

## **FINAL MINUTES**

Thursday, March 25, 2021

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:00 a.m. on Thursday, March 25, 2021. The meeting was held by electronic communications means due to the state of emergency issued by Governor Northam as a result of the novel coronavirus (COVID-19). The meeting was held using Cisco WebEx Events. President Barlow called the meeting to order.

### **ROLL CALL**

The Board Secretary called the roll:

#### **PRESENT**

O. Bryan Taliaferro, Jr.  
Donald Horsley  
Shelley Barlow  
Cecil Shell  
Margaret Ann Smith  
L. Wayne Kirby  
Kay Johnson Smith  
James S. Huffard, III  
John R. Marker  
Richard Sellers  
Neil Houff  
Charles Church  
Lonnie Johnson

Dr. M. Ray McKinnie

#### **CONGRESSIONAL DISTRICT**

1<sup>st</sup>  
2<sup>nd</sup>  
4<sup>th</sup>  
5<sup>th</sup>  
6<sup>th</sup>  
7<sup>th</sup>  
8<sup>th</sup>  
9<sup>th</sup>  
10<sup>th</sup>  
11<sup>th</sup>  
Pesticides – Commercial Agricultural  
Pesticides – Commercial Structural  
Representing Dr. Timothy D. Sands, President,  
Virginia Tech  
Representing Dr. Makola Abdullah, President,  
Virginia State University

#### **ABSENT**

Clifton A. Slade

3<sup>rd</sup>

#### **STAFF PRESENT**

Jewel Bronaugh, Commissioner, Virginia Department of Agriculture and Consumer Services  
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services  
Katherine Coates, Virginia Department of Agriculture and Consumer Services

#### **APPROVAL OF MINUTES**

Mr. Marker moved that the draft minutes of the meeting on December 11, 2020, be approved as distributed. Mr. Shell seconded the motion. The motion was approved by a unanimous roll call vote.

**APPROVE:** Barlow, Shell, M. Smith, K. Johnson Smith, Huffard, Marker, Sellers, Houff, Church, Horsley, L. Johnson

**OPPOSE:** None

#### **REPORT FROM BOARD MEMBERS**

A full recording of Board Member reports can be found at the following link:

<https://www.vdacs.virginia.gov/boards-agriculture-and-consumer-services.shtml>

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### **Don Horsley**

Mr. Horsley provided an update on the weather and reported on the progress of the truck and wheat crops in his district. He stated that they are gearing up for the corn and soybean season and hope to start planting next week if the weather holds up. He said that there was excitement about the market situation, and he hoped everyone was able to take advantage.

### **Cecil Shell**

Mr. Shell reported on the weather and the ice storm damage in his district. He provided updates on the status of the timber and vegetable markets; grain prices; and the wheat, soybean, and corn crops and planting. He stated that they have had record exports and are hoping that the prices go up. China has come back into the tobacco market, and some of the increases have gone up 80 percent. He added that the dark-fired tobacco market is doing well. He looks forward to a good crop year.

### **Margaret Ann Smith**

Ms. Smith reported that it was a wet winter in her district. All the moisture resulted in many cattle not being able to be brought to market. She provided an overview of the winter damage to and the current state of pastures. She said the market is looking optimistic and livestock prices are currently robust. She added that labor issues continue to be a challenge for everyone in the industry in her district.

### **L. Wayne Kirby**

Mr. Kirby stated that he agreed with what other Board members were reporting. He said that 2020 was a depressing year but 2021 is bringing optimism. He reported that the small grain crop is behind. Much of it got a late start because of the wet weather in the fall. He provided an update on the vegetable growers in his district. He concluded his report by stating that prices have improved and that has caused optimism.

### **Kay Johnson Smith**

Ms. Johnson Smith reported on the farmers' market operations in her district. She noted that the Virginia Cooperative Extension (VCE) is advertising for a 4-H agent in Alexandria. She announced that the Animal Ag Alliance is hosting its 20<sup>th</sup> Annual Stakeholder Summit on May 5-6. It will be virtual due to the pandemic and will include a week of webinars the week prior to the summit. They are running a photo contest for ranchers and farmers to win a complimentary registration to the summit to encourage participation. She concluded her report by inviting the Board to Northern Virginia to see the blooming cherry blossoms, which will peak in April.

### **James Huffard**

Mr. Huffard reported on the weather and the ice storm damage in his district. He stated that dairy farmers are continuing to leave the industry and many of them are now raising beef cows instead. Duchess Dairy has recently added new customers, and sales of its pints are starting to pick up in convenience stores along the interstate. He noted that Duchess Dairy is sponsoring a minor league baseball team mascot. He concluded his report by requesting that the Board receive a summary of agriculture legislation that passed during the 2021 Session of the General Assembly. President Barlow responded that Secretary Schmidt would be giving a legislative report later in the meeting.

### **John Marker**

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Mr. Marker reported on the weather, the small grains crop, and the status of fruit trees in his district. He stated that it was tough finding labor this winter and they did not get enough pruning done. He noted that spring camping season is in full swing in his district. He concluded by reporting on COVID-19 vaccination efforts in the farm community in his county.

### **Richard Sellers**

Mr. Sellers reported on the urban markets and gardens in his area. He stated that he was contacted recently by the Fairfax County Department of Planning about a public hearing on the definition of and qualifications to be considered agritourism in the county. He has shared the information he received with the Virginia Farm Bureau Federation and is interested to see how the public hearing proceeds.

### **Neil Houff**

Mr. Houff reported that the Virginia Crop Association hosted its first virtual meeting on January 20. The meeting was successful and attracted over 200 attendees. He gave an update on fertilizer pricing. He concluded his report by discussing challenges resulting from recent downgrades to weight restrictions on certain bridges by the Virginia Department of Transportation (VDOT), which has impacted the transportation of products. Stakeholders are working with VDOT on solutions.

### **Charles Church**

Mr. Church reported that in the first quarter, the Virginia Pest Management Association (VPMA) has been focusing on testing and recertification to deal with the backlog created by the pandemic. VPMA has worked with the VDACS Office of Pesticide Services to host in-person testing events for new applicators. VPMA is providing four different virtual recertification opportunities this spring and has also created an online library of recertification modules that it hopes to have up and running by mid-June. He announced that VPMA plans to host an in-person state technical meeting on December 8-9 in Virginia Beach. He reported that termites will start swarm as it gets warm, which may be more noticeable than usual because so many people are working from home. He concluded by stating that there may be more mosquitoes this year due to the mild winter.

### **Lonnie Johnson**

Mr. Johnson reported that Virginia Tech (VT) is beginning to offer more face-to-face instruction. He discussed VT's plans to safely host residential 4-H camps this summer. He reported on their unit offices' activities to educate the farm community about COVID-19 vaccinations through partnerships with local governments and the Virginia Department of Health, a training, newsletters, social media, and direct contacts. He reported on a voluntary BMP survey that was conducted to learn what farmers are doing to prevent runoff into the Chesapeake Bay. He concluded by stating that VT is looking forward to transitioning back to fully in-person courses next fall and providing a report on VCE's budget.

### **Dr. M. Ray McKinnie**

Dr. McKinnie reported that Virginia State University (VSU) increased in-person learning for the spring semester, which included a reduction in campus residency and a combination of in-person and virtual classes. Students have adapted, and COVID-19 testing numbers are staying below the state average. VSU intends to return fully to face-to-face instruction in fall. He stated that the Provost is currently experimenting with a one-year registration for students. He reported on the College of Agriculture's research plots and the activities of VCE specialist programs,

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including the build out of their mobile education unit. He concluded his report by expressing gratitude to the General Assembly for its support of the VSU College of Agriculture.

### **O. Bryan Taliaferro**

Mr. Taliaferro reported on the difficulties caused by excess rain in his district throughout the year. He discussed with the Board the upsurge in grain prices and the concerns that come with that upsurge. He warned that major price increases are followed by periods of lower prices and that producers should price ahead.

### **Shelley Butler Barlow**

Ms. Barlow began her report by thanking VDACS staff and leadership for their work to ensure the continuity of operations. She congratulated Commissioner Bronaugh on her nomination by President Biden to be Deputy Secretary of the U.S. Department of Agriculture. She reported on the weather and field work in her district. She stated that they are cautiously optimistic about the higher prices. She concluded her report by discussing solar energy, carbon credits, carbon sequestration, and climate change. She stated that the Board should be tuned into these issues because they are points of conversation in many of her professional associations.

### **COMMISSIONER'S REPORT**

Commissioner Bronaugh delivered her report to the Board. During the presentation of this report, she briefed the Board on personnel changes, recent events, and other matters relating to VDACS and the COVID-19 state of emergency. A copy of the written report on which her presentation was based was included in the Board meeting agenda and materials.

### **2021 SESSION OF THE GENERAL ASSEMBLY – LEGISLATIVE REPORT**

President Barlow called on Kevin Schmidt, Director, Office of Policy, Planning, and Research. Mr. Schmidt provided a brief overview of legislation tracked by VDACS during the 2021 Session of the General Assembly.

### **2021 SESSION OF THE GENERAL ASSEMBLY – BUDGET REPORT**

President Barlow called on Kendra Shifflett, Director of Administrative and Financial Services. Ms. Shifflett provided a brief overview of agency budget issues related to the 2021 Session of the General Assembly and responded to Board member questions.

### **FAST-TRACK ACTION TO AMEND 2 VAC 5-560 (RULES AND REGULATIONS PERTAINING TO LABELING AND SALE OF INFANT FORMULA)**

President Barlow called on Ryan Davis, Program Manager, Office of Dairy and Foods. Mr. Davis briefed the Board on the proposed fast-track regulatory action to repeal 2 VAC 5-560.

Following Mr. Davis' presentation, Mr. Shell moved that the Board of Agriculture and Consumer Services amend 2 VAC 5-560, Rules and Regulations Pertaining to Labeling and Sale of Infant Formula, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to amend this regulation through a fast-track regulatory action

Mr. Huffard seconded the motion. The Board voted unanimously to approve the motion.

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**APPROVE:** Barlow, Shell, M. Smith, K. Johnson Smith, Huffard, Marker, Sellers, Houff, Church, Horsley, McKinnie, L. Johnson.

**OPPOSE:** None

**REPORT ON EXPANSION OF SPOTTED LANTERNFLY QUARANTINE (2 VAC 5-336) – DAVID GIANINO, PROGRAM MANAGER, OFFICE OF PLANT INDUSTRY SERVICES**

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino presented the Board with a brief report on the expansion of 2 VAC 5-336.

**REPORT FROM RECORDS SUBCOMMITTEE REGARDING RELEASE OF RECORDS**

President Barlow called on Mr. Sellers to give a brief overview of the work of the Records Subcommittee. Mr. Sellers provided an overview of the record request, the subcommittee's February 5, 2021, meeting, and the subcommittee's final recommendation. As Interflex rescinded its previous request during the discussion at the December 11, 2020, meeting of the Board, there was no pending request to the Board to release records. Therefore, no Board motion was needed.

**NEW BUSINESS**

Mr. Huffard relayed a question from a hemp grower in his district. Secretary Schmidt recommended that Mr. Huffard or the hemp grower speak directly with agency staff to receive detailed information to address his questions. Mr. Huffard also commented that he wanted to affirm Ms. Barlow's comments about solar power.

Ms. Margaret Ann Smith stated that farm equipment theft is a growing problem in her district. She suggested that VDACS spread awareness of the problem through social media. Dr. Bronaugh asked that Ms. Smith follow up with her and suggested that there may be an opportunity to meet with the VDACS Office of Communications about raising awareness of this issue.

**FUTURE BOARD MEETINGS**

President Barlow announced that the remaining Board meeting dates for 2021 will be May 20 and December 10 in Richmond. A summer meeting will be added at a later date.

**PUBLIC COMMENT PERIOD**

Mr. David Sacks, a resident of Henrico County, addressed the Board about his concerns regarding home service contract providers. He requested that the Board develop and adopt regulations, as authorized by Va. Code § 59.1-434.4, in order to provide consumer protection to Virginia citizens. He shared his own experience with a home service contract provider, in which, after a drawn out and confusing process, the home service contract provider denied his claim based on "bizarre and nonsensical interpretation of the contract language." There was no process to question or appeal that interpretation, and the company never responded to his

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multiple written requests for information about an appeals process. He noted that several online reviews mirrored his experiences.

Mr. Sacks stated that the guidance on the VDACS website provides cautions before purchasing a home service contract. However, he noted that home service contracts are typically purchased by a home seller and the contract holder is the purchaser of the house. Therefore, the individual who holds the contract with the home service company rarely has the opportunity to do standard due diligence before entering into such contract.

Ms. Barlow thanked Mr. Sacks for bringing his concern before the Board. Justin Bell, Assistant Attorney General and Counsel to the Board, encouraged Mr. Sacks to submit a consumer complaint through the Office of the Attorney General.

In response to a question from President Barlow, Commissioner Bronaugh indicated that Larry Nichols, Director of the Division of Consumer Protection, is the staff member in charge of the agency division that registers home service contract providers. Mr. Nichols then provided Mr. Sacks with his direct phone number to further discuss the issue.

Secretary Schmidt requested that Mr. Sacks email him the documents that he has requested for review and so that Secretary Schmidt can provide to him information on the procedure to submit a formal petition for rulemaking to the Board.

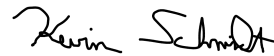
**ADJOURNMENT**

There being no further business, the Board adjourned at approximately 11:30 a.m.

Respectfully submitted,



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Shelley Barlow  
Board President



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Kevin Schmidt  
Board Secretary