrors the federal OSHA requirements, there are two material differences:

1. Virginia requires fall protection at heights of 10 or more feet above a lower-level. The federal regulation requires fall protection at 15 or more feet above a lower-level, and in certain instances up to 30 feet above a lower-level (controlled decking zones (CDZ). The Board determined in 2004 that a more stringent requirement for fall protection in steel erection operations was imperative to protect the health, safety, and welfare of Virginia workers. The 10 foot fall protection requirement adopted by the Board provided an equivalent level of protection to steelworkers as is provided to other construction employees working from scaffolds (10 foot fall protection requirement).
2. Virginia prohibits the use of controlled decking zones (CDZ). A controlled decking zone, as defined by federal OSHA, allows certain steel workers to be exposed to fall hazards without fall protection up to 2 stories or 30 feet above a lower level, whichever is less (29 CFR 1926.760(c)). The federal controlled decking zone (CDZ) provisions in 29 CFR §1926.760(c)), provide no fall protection at the 2 floor or 30 foot height for leading edge decking workers other than training on how to avoid falls. Virginia has experienced a number of fatalities and injuries related to decking operations in such work zones (5 fatal accidents between 1995 and 2008 with fall distances of 2 stories, 24.5', 28', 28' and 30'). In 4 of the inspections, fall protection was not provided by the employer and citations were issued. In the 5th inspection, the employer had a 100% fall protection requirement for steelworkers and the victim failed to tie off to a lifeline when returning from lunch and fell through a decking hole. The Safety Standards for Fall Protection in Steel Erection, Construction Industry, protects the safety, health, and welfare of the public by limiting worker exposure to hazards. No comments were received during the public comment period.

At this time, DOLI is recommending to the SHCB that this regulation be retained as is. DOLI requests that the Board vote to retain with no changes.

16VAC25-200: Virginia Voluntary Protection Program (VPP)

Jennifer Rose, Cooperative Programs Director, presented the VPP regulation recommendation to the SHCB. This regulation is voluntary and outlines the definitions, rules, regulations, and standards required by §40.1-49.13 of the *Code of Virginia*, and necessary for the operation of the Virginia Voluntary Protection Program (VPP) in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Historically, employer adoption of the VPP concepts have consistently resulted in injury and illness rates 50-60 % or more below that of the employer’s industry as a whole.

Virginia VPP currently recognizes 37 VPP STAR sites employing approximately 12,600 employees and 2,100 contractor employees who enjoy the protections and benefits of working in some of the safest and healthiest working conditions in the country. This regulation applies to Virginia employers and employees that volunteer to participate in Virginia VPP. As such, there is no negative impact on Virginia’s employers that are not program participants. No comments were received during the public comment period.

At this time, DOLI is recommending to the SHCB that this regulation be retained as is. DOLI requests that the Board vote to retain with no changes.

Chair Smith thanked the speakers for their presentations and announced that the SHCB will call a vote on the DOLI recommendations for the four regulations presented. He asked the Board if there was any discussion on the recommendations presented. There was none. There was a request for a motion to approve the DOLI recommendation for the four regulations. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion to approve the DOLI recommendations for the 4 regulations presented to the SHCB.	“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				
Ms. Audrey Janosik	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x				
Mr. James “Lou” Spencer	x				
TOTALS	13			1	

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

NEW BUSINESS

a) Notice of Periodic Reviews of Certain Regulations

Ms. Bernhardt requested the Board SHCB's permission to proceed with the periodic review process of the Board's regulations listed in Section II, below.

II. Background and Basis

The Administrative Process Act (§2.2-4017 of the Code of Virginia) and Governor Youngkin's Executive Order 19 (2022), "Development and Review of State Agency Regulations," govern the periodic review of existing regulations. State agencies are required to conduct a periodic review of regulations every four years. Four regulations of the Safety and Health Codes Board have been identified for review in 2024. They are as follows:

- 1. 16 VAC 25-35:** Regulations Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees.

History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2224>

- 2. 16 VAC 25-55:** Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspector.

History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2403>

- 3. 16 VAC 25-73:** Regulation Applicable to Tree Trimming.

History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2517>

- 4. 16 VAC 25-75:** Telecommunications, General, Approach Distance

History: <https://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2421>

Ms. Bernhardt presented the recommendation by the Staff of the Department of Labor and Industry that the Safety and Health Codes Board approve DOLI to proceed with the periodic review of the above regulations and present the SHCB with a report and recommendations when the review is completed.

Chair Smith then called for discussion on the recommendation by DOLI for the Board to approve DOLI to initiate a periodic review of the 4 regulations presented.

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.

Motion to approve the DOLI recommendations to begin the Periodic Review Process for the 4 regulations presented to the SHCB.	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				
Ms. Audrey Janosik	x				
Mr. Jeffrey Rowe	x				
Ms. Lutheria Smith	x				
Mr. Robert Smith	x				
Mr. James "Lou" Spencer	x				
TOTALS	13			1	

A board member asked the question regarding the second recommendation in the briefing package on page 22. Ms. Bernhardt indicated that this will also be a part of the recommendation that was voted on by the SHCB and read it into the record of the meeting. Which is as follows: 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.

b) Regulatory Advisory Panel Status

Ms. Bernhardt presented the status of the Regulatory Advisory Panel (RAP) being developed by DOLI to assist in the development of proposed regulatory language amendments approved but the Board at the September 18, 2023 meeting for the following regulations:

16VAC25-70: Confined Space Standard for the Telecommunications Industry

16VAC25-160: Construction Industry Standard for Sanitation

DOLI has compiled a stakeholder listing for each regulation’s industry to send out to solicit participation in the regulatory advisory panel (RAP) for their respective industries. The email will be sent out in the near future and hope to have a RAP established for each regulation to begin the process of meeting with the RAPs to discuss the regulatory amendments. Ms. Bernhardt asked the Board to pass along names of any stakeholders for the construction and/or telecommunications industries that they would like to add to the applicable stakeholders lists. The plan is to have the two RAPs established and underway in meetings for DOLI to present to the board a progress report at the next SHCB meeting.

Chair Smith 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

Chair Smith asked for items of interest from the Department.

Assistant Commissioner Chuck Stiff addressed the Board to announce the VOSH Safety Conference to be co-hosted with the Voluntary Protection Programs Participants' Association (VPPPA) in Virginia Beach on June 10-13, 2024. He discussed the valuable opportunity for participants to stay informed on latest industry safety and health trends and regulatory updates related to workplace safety. He recommended to any board members who would like to attend to contact DOLI if interested in getting more information about the conference and the registration process.

Mr. Stiff also addressed the board regarding a child labor issue and safety concerns in the news at a Virginia poultry processing plant in Virginia. DOLI is actively involved in investigating and addressing the issues involved in both the child labor concerns with DOLI's labor law department as well as the safety concerns with the VOSH program. Because there is an active investigation, details of DOLI's investigation could not be shared with the SHCB at this time.

ITEMS OF INTEREST FROM MEMBERS OF THE BOARD

Chair Smith asked for items of interest from the Members of the Board. There were no members who wished to address the board.

MEETING ADJOURNMENT

Chair Smith adjourned the meeting at 11:45 am.