

**FINAL**  
SAFETY AND HEALTH CODES BOARD  
PUBLIC MEETING MINUTES  
Friday, December 3, 2021

On December 3, 2021, the Safety and Health Codes Board (“Board”) held a public meeting at the Fairfield Public Library in Henrico, Virginia. The Board held an in person meeting with the option for the public to attend virtually utilizing **WebEx**.

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=33426>

The Board members and Department staff listed below as “participating” were all participating in person. There was a quorum of Board members *physically* assembled at one location.

A recording of the meeting in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/12/SHBC-Meeting-Heat-Illness-12-3-21-1.mp4>

**BOARD MEMBERS**

**PRESENT:**

Mr. Jay Abbott  
Mr. Robert Buchler  
Ms. Kelly Bundy  
Mr. John Fulton  
Ms. Julie Henderson  
Ms. Elizabeth (Beth) Lohman  
Mr. Travis Parsons  
Ms. Milagro Rodriguez, Chair  
Ms. Lutheria Smith  
Mr. Charles Stiff  
Mr. Thomas Thurston

**BOARD MEMBERS ABSENT:** Mr. Louis (Lou) Cernak  
Mr. Fernando Franco  
Mr. Michael Luce

**STAFF PRESENT:**

Mr. C. Ray Davenport, 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, Staff Attorney

**OTHERS PARTICIPATING:**

Mr. Joshua Laws, Assistant Attorney General (virtual)  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**CALL TO ORDER**

Chair Rodriguez called the meeting to order at 10:03AM. A quorum was present. Chair Rodriguez made opening remarks informing the public that this meeting was being held in person with virtual attendance available to the public.

**APPROVAL OF AGENDA**

Chair Rodriguez asked the Board if there was any discussion on the agenda. There was none. Chair Rodriguez 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.**

<b>Motion #1: Approval of Agenda</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. Fernando Franco				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael. A. Luce				1	
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>			<b>3</b>	

**APPROVAL OF MEETING MINUTES**

Chair Rodriguez then called for discussion and motion for approval of the following minutes, which she listed the dates for the Board:

- November 12, 2020 Board Meeting
- January 5, 2021 Public Hearing
- January 12, 2021 Emergency Board Meeting
- January 13, 2021 Emergency Board Meeting
- June 29, 2021 Emergency Board Meeting
- August 5, 2021 Public Hearing
- August 26, 2021 Board Meeting

Chair Rodriguez asked the Board if there was any discussion on the November 2020-August 2021 meeting minutes presented. She announced that they will go through each meeting minutes for discussion but will have one vote on all the meeting minute approval. A board member noted that the Agenda listed November 11, 2020 as the meeting date, but the actual meeting date was November 12, 2020. Chair Rodriguez received clarification from the Agency that the date listed on the Agenda was a clerical error and the meeting of the minutes for November 12, 2020 was the correct date. Chair Rodriguez then went through all the meeting dates separately asking if there was any more discussion on the 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.**

<b>Motion #2: Approval of Meeting or Public Hearing minutes from November 2020-August 2021</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. Fernando Franco				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael. A. Luce				1	
Mr. Travis M. Parsons	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>			<b>3</b>	

## **OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

Chair Rodriguez called the next item on the agenda, which was the opportunity for the public to address the Board. Several members of the public registered to speak virtually using WebEx to address the Board on the Heat Illness Prevention Standard that will be presented to the Board under New Business.

Juley Fulcher (Public Citizen/Congress Watch)  
Hobey Bauhan (Virginia Poultry Federation)  
Michael Oesterling (Shellfish Growers of Virginia)  
Ron Jenkins (Virginia Loggers Association)  
Kyle Shreve (Virginia Agribusiness Council)  
Brandon Robinson (Associated General Contractors of Virginia)  
Vanessa Patterson (Richmond Area Municipal Contractors Association)  
Ronda Moreta (DOLI)  
George Hodson (Veritas Vineyard and Winery)  
Ben Rowe (Virginia Farm Bureau)  
Rachel McFarland (Virginia Justice Project for Farm and Immigrant Workers)  
Conner Miller (Virginia Forest Products Association)  
Nicole Riley (NFIB)  
Phil Abraham (The Vectre Corporation)  
Dale Bennett (Virginia Trucking Association)  
Father Mario Melendez (Diocese of Virginia/Latino Ministry)

**Chair Rodriguez called for a RECESS from 11:00 to 11:28 AM.**

## **OLD BUSINESS**

There was no old business. Chair Rodriguez moved to the next item on the agenda.

## **NEW BUSINESS**

The first item on the agenda for new business was the TH-02 for 16VAC25-210 Proposed Regulation for Heat Illness Prevention Standard. Chair Rodriguez recognized Jay Withrow, Director of Legal Services from the Department to present the briefing package.

Mr. Withrow presented the briefing package and documents that were provided to the Board in advance. Mr. Withrow explained the Virginia regulatory process for proceeding with the adoption of this new heat illness prevention standard. The matter before the Board is stage 2 (Proposed Regulation) of the rulemaking process where the Agency/Department considers public comment and submits the proposed regulation. There was an explanation of the work done with the proposed regulation since stage 1 (NOIRA) was approved by the Board. A Regulatory Advisory Panel (Panel) was established to develop a proposed regulation to present to the Board for approval to move onto stage 2. The Panel broke off into four smaller groups to

work on language for the proposed regulation and then larger group met to come up with a proposed regulation to recommend to the Board as a proposed standard.

Mr. Withrow discussed the public comments received during the NOIRA stage of the regulatory process. He then went through the background of the hazard issues relating to heat illness and the statistics that would explain the need for a standard to protect workers in Virginia.

**Chair Rodriguez called for a LUNCH RECESS from 12:25 PM to 1:00 PM.**

Mr. Withrow continued with briefing the Board on the scope of the heat illness hazards and the Heat Illness Prevention Standard and results of the activities of the Regulatory Advisory Panel. Mr. Withrow also addressed the concerns of commenters regarding heat illness issues activities at the federal OSHA level, where he provided statistic that it takes an average of 7 years for a proposed regulation to be adopted by OSHA. There was also a presentation of the current legislative activities at the Virginia General Assembly.

Mr. Withrow presented the proposed regulation draft language to the Board for review and comment. A few Board members asked clarifying questions regarding the proposed language. After the presentation, Mr. Withrow announced the recommendation of the Department that the Safety & Health Codes Board consider for adoption the proposed Heat Illness Prevention Standard 16VAC25-210.

Chair Rodriguez asked if there was discussion on the matter. Member Stiff asked procedural question about the actions and process should the Board approve the recommendation. Member Bundy asked if the Board would have access and consider the federal OSHA proposed regulation public comments. It was determined that those federal OSHA comments are publicly accessible.

Chair Rodriguez asked if there was a motion to accept the recommendation of the Department. The motion was made, properly seconded and the roll call vote was conducted.

**The motion did not carried.**

<b>Motion #3: Department recommendation to adopt the Heat Illness Prevention Standard as a proposed regulation 16VAC25-210.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott		1			
Mr. Robert Buchler		1			
Ms. Kelly Bundy		1			
Mr. Louis (Lou) Cernak				1	
Mr. Fernando Franco				1	
Mr. John Fulton		1			
Ms. Julie Henderson	1				

Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael. A. Luce				1	
Mr. Travis M. Parsons	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Ms. Lutheria Smith		1			
Mr. Charles L. (“Chuck”) Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>5</b>	<b>6</b>		<b>3</b>	

Chair Rodriguez asked for the next item on the agenda, Notice of Periodic Review for 2021. Chair Rodriguez recognized Princy Doss from the Department.

The following six regulations are up for review this year.

1. **16 VAC 25-20** Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees
2. **16 VAC 25-30** Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporation by Reference 40 CFR 61.140 through 61.156
3. **16 VAC 25-40** Standard for Boiler and Pressure Vessel Operator Certification
4. **16 VAC 25-70** Virginia Confined Space Standard for the Telecommunications Industry
5. **16 VAC 25-97** Reverse Signal Procedures – General Industry – Vehicles/Equipment Not Covered by Existing Standards
6. **16 VAC 25-160** Construction Industry Standard for Sanitation

The Department of Labor and Industry recommends that the Safety and Health Codes Board approve the publication of a Notice of Periodic Review in the Virginia Register for 16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees; 16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporated by Reference 40 CFR 61.140 through 61.56; 16VAC25-40, Standard for Boiler Pressure Vessel Operator Certification; 16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry; 16VAC25-97, Reverse Signal Procedures- General Industry- Vehicles/Equipment Not Covered by Existing Standards; and 16VAC25-160, Construction Industry Standard for Sanitation.

The Department also recommends that the Board state in any motion it may make regarding the periodic review of these regulations that it will receive, consider and respond to petitions by any interested person at any time with respect to the periodic review which will be conducted in accordance with the above-cited § 2.2-4017 of the Administrative Process Act and Executive Order 14 (2018), “Development and Review of State Agency Regulations”.

Chair Rodriguez asked if there was discussion on the matter. There was none. Chair Rodriguez asked if there was a motion to accept the recommendation of the Department. The motion was made, properly seconded and the roll call vote was conducted. **The motion carried.**

<b>Motion #4: Recommendation for Periodic Review of the 6 listed regulations.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis (Lou) Cernak				1	
Mr. Fernando Franco				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Elizabeth (Beth) Lohman	1				
Mr. Michael. A. Luce				1	
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>			<b>3</b>	

### **Items of Interest from the Department of Labor and Industry**

Chair Rodriguez asked for items of interest from the Department of Labor and Industry. There was none.

### **Items of Interest from Members of the Board**

Chair Rodriguez then asked for items of interest from the Members of the Board. Chair Rodriguez recognized board member Parsons who commended the Department and the Regulatory Advisory Panel for all the hard work on the Heat Illness Prevention Standard.

Jay Withrow then requested to repeat the final vote for Motion #3: Department recommendation to adopt the Heat Illness Prevention Standard as a proposed regulation 16VAC25-210 based on feedback that those attending virtually could not hear the results. He then announced that Motion #3 did not carry with a vote of 5 Yea, 6 Nah and 3 absent.

### **Meeting Adjournment**

Chair Rodriguez expressed his thanks to everyone who worked on the Heat Illness Prevention Standard. She also welcomed the new Board members that were recently appointed. Chair Rodriguez asked for a motion to adjourn and a second. Chair Rodriguez adjourned the meeting at 2:30 PM.