

VIRGINIA CODE COMMISSION
General Assembly Building, 6th Floor
Speakers Conference Room
910 Capitol Street
Richmond, Virginia 23219

Wednesday, September 17, 2003 - 10:00 a.m.

MEMBERS PRESENT:

William C. Mims, Chairman
R. Steven Landes, Vice Chairman
William J. Howell
John S. Edwards
Diane Strickland
Frank S. Ferguson
Thomas M. Moncure, Jr.

STAFF PRESENT:

Amy Marschean
Ginny Edwards
Suzan Bulbulkaya
Jane Chaffin
Heather Butros
Reg Snider

MEMBERS ABSENT:

Randall G. Johnson
Robert L. Calhoun
E.M. Miller, Jr.

OTHERS PRESENT:

Susan Ward, VA Health Care Association
Paul R. Gilding, DMHMRSAS
Leslie Anderson, DMHMRSAS
Martha Mead, DMHMRSAS
Julie Stanley, DMHMRSAS

CALL TO ORDER

Chairman William C. Mims called the meeting to order at 10:05 a.m.

REVIEW AND APPROVAL OF MINUTES

Senator Mims noted that the second occurrence of "Members Present" under the attendance portion of the August minutes should be changed to "Members Absent." Mr. Ferguson made a motion, seconded by Delegate Landes, to approve the minutes of the August 20, 2003 meeting, as amended. The motion was approved.

REPEAL OF OBSOLETE LAWS

Heather Butros stated that she examined the uncodified Acts of Assembly from 1950 through 1959 and identified four items as falling within the mandate set forth by § 30-151 of the Code of Virginia:

1. Chapter 354, 1952 Acts provides for the beginning of squirrel season in Floyd County not to begin before September 15 in any given year. Sections 29.1-501 and 29.1-502 empower the Board of Game and Inland Fisheries to promulgate and adopt regulations pertaining to the hunting, taking, etc., of any wild animal or inland fish. By regulation (4 VAC 15-230-20), it is unlawful to hunt squirrel from the first Saturday in September through January 31 of each year.

- 1 2. Chapter 180, 1956 Acts permits killing of antlerless deer and provides for an
2 antlerless deer permit to be sold at \$2.20 to take antlerless deer under
3 conditions prescribed by the game commission. Section 29.1-305 establishes
4 a bear, deer, and turkey license. Tags for deer are attached to this license
5 and allow a hunter to take antlerless deer as prescribed in regulations of the
6 Board of Game and Inland Fisheries (4 VAC 15-90-90).
- 7 3. Chapter 420, 1958 Acts makes it unlawful to take deer or elk between sunset
8 and sunrise by the use of a spotlight or flashlight and makes the display or
9 flashing of a spotlight or flashlight from any vehicle from sunset or sunrise by
10 any person in possession of any firearms prima facie evidence of an unlawful
11 attempt to take deer or elk. Section 29.1-523 of the Code of Virginia prohibits
12 this activity.
- 13 4. Chapter 451, 1958 Acts establishes a season for hunting wild male turkeys in
14 certain counties, allows the harvest of male turkeys in counties having a
15 population of not less than 55,000 but not more than 67,000 and further
16 prohibits the killing of hen turkeys. Sections 29.1-501 and 29.1-502 empower
17 the Board of Game and Inland Fisheries to promulgate and adopt regulations
18 pertaining to the hunting, taking, etc., of any wild animal or inland fish. The
19 turkey season and bag limits are set by regulation (4 VAC 15-240-10,
20 4 VAC 15-240-20 and 4 VAC 15-240-70).

21 Speaker Howell made a motion, seconded by Delegate Landes, to accept Ms.
22 Butros' recommendation to repeal the above-referenced Acts of Assembly and
23 that the legislation be carried by Delegate Landes. The motion was approved.

24 Reg Snider presented his recommendations for repeal or amendment based on
25 the Code Commission mandate found in § 30.1-151 of the Code of Virginia:

- 26 1. Chapter 227, 1960 Acts created the Rudee Inlet Authority and this act was
27 recommended to and approved by the Commission for repeal last year.
28 However, during the 2002 General Assembly session, the Virginia Beach City
29 Manager's office requested that the legislation be tabled to give the City of
30 Virginia Beach time to consider whether this Authority might still have value.
31 The City of Virginia has decided that the act that created the Authority would
32 have to be completely rewritten for it to serve its interests and agrees to
33 repealing the act.
- 34 2. References to repealed § 56-334 contained in §§ 9.1-101 and 9.1-400 were
35 brought to staff's attention by the Lexis Publishing editors. The language at
36 issue is "agents, investigators, and inspectors" appointed under § 56-334
37 (§ 9.1-101, definition of "law-enforcement officer") or vested with the power to
38 arrest pursuant to § 56-334 (§ 9.1-400, definition of "deceased person"). Mr.
39 Snider recommends amending the two sections by striking the obsolete
40 clauses referencing § 56-344. Section 56-334 gave the State Corporation
41 Commission (SCC) the power to appoint agents, inspectors or investigators

1 as it may deem necessary to enforce the laws and regulations governing the
2 operation of motor vehicles on the highways of the Commonwealth. Chapters
3 744 and 803 of the 1995 Acts repealed this authority and officers are no
4 longer appointed or existing under the section. The officers appointed under
5 this section transferred to the State Police and are indistinguishable from
6 other special agents in the employ of the State Police and are covered
7 elsewhere in the definitions. Mr. Snider concluded that the clauses containing
8 references to § 56-334 may be safely stricken from the Code of Virginia.

- 9 3. Three references to the Governor's Employment and Training Department
10 (GETD) remain in the Code of Virginia even though the department ceased to
11 exist several years ago. Mr. Snider's research confirmed that there is no
12 reason for continued reference to GETD in the Code of Virginia; therefore, he
13 recommends striking the references to GETD in §§ 2.2-212 and 60.2-113.

14 Mr. Snider presented various hunting and wildlife provisions from the Acts of
15 Assembly that he has identified as obsolete:

- 16 1. Chapter 116, 1952 Acts prohibits hunting game in Buckingham County with a
17 rifle larger than .22 caliber. Repeal of this act is recommended since § 29.1-
18 528 of the Code of Virginia authorizes localities to draft ordinances prohibiting
19 hunting with a rifle of caliber larger than .22. Buckingham County has such an
20 ordinance in effect. Because of the existence of § 29.1-528, repeal of the
21 chapter under consideration would create no Dillon Rule issue for
22 Buckingham County. Senator Mims asked Mr. Snider to contact the
23 Buckingham County administrator and county attorney for confirmation. If the
24 county administrator and attorney concur, proceed with repealing the act.

- 25 2. Chapter 303, 1954 Acts authorizes Roanoke County to designate any area
26 within the county, upon request of all landowners within that area, as a bird
27 sanctuary. Roanoke County is identified in the act by population range.
28 Delegate Landes asked Mr. Snider to contact the county administrator and
29 request that the issue be brought before the county's board of supervisors.

30 Senator Mims suggested that the Commission defer action on Chapter 303
31 and the next recommendation found in the report (Chapter 72, 1962 Acts),
32 which authorizes the Town of Culpeper to create a bird sanctuary, until the
33 December meeting.

- 34 3. Chapter 96, 1954 Acts prohibits deer hunting in Essex County with a rifle.
35 Essex County has such prohibition in an ordinance promulgated pursuant to
36 § 29.1-528 of the Code of Virginia and 4 VAC 15-270-10. Mr. Snider opines
37 that the 1954 Act is redundant. The act is also in conflict with a recent
38 ordinance that permits deer hunting with a muzzle loading rifle. Mr. Snider
39 has contacted the Essex County attorney and is awaiting a response.

- 40 4. Chapter 197, 1950 Acts as amended by Chapter 419, 1956 Acts requires
41 Dickenson and Buchanan Counties to pay the game warden of such county a

1 salary. Mr. Snider reported that all regular game wardens are employees of
2 the Department of Game and Inland Fisheries, receiving their salaries from
3 the Commonwealth and the counties have not paid game wardens for
4 decades.

5 Delegate Landes made a motion, seconded by Judge Strickland, to approve the
6 recommendations in Mr. Snider's report, with the exception of the acts relating to
7 the establishment of bird sanctuaries in Culpeper and Roanoke counties. The
8 motion carried.

9 **TITLE 37.1 RECODIFICATION**

10 Amy Marschean continued with the revision of Subtitle I (General Provisions) of
11 proposed Title 37.2 on page 18 of LD 04-3401132 dated 9/16/03. Ms. Marschean
12 referred to a chart she had distributed earlier that shows how she plans to move
13 certain provisions.

14 Ms. Marschean reported that the Department of Mental Health, Mental
15 Retardation and Substance Abuse Services (DMHMRSAS) has decided not to go
16 forward with replacing the term "substance abuse" with "substance use disorder"
17 at this time. Ms. Marschean advised that, as a result of this decision, she would
18 go through the draft and return the substance abuse terminology to its original
19 form and will bring the changes to the task force's attention.

20 Staff was asked to clarify the reason for striking subdivision 10 of § 37.1-205 on
21 page 20. The stricken language encourages "general hospitals and other
22 appropriate health facilities to admit substance abusers without discrimination
23 and to provide them with adequate and appropriate treatment." Ms. Marschean
24 deferred to Ken Batten who responded that early on it was felt that this language
25 was needed to develop substance abuse services at the local level. Today,
26 community services boards contract these services to hospitals. Therefore,
27 DMHMRSAS believes that the language is unnecessary. Susan Ward with the
28 Health Care Association added that the federal Americans with Disabilities Act
29 addresses the issue, which makes this language redundant.

30 Section 37.1-20.3 deals with criminal background checks. Background checks
31 are required for employees of the Department, employees licensed by the
32 Department, and employees of the community services boards. These checks
33 are currently addressed in three separate sections. The commonality between
34 the sections is that they all seem to contain the same barrier crimes. Staff will
35 attempt to apply cross references to the barrier crimes and eliminate the
36 separate barrier crime listings. There are some differences in Department
37 barriers and licensees and community services boards barriers, but staff's goal is
38 to consolidate wherever possible. The Chairman suggested that Ms. Marschean
39 wait on making these changes until the Crime Commission finishes its rewrite of
40 Title 18.2.

1 In § 37.1-48, subsection H on page 30 was controversial. This provision deals
2 with system restructuring and was introduced by Delegate McDonnell. The
3 provision puts in place road maps as to how restructuring should occur. No
4 amendments are recommended. However, staff wants guidance as to whether
5 the subsection is appropriate in the code or whether it should be placed in an
6 enactment clause since it is specific in nature. The Code Commission concurred
7 that this type of language is generally not appropriate to write into the code;
8 however, the Commission decided to review the language again prior to
9 introducing the bill.

10 There was discussion about the use of the term "consumer" instead of "person"
11 on page 36, line 7. Ms. Marschean responded that "consumer" is a defined term
12 and is preferred because it does not require further explanation. "Person" would
13 have to be further clarified.

14 Ms. Marschean noted that several agencies are authorized to carry out
15 cooperative licensing. She suggested adding a clarifying sentence to the end of
16 § 37.1-189.1, which would provide that the board may adopt regulations jointly
17 with other boards. If the Commission decides to add this language, then
18 consideration should be given to adding similar language in the Code for the
19 other applicable agencies. There are a total of four sections involved. Mr.
20 Ferguson commented that the suggested language on lines 12-14 could be
21 problematic by stating that the boards can "jointly" adopt regulations. The boards
22 must adopt regulations separately. Senator Mims asked staff to bring all four
23 sections to the next meeting showing the suggested changes and taking into
24 consideration Mr. Ferguson's comments.

25 There was discussion about the drafting note following § 37.1-189 on page 40,
26 which states that the ICFMR definition will be provided by regulation. After
27 discussion, staff was asked to clarify the note.

28 Staff pointed out inconsistency in language regarding appeal rights found in
29 §§ 37.1-185 B (page 48) and 37.1-186 (page 51). Mr. Ferguson suggested that
30 the Commission consider adding language at the end of § 37.1-185 B that would
31 provide that anyone aggrieved by the Commissioner's decision will have appeal
32 rights under the Administrative Process Act.

33 In subdivision 7 of § 37.1-185.1 on page 50, there was discussion about
34 DMHMRSAS' desire to remove subdivision 7 from the list of sanctions. The
35 Commission decided to move subdivision 7 into new subsection B within § 37.1-
36 185.1 and make the provision mandatory.

37 Article 3 beginning on page 52 deals with the Office of the Inspector General.
38 Staff worked closely with the inspector general, the attorney general's, and the
39 Virginia Health Care Association on streamlining this article.

40 Most of the discussion centered on access to records in an investigation. On
41 page 54, lines 4 through 7 prohibit access to privileged peer review information

1 from providers. Staff explained that this language is not in existing law and would
2 be a substantive change; however, the change is consistent with similar
3 provisions found in Title 32.1 and in other chapters of Title 37.1 regarding
4 inspections of the department. Susan Ward stated that allowing access to these
5 records is detrimental to the entire peer review process. The Department of
6 Health Professions, DMHMRSAS, and the Department of Health do not have
7 such access. This amendment does not prohibit access to medical records, etc.,
8 in an investigation. Senator Mims asked Ms. Marschean to draft the amendment
9 in a separate bill and bring it back before the Commission later for a decision on
10 whether to introduce as a Code Commission bill or to find another sponsor.

11 **REVISION OF TITLE 1**

12 Ginny Edwards stated that the draft before the Commission deals largely with
13 population brackets. In deference to an early Attorney General's opinion, Ms.
14 Edwards has combined "population" and "inhabitants" into one definition. In
15 addition, lines 19 through 21 on page 1 have been deleted as superfluous.

16 Staff suggested adding census figures for towns in the appendix of the Acts of
17 Assembly along with counties and cities. Mr. Ferguson suggested that references
18 to "official" census figures generally means the initial number that redistricting is
19 based upon. The consensus of the Commission is to add towns in the appendix
20 as recommended by staff. Ms. Edwards further suggested cross referencing the
21 appendix in the acts in Title 1. She will bring back suggested language at a future
22 meeting.

23 Section 1-13.17 provides that ordinances and other instruments adopted by a
24 county, city, or town, or any corporation, board or number of persons shall not be
25 inconsistent with other laws. One problem with the section is that there is no
26 catchall term to apply to official documents that one of these entities might act
27 upon. Current language is not all-inclusive, but to be overly inclusive could cause
28 a freedom of speech issue. The section was recently cited in a court case
29 (Blanton vs. Amelia Co. – biosolids case). There was discussion about whether
30 the section is necessary at all or if a general statement that the United States and
31 Virginia constitutions are supreme over local laws would suffice. The
32 Commission asked staff to rewrite § 1-13.17 so that it provides that any action of
33 localities shall not be inconsistent with the laws of the Commonwealth, etc. Staff
34 will rewrite the language and bring it back before the commission.

35 **TITLE 3.1 RECODIFICATION**

36 Sue Bulbulkaya first reviewed the unresolved issues from the last meeting.

37 In Chapter 7, the musk thistle and curled thistle provisions were transferred into
38 § 15.2-902 as new subsection C. State programs formerly existed to control
39 these thistles, but these powers were later granted to localities..

1 In Chapter 10, Endangered Plant and Insect Species Act, staff has attempted to
2 separate endangered species and threatened species. There was discussion
3 about the placement of subsection G of § 3.1-1022 on page 4. Staff was asked to
4 insert subsection G as the last paragraph of § 3.1-1023 and to change "demand"
5 to "require" so that the paragraph reads, "The Commissioner may require any
6 person possessing endangered species or parts thereof to present such species
7 or parts thereof for inspection and to give full information as to its origin and
8 destination."

9 The Chairman asked staff to review all references to "regulations adopted
10 pursuant thereto" and to simplify the phrase.

11 The Department of Agriculture and Consumer Services has requested that the
12 provisions in § 3.1-1027 setting forth the wild ginseng harvest season be
13 removed from the code and to authorize the Board of Agriculture and Consumer
14 Services to set the season. The ginseng dealers licensed by the Commonwealth
15 generally support a later harvest season. Senator Mims made a motion,
16 seconded by Senator Edwards, to make the suggested substantive change. The
17 motion was approved.

18 **OTHER BUSINESS AND PUBLIC COMMENT**

19 The Chairman asked for clarification on the Commission's workplan and when
20 each of the three recodifications will be ready for introduction to the General
21 Assembly. Mrs. Chaffin said that she would review the minutes from earlier
22 meetings when timeframes for completion of the recodifications were discussed
23 and advise the Commission of the schedule at the next meeting.

24 The Chairman asked if anyone wished to speak during the public comment
25 period. No one came forward

26 The meeting adjourned at 2:15 p.m.

27