

**FINAL  
SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
June 24, 2020**

On March 12, 2020, Governor Ralph Northam issued Executive Order Number 51, declaring a State of Emergency under § 44-146.17 due to the spread within the Commonwealth and surrounding states of the Novel Coronavirus (COVID-19), a communicable disease of public health threat. On May 26, 2020, Governor Northam issued Executive Order Number 63, directing the Commissioner of Labor and Industry to promulgate emergency standards to “control, prevent, and mitigate the spread of COVID-19 in the workplace.

“Under §2.2-3708.2.A.3, a public body may meet by electronic means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency.”

Given the nature of the emergency, that COVID-19 spreads easily from person to person, and the purpose of the meeting, which was to promulgate an emergency temporary standard specifically addressing the emergency, the Safety and Health Codes Board (“Board”) held an entirely electronic emergency meeting utilizing WebEx.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members physically assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the emergency electronic meeting.

Notice of the meeting was provided to the public contemporaneously with the notice given to the Board. The notice invited the public to witness the meeting remotely via WebEx. Notice was provided on the Department of Labor and Industry’s (DOLI) website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> as well as on the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31004>.

A copy of the proposed agenda and all agenda packets, unless exempt, and all materials furnished to members of the Board for this meeting were made available for public inspection on the Doli’s website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> and the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31004> contemporaneously with the documents being furnished to the members of the Board.

**BOARD MEMBERS**

**PARTICIPATING:**

Mr. Charles L. (“Chuck”) Stiff (Interim Chair)  
Mr. Jeffery Steers  
Dr. Dwight Flammia  
Mr. John D. Fulton  
Mr. Phil Glaize

Ms. Tina Hoover  
Ms. Anna E. Jolly  
Mr. Michael. A. Luce  
Mr. Courtney M. Malveaux  
Mr. Travis M. Parsons  
Mr. Kenneth W. Richardson, II  
Ms. Milagro (“Milly”) Rodriguez  
Mr. Thomas A. Thurston.

**BOARD MEMBERS ABSENT:** Mr. Louis J. (“Lou”) Cernak Jr.  
Mr. Phil Glaize

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Edward G. Hilton, Director of Boiler Safety  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney  
Ms. Elizabeth DePatie, DOLI Legal Intern

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Attorney General’s Office  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**CALL TO ORDER**

Chair Chuck Stiff called the Public meeting to order at 9:19 a.m. A quorum was present. Chair Stiff made opening remarks informing the public that this meeting was an emergency electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

This emergency Board meeting was held to discuss the DRAFT Emergency Temporary Standard/Emergency Regulation to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers under the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program, 16 VAC 25-220.

Section 2.2-3708.2(d)(7), Code of Virginia, requires that “votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in

the minutes.” It also requires that “For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes.”

**APPROVAL OF AGENDA**

Chair Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

| <b>Approval of Agenda</b>       | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> | <b>Other</b> |
|---------------------------------|------------|------------|----------------|---------------|--------------|
| Mr. Jeffery Steers              | 1          |            |                |               |              |
| Mr. Louis J. (“Lou”) Cernak Jr. |            |            |                | 1             |              |
| Dr. Dwight Flammia              | 1          |            |                |               |              |
| Mr. John D. Fulton              | 1          |            |                |               |              |
| Mr. Phil Glaize                 |            |            |                | 1             |              |
| Ms. Tina Hoover                 | 1          |            |                |               |              |
| Ms. Anna E. Jolly               | 1          |            |                |               |              |
| Mr. Michael. A. Luce            | 1          |            |                |               |              |
| Mr. Courtney M. Malveaux        | 1          |            |                |               |              |
| Mr. Travis M. Parsons           | 1          |            |                |               |              |
| Mr. Kenneth W. Richardson, II   | 1          |            |                |               |              |
| Ms. Milagro (“Milly”) Rodriguez | 1          |            |                |               |              |
| Mr. Charles L. (“Chuck”) Stiff  |            |            |                |               | did not vote |
| Mr. Thomas A. Thurston          | 1          |            |                |               |              |
| <b>TOTALS</b>                   | <b>11</b>  |            |                | <b>2</b>      | <b>1</b>     |

**NEW BUSINESS**

Jay Withrow, Director of Legal Support, ORA, OPPO, and OWP presented the briefing package for the Emergency Temporary Standard/Emergency Regulation to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers under the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program, 16 VAC 25-220. This presentation is available on the DOLI website.

Mr. Withrow presented 41 pages of the briefing package before Board member Courtney Malvaeux requested permission to make a motion to the Board.

Mr. Malvaeux made a motion that “Roll call votes relating to necessity or substance of a new standard shall occur after a live public comment period (in person or virtually) to afford members of the board an opportunity to discuss these matters with effected stakeholders.”

Board members discussed the motion Mr. Malvaeux proposed. Some stated that there was not enough time given for public comment and to hear from all the stakeholders. Others stated

that the situation is an emergency requiring an emergency standard. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion did not carry.

| <b>Malveaux's motion on roll call vote after public hearing</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> | <b>Other</b>               |
|---|------------|------------|----------------|---------------|----------------------------|
| Mr. Louis J. ("Lou") Cernak Jr.                                 |            | 1          |                |               |                            |
| Dr. Dwight Flammia  |            | 1          |                |               |                            |
| Mr. John D. Fulton  | 1          |            |                |               |                            |
| Mr. Phil Glaize   |            |            |                |               | No vote - technical issues |
| Ms. Tina Hoover   | 1          |            |                |               |                            |
| Ms. Anna E. Jolly   |            | 1          |                |               |                            |
| Mr. Michael. A. Luce  | 1          |            |                |               |                            |
| Mr. Courtney M. Malveaux  | 1          |            |                |               |                            |
| Mr. Travis M. Parsons   |            | 1          |                |               |                            |
| Mr. Kenneth W. Richardson, II                                   | 1          |            |                |               |                            |
| Ms. Milagro ("Milly") Rodriguez                                 |            | 1          |                |               |                            |
| Mr. Jeffery Steers  |            |            |                |               | No vote - technical issues |
| Mr. Charles L. ("Chuck") Stiff                                  |            |            |                |               | Did not vote               |
| Mr. Thomas A. Thurston  |            | 1          |                |               |                            |
| Totals  | 5          | 6          | 1              | 1             |                            |

After the vote was taken, the Board took a break, and Mr. Glaize was able to be heard during the break. Mr. Glaize was able to hear the meeting, but was not able to be heard during the roll call vote or during the discussion. Mr. Glaize asked to speak to the motion and to have his vote heard. Mr. Stiff granted Mr. Glaize permission to speak.

Mr. Stiff asked Mr. Withrow if Mr. Glaize could vote, and Mr. Withrow advised that the agency should research Robert's Rules of Order to determine if this is admissible and if this would be a motion to reconsider. Mr. Malvaeux requested that Mr. Glaize's vote be taken due to technical difficulties, not procedural issues and that this was not considered a reconsideration. While the agency researched this procedural issue, Mr. Withrow continued presenting the briefing package up to p.120. A break was taken.

When the Board reconvened after the break, Attorney Josh Laws presented the options for the Board to address the issue of board members who were unable to vote for Mr. Malvaeux's motion. Mr. Stiff decided to allow for the vote to be taken again due to technical difficulties.

Mr. Malvaeux repeated his motion that "Roll call votes relating to necessity or substance of a new standard shall occur after a live public comment period (in person or virtually) to afford

members of the board an opportunity to discuss these matters with effected stakeholders.”

| <b>Malveaux's motion on roll call vote after public hearing (second vote)</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> |
|---|------------|------------|----------------|---------------|
| Jeffrey Steers  |            | 1          |                |               |
| Mr. Louis J. (“Lou”) Cernak Jr.   |            | 1          |                |               |
| Dr. Dwight Flammia  |            | 1          |                |               |
| Mr. John D. Fulton  | 1          |            |                |               |
| Mr. Phil Glaize   | 1          |            |                |               |
| Ms. Tina Hoover   | 1          |            |                |               |
| Ms. Anna E. Jolly   |            | 1          |                |               |
| Mr. Michael. A. Luce  | 1          |            |                |               |
| Mr. Courtney M. Malveaux  | 1          |            |                |               |
| Mr. Travis M. Parsons   |            | 1          |                |               |
| Mr. Kenneth W. Richardson, II   | 1          |            |                |               |
| Ms. Milagro (“Milly”) Rodriguez   |            | 1          |                |               |
| Mr. Charles L. (“Chuck”) Stiff  |            |            | 1              |               |
| Mr. Thomas A. Thurston  |            | 1          |                |               |
| <b>TOTALS</b>   | <b>6</b>   | <b>7</b>   | <b>1</b>       |               |

The motion was made, properly seconded, a roll call vote was conducted, and the motion did not carry.

Mr. Withrow continued with presenting the briefing package up to p. 136, for a vote on the Department staff’s recommendation. Mr. Withrow stated that the “staff of the Department of Labor and Industry recommends that the Board find that SARS-CoV-2 and COVID-19 related hazards and job task employee exposures constitute a grave danger to employees in Virginia that necessitate the adoption of an emergency temporary standard to protect Virginia employees from the spread of the SARS-CoV-2 virus which causes COVID-19 under Va. Code §40.1-22(6a).

The Board had a discussion related to the recommendation and whether there is a grave danger and if there is a need for an emergency temporary standard. The motion was made, properly seconded, and carried.

| <b>Finding of Grave Danger</b>     | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> |
|------------------------------------|------------|------------|----------------|---------------|
| Jeffrey Steers                     | 1          |            |                |               |
| Mr. Louis J. ("Lou") Cernak Jr.    | 1          |            |                |               |
| Dr. Dwight Flammia                 | 1          |            |                |               |
| Mr. John D. Fulton                 | 1          |            |                |               |
| Mr. Phil Glaize                    |            | 1          |                |               |
| Ms. Tina Hoover                    |            | 1          |                |               |
| Ms. Anna E. Jolly                  | 1          |            |                |               |
| Mr. Michael. A. Luce               |            |            | 1              |               |
| Mr. Courtney M. Malveaux           |            | 1          |                |               |
| Mr. Travis M. Parsons              | 1          |            |                |               |
| Mr. Kenneth W. Richardson, II      | 1          |            |                |               |
| Ms. Milagro ("Milly")<br>Rodriguez | 1          |            |                |               |
| Mr. Charles L. ("Chuck") Stiff     |            |            | 1              |               |
| Mr. Thomas A. Thurston             | 1          |            |                |               |
| <b>TOTALS</b>                      | <b>9</b>   | <b>3</b>   | <b>2</b>       |               |

The Board took a break and when they returned Mr. Withrow continued with his presentation at p. 137 of the briefing package. Mr. Withrow addressed the Department's finding on whether workplace exposures to SARS-CoV-2 and COVID-19 constituted an emergency situation to employees and employers in Virginia necessitating the adoption of an emergency regulation and stopped his presentation at p. 140 of the briefing package to provide the Department staff's recommendation.

Mr. Withrow stated that the "staff of the Department of Labor and Industry recommends that the Board find that SARS-CoV-2 and COVID-19 related hazards and job task employee exposures constitute an emergency situation that necessitate the adoption of an emergency regulation to protect Virginia employees and employers under Va. Code §2.2-4011."

The Board had a discussion related to the recommendation and whether there was an emergency situation and if there is a need for adoption of an emergency regulation. The motion was made, properly seconded, and carried.

| <b>Roll Call on Emergency</b>   | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> |
|---------------------------------|------------|------------|----------------|---------------|
| Jeffery Steers                  |            |            | 1              |               |
| Mr. Louis J. ("Lou") Cernak Jr. | 1          |            |                |               |
| Dr. Dwight Flammia              | 1          |            |                |               |
| Mr. John D. Fulton              | 1          |            |                |               |
| Mr. Phil Glaize                 | 1          |            |                |               |
| Ms. Tina Hoover                 |            | 1          |                |               |
| Ms. Anna E. Jolly               | 1          |            |                |               |
| Mr. Michael. A. Luce            |            |            | 1              |               |
| Mr. Courtney M. Malveaux        | 1          |            |                |               |
| Mr. Travis M. Parsons           |            | 1          |                |               |
| Mr. Kenneth W. Richardson, II   | 1          |            |                |               |
| Ms. Milagro ("Milly") Rodriguez |            | 1          |                |               |
| Mr. Charles L. ("Chuck") Stiff  |            |            | 1              |               |
| Mr. Thomas A. Thurston          |            | 1          |                |               |
| <b>TOTALS</b>                   | <b>7</b>   | <b>4</b>   | <b>3</b>       |               |

After the vote, Mr. Stiff asked the Board if they had legal questions requiring a closed meeting with Mr. Laws. No Board members requested a closed meeting.

Mr. Withrow stated that while the Board has made a finding of a grave danger and made a finding of an emergency regulation, they have not officially decided the path that they are going to adopt a regulation.

Mr. Withrow stated that the "staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt either an emergency temporary standard under Va. Code §40.1-22(6a) or an emergency regulation under Va. Code §2.2-4011 addressing infectious disease prevention SARS-CoV-2 that causes COVID-19 the content of which will be determined at a later time."

The Board had a discussion related to the recommendation. The motion was made, properly seconded, and carried.

| <b>Adoption of Emergency Temporary Standard/Regulation</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> |
|--|------------|------------|----------------|---------------|
| Jeffery Steers   | 1          |            |                |               |
| Mr. Louis J. ("Lou") Cernak Jr.                            | 1          |            |                |               |
| Dr. Dwight Flammia   | 1          |            |                |               |
| Mr. John D. Fulton   |            |            | 1              |               |
| Mr. Phil Glaize  |            | 1          |                |               |
| Ms. Tina Hoover  | 1          |            |                |               |
| Ms. Anna E. Jolly  | 1          |            |                |               |
| Mr. Michael. A. Luce                                       |            |            | 1              |               |
| Mr. Courtney M. Malveaux                                   |            | 1          |                |               |
| Mr. Travis M. Parsons                                      |            | 1          |                |               |
| Mr. Kenneth W. Richardson, II                              | 1          |            |                |               |
| Ms. Milagro ("Milly") Rodriguez                            | 1          |            |                |               |
| Mr. Charles L. ("Chuck") Stiff                             |            |            | 1              |               |
| Mr. Thomas A. Thurston                                     | 1          |            |                |               |
| <b>TOTALS</b>  | <b>8</b>   | <b>3</b>   | <b>3</b>       |               |

Mr. Withrow continued with presenting the briefing package at p. 175, where information between the two statutes is provided. Mr. Withrow concluded this part of the briefing package at p. 182. Mr. Stiff asked the Board if they required legal counsel to discuss the two options. No Board members requested this.

Mr. Withrow continued his presentation of the briefing package at p. 182 and delivered the Department's recommendation that the Board should proceed under Va. Code §40.1-22(6a). While the Board can select the route it thinks is most effective and as long as it acts in accordance with the procedural and substantive requirements of either statute, using §40.1-22(6a) means the Board will be acting under a specific power in its own statute. In addition, based on the informal guidance from the Attorney General's Office, the Board would have the ability to put in place a permanent standard during the six month period that the Emergency Temporary Standard is in effect, and based on the language in 40.1-22(6a), the Board can also act to repeal it during that time. However, because of the possibility of court review, it is the further recommendation of the Department that the Board accept to substantially comply with the core requirements of the Administrative Process Act by undertaking to do the following during the six month period that the Emergency Temporary Standard is in effect.

Mr. Withrow stated that the "staff of the Department of Labor and Industry recommend that the Safety and Health Codes Board adopt an emergency temporary standard under Va. Code §40.1-22(6a), Infection Disease Prevention SARS-CoV-2 virus that causes COVID-19, the content of which will be considered at a later time. The Board also directs the Department to send the



proposed permanent standard to the Department of Planning and Budget for an economic impact analysis with a request that they complete the same within 14 days, as provided for under Executive Order 14 for emergency regulations adopted under Va. Code §2.2-4011. The Board also directs the Department to publish a 60 day written comment period for the proposed permanent standard as provided for in the Board’s Public Participation Guidelines for “normal” proposed regulations, 16VAC25-11-50. The Board will schedule a public hearing as is the standard course of action for the Board with “normal” proposed regulations, 16VAC25-11-100, and the Board will schedule a meeting to adopt a permanent standard.

The Board had a discussion related to the recommendation. The motion was made, properly seconded, and carried.

| <b>Adopt ETS/Reg under Va. Code §40.1-22(6A)</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> |
|--|------------|------------|----------------|---------------|
| Mr. Jeffery Steers                               | 1          |            |                |               |
| Mr. Louis J. (“Lou”) Cernak Jr.                  | 1          |            |                |               |
| Dr. Dwight Flammia                               | 1          |            |                |               |
| Mr. John D. Fulton                               | 1          |            |                |               |
| Mr. Phil Glaize                                  |            | 1          |                |               |
| Ms. Tina Hoover                                  |            | 1          |                |               |
| Ms. Anna E. Jolly                                | 1          |            |                |               |
| Mr. Michael. A. Luce                             |            |            | 1              |               |
| Mr. Courtney M. Malveaux                         |            | 1          |                |               |
| Mr. Travis M. Parsons                            | 1          |            |                |               |
| Mr. Kenneth W. Richardson, II                    | 1          |            |                |               |
| Ms. Milagro (“Milly”) Rodriguez                  | 1          |            |                |               |
| Mr. Charles L. (“Chuck”) Stiff                   |            |            | 1              |               |
| Mr. Thomas A. Thurston                           | 1          |            |                |               |
| <b>TOTALS</b>                                    | <b>9</b>   | <b>3</b>   | <b>2</b>       |               |

Mr. Withrow stated that the next step would be to review the Draft emergency temporary standard with amendments. Mr. Stiff suggested that the Board continue this to another day and asked the Board members for their availability.

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

Commission Ray Davenport stated that there were no items of interest from the Department.

**MEETING ADJOURNMENT**

Chair Stiff asked the Board if there is a motion to adjourn. The motioned to adjourn was made and properly seconded. Chair Stiff adjourned the meeting of the Safety and Health Codes Board at 4:35PM, on June 24, 2020.