

1 **VIRGINIA CODE COMMISSION**
2 General Assembly Building, 6th Floor
3 Speakers Conference Room
4 910 Capitol Street
5 Richmond, Virginia 23219

6 **Wednesday, November 19, 2003 - 10:00 a.m.**
7

MEMBERS PRESENT:

William C. Mims, Chairman
R. Steven Landes, Vice Chairman
John S. Edwards
Diane Strickland
Frank S. Ferguson
Thomas M. Moncure, Jr.
Robert L. Calhoun
E.M. Miller, Jr.

STAFF PRESENT:

Ginny Edwards
Suzan Bulbulkaya
Jane Chaffin
Heather Butros
Reg Snider
Jescey French

MEMBERS ABSENT:

William J. Howell
Randall G. Johnson

OTHERS PRESENT:

Tom Edmonds, Virginia State Bar
Spencer Neil, Farm Bureau
Donna Johnson, Agricultural Council
Roy Seward, Department of Agriculture
and Consumer Services

8 **CALL TO ORDER**

9 Chairman William C. Mims called the meeting to order at 10:20 a.m. The
10 Chairman noted that a quorum was not yet present and that any action items
11 would be voted on once a quorum was established.

12 **REVIEW AND APPROVAL OF MINUTES**

13 Agenda item deferred until establishment of a quorum.

14 **VIRGINIA STATE BAR REQUEST**

15 Tom Edmonds, Executive Director of the Virginia State Bar, requested, on behalf
16 of the bar, that the Commission make a housekeeping change to § 54.1-3910.1
17 of the Code of Virginia. Specifically, there is a reference to "Paragraph 13
18 (K)(10)" of the Supreme Court Rules in § 54.1-3910.1 of the Code of Virginia;
19 however, due to a rewriting of Paragraph 13, the reference to subdivision (K)(10)
20 is no longer accurate. The correct subdivision reference is now "B 8 c." The bar
21 would like to remove the paragraph level designation entirely to avoid the need to
22 amend the section whenever Paragraph 13 is amended in the future. Mr. Miller
23 interjected that this type of change typically would not be brought before the
24 Commission, but since the reference being corrected is to the Supreme Court
25 Rules instead of statute, he felt that the Commission should address the

1 correction. After discussion, it was the consensus of the members present that
2 the Commission could make this change editorially pursuant to authority granted
3 in § 30-149, which provides that the Commission may make "consequential
4 changes made necessary by the use in the statutes of titles, terminology and
5 references, or other language no longer appropriate."

6 **TITLE 3.1 RECODIFICATION**

7 At this time, the presence of a quorum was noted.

8 Sue Bulbulkaya stated that provisions relating to the 15 commodity boards make
9 up Part A of Subtitle II. Today, Ms. Bulbulkaya will present five of the 15
10 commodity boards--Corn Board, Cotton Board, Egg Board, Small Grains Board
11 and Soybean Board. She explained that the task force began with the Cotton
12 Board and used it to create a model outline to use for all commodity boards.
13 Because referenda have already been held and set up completed, all commodity
14 boards have been updated by eliminating the original language dealing with
15 referenda and board set up.

16 Ms. Bulbulkaya referred to the draft (LD 04 3308132, 11/13/03) in the meeting
17 book beginning with the Corn Board.

18 In § 3.1-1035 on page 10, Senator Calhoun moved to strike all of lines 8 through
19 10 relating to who is eligible to vote in a referendum and insert "Any person who
20 is not an individual shall vote by its authorized representative." Judge Strickland
21 seconded the motion and it carried.

22 On page 2, § 3.1-1043, Senator Calhoun suggested that the drafting note be
23 expanded to explain why the act of assembly that established the board and
24 authorized the referendum is being referenced instead of setting out the
25 referendum language and board establishment provisions. It was determined that
26 the referendum and board establishment provisions were obsolete since these
27 events have already occurred. Staff will similarly expand the drafting note under
28 all other commodity boards where this change is made.

29 In § 3.1-1041, Subsequent referenda, there was discussion about how an
30 individual finds out what actual number is "ten percent of the number of the
31 Commonwealth's corn producers," which is the number needed to hold a
32 subsequent referendum on the continuation of an assessment. After discussion it
33 was decided that language would be added to authorize the Commissioner of
34 Agriculture and Consumer Services to determine this number. Also, the
35 Commissioner will be given the same authority wherever similar language occurs
36 in the other commodity boards provisions.

37 On page 8, lines 2 and 3, staff pointed out that language had been added
38 requiring the Board of Agriculture and Consumer Services to adopt rules
39 governing the conduct of subsequent referenda. However, Ms. Bulbulkaya
40 distributed another draft (page 12 of LD 03 - 3254226) that would place such
41 regulatory authority in Subtitle I under the Board of Agriculture and Consumer

1 Services' general powers as a general provision dealing with the conduct of
2 referenda. The language dealing with adopting rules would be repealed under
3 each individual commodity board. Ms. Bulbulkaya explained that the Board of
4 Agriculture and Consumer Services had been given similar authority for most of
5 the other commodity boards. The task force determined that any such regulatory
6 authority should be consistent for all commodity boards.

7 There was discussion about why the rules for some commodity boards were
8 exempted from Article 2 of the Administrative Process Act (APA) while others
9 mentioned no exemption at all. The Commission asked staff to ask the task force
10 to review the APA requirements and determine if any of the APA provisions
11 should apply or if a full APA exemption was recommended. The Commission
12 agreed that the requirement should be the same for all commodity boards. Mrs.
13 Chaffin pointed out that adding an exemption from the APA would not exempt the
14 Board of Agriculture and Consumer Services from filing the rules pursuant to the
15 Virginia Register Act. If the task force determines that it would be impractical to
16 file the rules, then an exemption from the Virginia Register Act would be needed.

17 In § 3.1-1034 on page 8, line 20, staff was directed to add the word "subsequent"
18 prior to "referendum so that the catch line reads, in part, "Management of
19 subsequent referendum." Ms. Bulbulkaya stated that she would also make this
20 change throughout for the other commodity boards.

21 On page 13 in § 3.1-1047 in the language establishing the Virginia Corn Fund,
22 there was a discussion on where the interest earned on the money in the fund is
23 deposited. The language states that fund moneys, including interest, should
24 remain in the fund and not revert to the general fund. Mr. Miller asked where the
25 money currently goes and would this change be considered substantive. He
26 pointed out that for several of the funds the interest is currently reverting the
27 general fund. Ms. Bulbulkaya stated that this language was pulled from the
28 canned special fund language that is part of the drafting system. After discussion,
29 the consensus of the Commission was that, as a general policy, it makes sense
30 for the money to go back to the commodity board instead of to the general fund.
31 Staff was requested to check with each commodity board and find out how each
32 fund is structured and to place the matter on a future Code Commission agenda
33 for further discussion.

34 Ms. Bulbulkaya stated that she learned from the tax department that
35 assessments for all commodity boards are collected in the same manner. She
36 distributed a separate handout showing a comparison of the collection of
37 delinquent assessments sections for each of the five commodity boards under
38 review today (§§ 3.1-684.55, 3.1-684.16, 3.1-1046, and 3.1-1102). Staff
39 recommends using the Cotton Board provisions in § 3.1-1102 to establish model
40 language that would be used for each commodity board. Senator Mims
41 commented that it might be more efficient to place one section dealing with the
42 collection of delinquent assessments in the general provisions chapter rather
43 than repeating the language under each board. Ms. Bulbulkaya stated that the

1 task force felt that placing the provision in each individual chapter would be more
2 user friendly. After discussion, the consensus was to place the provision under
3 the general provisions chapter and to add cross references under each
4 commodity board to the related general provisions section. Senator Mims made
5 a motion, seconded by Mr. Miller, to use the Cotton Board language in § 3.1-
6 1102 as model language for the collection of delinquent assessments. The
7 motion was approved.

8 Mr. Miller noted that there is inconsistency between the record retention
9 requirements for the commodity boards. Some boards are required to maintain
10 records for three years, while others must only maintain records for two years.
11 There was discussion about whether the record retention requirements should be
12 consistent between boards. The Commission decided to look at the record
13 retention requirements for each board as they are reviewed with the intent of
14 making these requirements uniform.

15 On page 3 of the Cotton Board draft (LD 04-33308132, 11/13/2003) in § 3.1-
16 1094, Senator Calhoun pointed out that the provisions dealing with gubernatorial
17 appointments are inconsistent between boards and suggested that the task force
18 look at this issue as well and determine if the language should be made uniform.

19 During the review of the chapter relating to the Egg Board, staff commented that
20 the changes to be applied to all commodity boards that had been discussed
21 earlier would be incorporated into the chapter.

22 Senator Calhoun noted that the definition of "county" in § 3.1-684.41 (Small
23 Grains Board) seems unnecessary. Since all small grains production areas are
24 designated in a separate section and the term as defined does not appear to be
25 used in the chapter, Senator Calhoun made a motion, seconded by Judge
26 Strickland, to strike the definition of "county" in § 3.1-684.41.

27 The same issue with the definition of "county" previously discussed also applies
28 to the Soybean Board (page 17, line 24) and that definition will be deleted in the
29 Soybean Board chapter.

30 Senator Calhoun noted that in § 3.1-684.4 the phrase "clerk of the circuit court in
31 each locality" is used, while under the other boards the phrase "clerk of the circuit
32 court in each county" is used. He suggested that the phrase be changed
33 consistently for all boards to "clerk of the circuit court in each locality" to
34 recognize the inclusion of cities.

35 Ms. Bulbulkaya stated that review of today's material was complete and that she
36 would have more material for review next spring after session. The Chairman
37 thanked her and the task force for their work on this title revision.

38 **REPORT ON CRIME COMMISSION'S REVISION OF TITLE 18.2**

39 Jescey French briefed the Code Commission on the background and status of
40 the Crime Commission's study of Title 18.2. She reported that the study was the

1 result of House Joint Resolution No. 687 (2001), which directed the Crime
2 Commission to completely revamp the criminal code.

3 The resolution also mandates the Crime Commission to recommend whether
4 Title 18.2 needs to be rewritten. There are five bills to come before the Crime
5 Commission at its December 3 meeting. The plan is to introduce these bills to the
6 2004 General Assembly session. The proposed legislation deals with the
7 following: (i) mandatory minimum statutes; (ii) relocation of inappropriately placed
8 statutes; (iii) unconstitutional statutes; (iv) little used statutes; and (v) statutory
9 restructuring of Title 18.2 felony offenses. The effective date of the legislation
10 would be delayed until July 1, 2005.

11 The statutory restructuring recommendation breaks felony offenses into
12 "degrees," which somewhat follows the current sentencing guidelines. The
13 Sentencing Commission has been involved. New definitions of "armed with a
14 deadly weapon" and "serious bodily injury" are proposed. Seven felonies are
15 proposed in the new penalty structure instead of the current six felonies. A
16 comment was made that the addition of degrees within the felony offense
17 categories is confusing and would be difficult to explain to a jury.

18 The mandatory minimum statutes recommendation would clean up existing
19 language by using consistent language when describing mandatory minimum
20 criminal sentences. A definition of mandatory minimum punishment is
21 recommended and language in various sections throughout the Code of Virginia
22 is conformed to the definition.

23 Several sections in existing Title 18.2 have been identified as inappropriately
24 placed in the Code of Virginia. A recommendation relocates these sections into
25 the appropriate titles of the Code.

26 Another recommendation repeals or amends various statutes in Title 18.2 that
27 have been identified as unconstitutional.

28 Several sections in Title 18.2 were identified as "little used" in the past 10 years.
29 These provisions are recommended for amendment or repeal.

30 The Code Commission discussed taking on Title 18.2 as a recodification next
31 year, presuming the Crime Commission legislation passes. The consensus of
32 the Code Commission was to evaluate the issue after session. A recodification of
33 this title could not be completed by 2005, which is the recommended effective
34 date of the Crime Commission bills. Ms. French stated that the Crime
35 Commission is also putting in an implementation plan resolution recognizing that
36 education needs to take place prior to the effective date. She also noted that the
37 Crime Commission report has no drafting notes or any type of explanation.

38 The Code Commission agreed that the Crime Commission should be asked to
39 avoid using any references to "Title 18.3" or "recodification" in its legislation.

40 Mr. Miller stated that there had been previous discussions by the Code
41 Commission about revising Title 19.2 and the same time it revises Title 18.2.

1 Although, the consensus was that this idea is a good one, the members were in
2 agreement that the Commission should not be wedded to completing Title 19.2 at
3 the same time Title 18.2 is completed.

4 The Chairman thanked Ms. French for her informative report.

5 **APPROVAL OF MINUTES AND STATE BAR REQUEST**

6 The Chairman stated that several housekeeping measures needed to take place
7 now that a quorum is present. The first item is approval of the minutes from the
8 last meeting. Senator Edwards made a motion, seconded by Judge Strickland, to
9 approve the minutes as written. The motion carried.

10 Secondly, Mr. Edmonds' earlier request to make a housekeeping change to
11 § 54.1-3910.1 of the Code of Virginia needs approval. Senator Edwards made a
12 motion, seconded by Mr. Ferguson, to make the requested change. The motion
13 carried.

14 **TITLE 1 REVISION - DEFINITION OF "PERSON."**

15 Ginny Edwards advised the Commission that the definition of "person" is used in
16 the Code of Virginia approximately 27,000 times in over 9,000 sections of the
17 code. There are approximately 171 different definitions of "person" contained in
18 the code. Staff introduced a broad policy issue for the Commission to examine.
19 Ms. Edwards explained that her research has led her to recommend that
20 "person" be looked at in each individual title instead of attempting to make the
21 Title 1 definition all inclusive and relying on that one definition.

22 One code section (§ 28.2-1302) was identified in which the definition parallels the
23 Title 1 definition. Staff asked if the Commission would like to eliminate the
24 definition in § 28.2-1302 as redundant. Also, Ms. Edwards suggested that the
25 Commission might want to consider eliminating the definition of "person" in those
26 sections that incorporate by reference the Title 1 definition of "person."

27 Mr. Ferguson suggested making the definition in Title 1 as comprehensive as
28 possible; however, he pointed out that definitions to "person" otherwise placed in
29 the code would override the Title 1 definition. After discussion, staff was asked
30 to draft a proposed comprehensive, concise definition of "person" for Title 1
31 without being too lengthy.

32 An error was found when reviewing the definition of "person" in § 25.1-100, which
33 was identified as the most comprehensive definition of "person" in the code. The
34 reference to "limited liability corporation" should be changed to "limited liability
35 company." Pursuant to the Commission's authority in § 30-149 to correct such
36 errors, staff was asked to notify the code publishers to make this change.

37 Ms. Edwards will draft a comprehensive definition to bring back to the
38 Commission at its December meeting.

1 Mr. Snider explained that there are two additional sections that contain
2 references to the definition of "highway vehicle" in repealed § 58.1-2101.
3 However, the remedy is not as simple as the one relating to the definition of
4 "clean special fuels" discussed earlier. After discussion, action was deferred on
5 this matter until the December meeting. Staff was asked to draft recommended
6 language for the Commission's review.

7 **OTHER BUSINESS AND PUBLIC COMMENT**

8 There was no further business and no one wished to speak during the comment
9 period.

10 **ADJOURNMENT**

11 The meeting adjourned at 3:05 p.m.