

FINAL MINUTES

Friday, December 11, 2020

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:00 a.m. on Friday, December 11, 2020. 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
Clifton A. Slade
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
Dr. Alan Grant

Dr. M. Ray McKinnie

CONGRESSIONAL DISTRICT

1st
2nd
3rd
4th
5th
6th
7th
8th
9th
10th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Timothy D. Sands, President,
Virginia Tech
Representing Dr. Makola Abdullah, President,
Virginia State University

ABSENT

None

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. Kirby moved that the draft minutes of the meeting on July 21, 2020, be approved as distributed.
Mr. Shell seconded the motion. The motion was approved by a unanimous roll call vote.

APPROVE: Taliaferro, Slade, Barlow, Shell, Kirby, K. Johnson Smith, Marker, Sellers, Houff, Church, Horsley, McKinnie, Grant

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>

Clifton Slade

Mr. Slade reported on the corn, soybean, and peanut crops in his district. He stated that moisture has created issues with the harvest and the planting of cover crops. He spoke about farmers who used the Soil and Water Conservation District and Natural Resources Conservation Service cover crop programs who were unable to get their cover crops in on time. Economically, he had his best year ever as a produce farmer, but he regrets that it was due to the COVID-19 pandemic. It has been a good season for all Virginia produce growers because COVID has resulted in a renewed movement to buy local produce and visit farmers' markets. COVID also resulted in some localities giving away food boxes that contained produce grown by local farmers. He concluded his report by sharing his experience growing hemp in 2020.

L. Wayne Kirby

Mr. Kirby reported on the status of the corn, soybean, barley, and wheat crops in his district. He noted that it has been challenging for barley and wheat producers to make money over the past few years. He stated that vegetable growers had a tremendous year and most cover crops were able to be planted in his district.

Kay Johnson Smith

Ms. Johnson Smith reported that her organization, The Animal Agriculture Alliance (AAA), announced that the AAA May 2021 Stakeholders Summit will be a virtual event. She reported on the impacts of the pandemic on residents in Arlington and Alexandria. There has been an increased need for food banks, and there is concern for the restaurant industry as winter approaches.

Richard Sellers

Mr. Sellers began his report by sharing that approximately 10 percent of Fairfax County is currently on unemployment. He reported on the operations of church and urban gardens in his region. He concluded his report by informing the Board that Fairfax County has proposed a new rule on agritourism that would allow certain operations to conduct agritourism activities.

Neil Houff

Mr. Houff reported on the corn and soybean harvest in his district. He announced that Dicamba-tolerant Engenia received U.S. Environmental Protection Agency approval for use on cotton and soybeans. He cautioned the Board that the label on Engenia is tedious and complex but is important to read. He concluded his report with an update on the fertilizer supply. He noted that there is a high demand for labor in the Valley.

O. Bryan Taliaferro

Mr. Taliaferro stated that his report is very similar to Mr. Kirby's. He reported on the soybean and corn yields in his district. Small grain acreage is down, and he will report exact numbers in the spring. He added that, due to COVID-19, there have been fewer opportunities for farmers to meet face-to-face and communicate.

Don Horsley

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Mr. Horsley reported on the soybean and corn crops in his district. He noted that planting was late in his district due to rain. He stated that it has been a great year for produce farmers and the strawberry producers in his area have had their best year ever. He added that he successfully grew and sold sweet corn and processed and sold meat from his livestock this year.

Cecil Shell

Mr. Shell reported on the corn, soybean, grain, and hay crops in his district. He stated that the weather in his area has been variable. He provided information on the situation facing tobacco farmers. They have lost many tobacco markets this year, and he noted they had to go north to find new markets. He concluded his report by sharing the success of the watermelon and sweet potato crop in his district.

John Marker

Mr. Marker reported on the weather and the corn, soybean, and apple harvests in his district. He stated that it has been one of the better years for farm markets and pick-your-own operations due to COVID-19 and the demand for socially-distanced activities. He concluded his report by sharing information about the conditions of the pasture, the hay crop, and beef prices in his district.

Margaret Ann Smith

Ms. Smith reported on the pasture conditions and hay crop in her district. She reported on the current pricing of and demand for Virginia livestock and the challenges of finding pen space. Local processors and farm-to-table folks are seeing tremendous growth and opportunities due to COVID-19. She concluded her report by noting some of the challenges of social distancing in livestock markets for employees and customers.

Dr. M. Ray McKinnie

Dr. McKinnie reported that Virginia State University (VSU) will hold a virtual graduation for the spring 2020 and December 2020 graduates on December 12. The College of Agriculture will have approximately 15 graduates. He shared that President Abdullah recently gave testimony before a Congressional subcommittee. Dr. McKinnie gave an overview on the capacity-building grants and other funding the College of Agriculture and its programs received this year. VSU was selected to present the 4-H STEM Challenge grant for a project called Mars Base Camp. He concluded the report with an update on the Small Farm Outreach program.

Dr. Alan Grant

Dr. Grant reported that Virginia Tech will hold its virtual graduation on December 18 for fall graduates. There will be approximately 120 undergraduates from the Colleges of Agriculture and Life Sciences (CALs). He discussed the challenges of the combination of face-to-face and online learning. The first week of classes for the spring semester will be all virtual before moving into a hybrid model. He noted that most CALs instruction will be face-to-face in altered classrooms. He reported on the current applications to Virginia Tech for fall enrollment and job placement for graduates. He concluded his report with updates on some recently filled staff and faculty vacancies.

James Huffard

Mr. Huffard reported on the crops in his district. The demand for milk processing has been higher than normal during the COVID-19 pandemic. He concluded his report by discussing the businesses in his community that have been severely impacted by the pandemic.

Shelley Butler Barlow

Ms. Barlow reported on the weather and cotton crop in her district. She reported on the corn, soybean, and peanut harvests and the challenging field conditions. She stated that direct-to-consumer sales have been excellent for farmers during the COVID-19 pandemic. She discussed the high demand for food assistance in her area. She concluded by thanking VDACS staff for its flexibility and creativity to get the business of agriculture done during the pandemic.

Charles Church

Mr. Church introduced himself to the Board. He stated that he is a third generation pest control operator. He reported that the Virginia Pest Management Association (VPMA) continues to provide information to its members regarding changes to VDACS regulations and changing federal Occupational Safety and Health Administration COVID-19 emergency standards. He gave an overview of VPMA activities, including virtual livestreams, webinars, and testing events. VPMA awarded two \$1,500 scholarships to students at the Dodson Urban Pest Management Lab at Virginia Tech. He concluded with a report on the virtual VPMA state technical meeting, which attracted more than 200 attendees.

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.

PESTICIDE CONTROL FUND REPORT TO THE BOARD

President Barlow called on Larry Nichols, Director, Division of Consumer Protection. Mr. Nichols presented the Board with a review of the Pesticide Control Fund Report. Mr. Nichols and Ms. Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services responded to Board member questions related to the report. Included in the presentation was a recommendation that the regulatory advisory panel be reconvened for 2 VAC 5-675, Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services.

APPOINTMENT OF REGULATORY ADVISORY PANEL FOR 2 VAC 5-675 (REGULATIONS GOVERNING PESTICIDE FEES CHARGED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES)

Mr. Nichols presented the Board with the proposed appointments to the reconvened Regulatory Advisory Panel for 2 VAC 5-675, Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services.

Mr. Shell moved that the Board of Agriculture and Consumer Services approve the creation of a regulatory advisory panel for the purpose of assisting the Board in reviewing the fee amounts established in 2 VAC 5-675, Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services. The regulatory advisory panel consists of the following members:

- Shelley Barlow

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- Neil Houff
- Charles Church
- Kyle Shreve or representative from Virginia Agribusiness Council
- Wilmer Stoneman or representative from Virginia Farm Bureau Federation
- Kevin Kordek or representative from Virginia Pest Management Association
- Representative from Virginia Crop Production Association
- Representative from CropLife America
- Representative from Responsible Industry for Sound Environment

Ms. Kay Johnson-Smith seconded the motion. The Board voted unanimously to approve the motion.

APPROVE: Taliaferro, Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Huffard, Marker, Sellers, Houff, Church, Horsley, Grant, McKinnie

OPPOSE: None

FAST-TRACK REGULATORY ACTION TO REPEAL 2 VAC 5-325 (REGULATIONS GOVERNING PINE SHOOT BEETLE)

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino briefed the Board on the proposed fast-track regulatory action to repeal 2 VAC 5-325.

Following Mr. Gianino's presentation, Mr. Taliaferro moved that the Board of Agriculture and Consumer Services repeal 2 VAC 5-325, Regulations Governing Pine Shoot Beetle, as presented by staff and that the Board authorize staff to take any and all steps necessary to repeal this regulation through a fast-track regulatory action.

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

APPROVE: Taliaferro, Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Huffard, Marker, Sellers, Houff, Church, Horsley, Grant.

OPPOSE: None

NOTICE OF INTENDED REGULATORY ACTION – 2 VAC 5-105 (REGULATIONS GOVERNING THE KEEPING OF DOGS AND CATS BY ANY PET SHOP)

President Barlow called on Dr. Charles Broaddus, State Veterinarian and Director of the Division of Animal Food and Industry Services. Dr. Broaddus provided a brief overview of 2 VAC 5-105. Dr. Broaddus then called on Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services. Dr. Bissett briefed the Board on the proposed Notice of Intended Regulatory Action for 2 VAC 5-105.

Following Dr. Bissett's presentation and questions from Board members, Mr. Shell moved that the Board of Agriculture and Consumer Services authorize staff to take any and all steps necessary to file a Notice of Intended Regulatory Action for 2 VAC 5-105, Regulations Governing the Keeping of Dogs and Cats by Any Pet Shop, for public comment.

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

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APPROVE: Taliaferro, Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Huffard, Marker, Sellers, Houff, Church, Horsley, Grant.

OPPOSE: None

PROPOSED ESTABLISHMENT OF THE VIRGINIA PRODUCE SAFETY CIVIL PENALTY MATRIX

President Barlow called on Erik Bungo, Program Supervisor, Produce Safety Program. Mr. Bungo briefed the Board on the proposed establishment of the Virginia Produce Safety Civil Penalty Matrix.

Following his presentation and questions from Board members, Mr. Huffard moved that the Board of Agriculture and Consumer Services adopt the proposed Virginia Produce Safety Civil Penalty Matrix as presented by staff and that the Board authorize staff to take any and all steps necessary to publish and receive public comment on this proposed civil penalty matrix.

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

APPROVE: Taliaferro, Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Huffard, Marker, Sellers, Houff, Church, Horsley, Grant.

OPPOSE: None

REQUEST FOR RELEASE OF RECORDS – JASON GRIM, INTERFLEX

President Barlow called on Erin Williams, Senior Policy Analyst. Ms. Williams presented the Board with a broad overview of the Virginia Freedom of Information Act (FOIA) and Va. Code § 3.2-103, which requires VDACS to hold certain records in confidence unless otherwise directed by the Board or the Governor. Ms. Williams reviewed the details of Mr. Grim's request, and Lamont White, Processing Specialist, Office of Food Distribution, provided additional details pertaining to the records held in confidence by VDACS. Justin Bell, Assistant Attorney General, Office of the Attorney General and Counsel to the Board, answered Board member questions and provided instructions regarding the various responses available to the Board.

Following Mr. Bell's instructions, Mr. Grim presented the Board with information on his request and Interflex and answered Board member questions.

Following discussion by the Board members and additional comments from Mr. Bell, a straw poll was conducted to see if Board members were sure or unsure if they had enough information to make a decision at this time. The Board voted unanimously that they were unsure if they had enough information to make a decision.

SURE: None

UNSURE: Taliaferro, Slade, Barlow, Smith, Kirby, K. Johnson Smith, Huffard, Sellers, Houff, Church, Horsley, Grant

Following the straw poll, Mr. Grim rescinded his request for records. The Board formed a subcommittee to further consider the issue and to meet with Mr. Grim to better understand his

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request and the Interflex system. The following Board members volunteered to serve on the subcommittee:

Ms. Johnson Smith

Mr. Huffard

Mr. Sellers

President Barlow

The subcommittee will report back to the Board at the March 2021 meeting.

NEW BUSINESS

No new business was introduced.

FUTURE BOARD MEETINGS

President Barlow announced that the tentative Board meeting dates for 2021 will be March 25, May 20, and December 10 in Richmond. A summer meeting will be added at a later date.

PUBLIC COMMENT PERIOD

There was no public comment

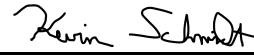
ADJOURNMENT

There being no further business, the Board adjourned at approximately 12:59 p.m.

Respectfully submitted,



Shelley Barlow
Board President



Kevin Schmidt
Board Secretary