

VIRGINIA CODE COMMISSION
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

Wednesday, December 15, 2004 - 10:00 a.m.

MEMBERS PRESENT: William C. Mims, Chairman; R. Steven Landes (By Telephone); John S. Edwards; S. Bernard Goodwyn; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; Robert L. Calhoun; Frank S. Ferguson

MEMBERS ABSENT: Diane Strickland, Robert Hurt

STAFF PRESENT: Amy Marschean, Ginny Edwards, Ellen Bowyer, Suzan Bulbulkaya, Jane Chaffin

OTHERS PRESENT: Doug McCartney, LexisNexis; Nikki Daugherty, LexisNexis; Ellen Gillespie, West; Paul Gilding, Department of Mental Health, Mental Retardation and Substance Abuse Services; Jane Hickey, Office of the Attorney General; Susan Ward, Virginia Hospital and Healthcare Association; Eric Finkbeiner, McGuire Woods; Don Butts, Department of Agriculture and Consumer Services; Donna Pugh Johnson, Virginia Agribusiness Council; Perida Giles, Department of Agriculture and Consumer Services; Roy Seward, Department of Agriculture and Consumer Services; Martha Moore, Farm Bureau; Brock Herzberg, Farm Bureau

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman William C. Mims called the meeting to order at 10:20 a.m. Judge Goodwyn made a motion to approve the minutes of the November 17, 2004, meeting as written. Mr. Moncure seconded the motion and the motion was approved.

TITLE 37.1 RECODIFICATION - FINAL ISSUES

Amy Marschean advised the members of several final issues to be addressed in the Title 37.1 recodification bill:

1. In Chapter 8, the terminology for involuntary admission to treatment was revised. During a recent review, the Department of Mental Health, Mental Retardation and Substance Abuse Services determined that there is a need to change similar terminology in Chapter 9, which deals with civil commitment of sexually violent predators, to "involuntary secure patient treatment" to reflect changes made in Chapter 8. Staff recommends making this change.
2. Currently, § 8.01-2 includes "a drug addict or an alcoholic as defined in § 37.1-1" in the definition of "Person under a disability." A new definition of "substance abuse" was substituted in the title revision and the definitions of "alcoholic" and "drug addict" were deleted. Staff recommends amending the definition in § 8.01-2 for consistency with the title revision.

Mr. Moncure suggested a clarifying change to the definition of "substance abuse." The change repeats the words "the use of" prior to "alcohol."

3. Ms. Marschean has updated the drafting note about the performance bond requirements for the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse. All state employees are covered by a performance bond up to \$500,000. Risk management no longer names specific employees to be bonded.

- 1 4. Remaining behavioral health authority provisions are deleted from Chapter 5 and
2 moved into Chapter 6 (see lines 3194, 3200 (prescription team), and 3202
3 (consumer liability for expenses of services).

4 Without objection, staff will incorporate all changes discussed.

5 **TITLE 1 REVISION**

6 Review of Public Comments

7 Ginny Edwards distributed a summary of the comments received on the Title 1 draft and
8 presented the comments to the Commission. Most of the comments were made by local
9 government attorneys.

- 10 1. New § 1-210, which is made up of existing §§ 1-13.3, 1-13.3:1, and 1-13.27,
11 addresses timing issues for filing legal pleadings and holding court and other
12 proceedings. The commenter stated that the proposed amendments do not address
13 a situation that is nonjudicial or not occurring on a holiday, for example a form filing
14 deadline.

15 Staff suggests referring the issue to the Joint Subcommittee Studying Conflicts of
16 Interests and Lobbyist Disclosure Filings, which is examining filing deadlines. Ms.
17 Edwards will draft a letter for the Code Commission chairman's signature asking the
18 joint subcommittee to look into this issue.

- 19 2. The commenter is seeking a codewide definition of "municipality" since the word
20 appears multiple times throughout the code. Currently the term "municipality"
21 appears in Title 15.2 and applies only to that title. Staff recommends adding the
22 definition of "municipality" currently found in § 15.2-102 into Title 1 and combining the
23 definition of "municipality" with the definition of "locality" because these two terms
24 define multiple jurisdictions. Staff noted that the Code Commission may want to
25 consider (i) deleting the definitions of "locality," "town," "city" and "municipality" from
26 Title 15.2 and relying on the parallel definitions in Title 1 and (ii) adding cross
27 references to the pertinent definitions in Title 15.2.

28 After discussion, the Commission decided to retain the definitions in Title 15.2 and
29 include the definitions in Title 1. The term "council" is currently needed and defined in
30 Title 15.2; however, a question remained as to whether "council" needs to be defined
31 in Title 1. Staff will perform a word search on "council," look at each reference outside
32 of Title 15.2, and, in each instance, determine whether the context refers to a city or
33 town council.

- 34 3. Section 1-214 – Delegation of duties. In § 15.2-1501, governing bodies are
35 authorized to designate officers to perform duties. The public comment states that
36 the provisions of § 1-214 do not address the issue of delegation of responsibility and,
37 therefore, do not recognize the realities of operating a local city government. Staff
38 suggests adding a cross reference to § 15.2-1501 in the annotations under § 1-214.

- 39 4. Section 1-221 – Local ordinances incorporating provisions of the Code and
40 regulations by reference. The commenter indicated that the change from "state
41 statutes" to "acts of the General Assembly" is problematic in that when incorporating
42 state law into ordinances, governing bodies would need to adopt the act of assembly
43 that enacted a change instead of the codified section. Staff concurs with the
44 comments and suggests remedying the concern by adding "provisions of the Code,"
45 to precede "acts of the General Assembly."

1 5. Section 1-248 – Supremacy of federal and state law. The commenter sees the
2 proposed supremacy clause as unnecessary because state law takes precedence
3 over local law and federal law is the supreme law of the land. Staff stated that the
4 provision clarifies statute and that it is the only provision in the Code that parallels
5 the Dillon Rule.

6 Outstanding Issues

7 Section 1-233 – Personal estate. Ms. Edwards stated that Rodney Johnson, Professor of
8 Law at the University of Richmond, was contacted about modernizing the terminology for
9 "chattels real." Professor Johnson suggested retaining the term "chattels real" and
10 adding a drafting note to direct the publisher to show examples of chattels real. He
11 stated that the term "leasehold" and the phrase "property held for a term of years," which
12 had been suggested to replace "chattels real," were not broad enough to encompass the
13 entire scope of the term.

14 Ms. Edwards stated that she located other sections of the code that referenced a
15 definition of "person." In those instances, Ms. Edwards looked at the definition to see if
16 there was a titlewide or chapterwide definition that would override the Title 1 definition. If
17 not, she deleted the definition, reasoning that the definition was duplicative and that the
18 Title 1 definition could be relied upon.

19 Senator Calhoun explained why the Woodrow Wilson Bridge Compact should be
20 repealed. After a discussion on the issue, the Commission decided to include the repeal
21 as part of the title revision.

22 Adoption of Final Report

23 Senator Calhoun made a motion to adopt the draft report. The motion was seconded by
24 Judge Goodwyn and approved.

25 Ms. Edwards asked how the Commission wanted her to deal with any unforeseen
26 changes to the title revision that may become necessary before the legislation is
27 introduced. She was advised to make necessary changes after consultation with Mr.
28 Miller.

29 **TITLE 64.1 UPDATE**

30 Ellen Bowyer, DLS Staff Attorney, advised the Commission that she had expected to
31 begin preparatory work on the revision of Title 64.1 in 2004, convene a work group in
32 2005, and have a bill ready for introduction to the 2006 General Assembly. A
33 recodification of Title 64.1 is definitely needed since it has not been recodified since
34 1959. However, Ms. Bowyer explained that the Virginia Bar Association's Committee on
35 Wills, Forms and Estates is working on a Uniform Trust Code, which is a mammoth
36 undertaking. Given that information, staff recommends that the Commission postpone
37 the revision of Title 64.1 until after enactment of the Uniform Trust Code. Uniform Trust
38 Code legislation is expected to be introduced to the 2005 General Assembly. Ms.
39 Bowyer expects to be back before the Commission in the spring of 2005 with a proposed
40 work plan for Title 64.1.

41 **2007 REORGANIZATION AND RENUMBERING OF CODE OF VIRGINIA**

42 Mr. Miller distributed a draft resolution advising the General Assembly and the citizens of
43 the Commonwealth of the Code Commission's intent to publish a 2007 Code of Virginia.
44 Mr. Miller stated that the Code Commission has the authority to perform this function

1 without legislation; however, he thought it would be a good idea to inform the General
2 Assembly and public by resolution. By the first meeting in 2005, Mr. Miller hopes to see
3 a concrete proposal showing the number of years that annual replacement volumes
4 would not be needed after publication of the 2007 Code. Senator Calhoun suggested
5 several technical changes to the draft. There was discussion about whether an official
6 act adopting the final, recompiled code is needed. Mr. Ferguson commented that, in his
7 opinion, some sort of legislation is needed, even if only editorial, stylistic and numbering
8 changes are being made. He suggested a section 1 bill or an added provision in Title 1
9 that states that the compilation is the code of 2007 and makes it clear that there are no
10 changes in the substance of law. The chairman asked that the item to be included on the
11 agenda of a future meeting for further discussion.

12 Mr. Moncure volunteered to draft the prefatory code of 2007.

13 When asked for West's viewpoint on the recompilation and republication of the entire
14 Code, Ellen Gillespie commented that West would like the opportunity to bid on the
15 project. West believes that it can offer an attractive proposal for the Commission's
16 consideration. The Chairman stated that he will take the issue under advisement.

17 LexisNexis representatives Doug McCartney and Nikki Daugherty responded that
18 LexisNexis regards the project as being within the confines of the existing contract.
19 Proposed artwork cover samples were circulated--one depicting the three ships logo
20 developed to represent the Jamestown Settlement 400th anniversary celebration, which
21 begins in 2007.

22 **CODE OF VIRGINIA 2005 PRICING AND REPLACEMENT VOLUMES PROPOSAL**

23 Doug McCartney presented LexisNexis' Code of Virginia replacement volumes proposal
24 for 2005. He commented that Volume 7, containing Titles 46.2 through 51.1, has
25 become too large and suggested moving Titles 47.1 through 51.1 into Title 7A, leaving
26 Title 46.2 in Volume 7. This transfer of titles would make both volumes nearly 1000
27 pages. After discussion, Mr. Miller made a motion to replace Volumes 1 and 6,
28 contingent on the passage of the Title 1 and Title 37.1 recodifications, and to replace
29 Volumes 7 (containing Title 46.2) and 7A (containing remaining titles in Title 7 and
30 existing Titles in 7A). Judge Goodwyn seconded the motion and the motion carried.

31 Mr. McCartney presented LexisNexis' Code of Virginia pricing proposal for the 2005
32 supplements and replacement volumes. Mr. McCartney stated that a \$9.00 net increase
33 between 2004 and 2005 is requested. He explained that no increase was requested
34 from 2003 to 2004. The percentage increase between 2003 and 2005 is about 4%.

	2005 Proposal with Four Replacement Volumes	
	State	Private
Cumulative Supplements	\$124.00	\$156.00
Index	\$ 64.00	\$ 69.00
Replacement Volumes (each)	\$ 32.00	\$ 39.50
Volume 11	\$ 24.50	\$ 31.00
Volume 11 Supplement	\$ 6.50	\$ 6.50
Advanced Code Service		\$ 47.50
TOTAL	\$347.00	\$468.00

35 Mr. Miller made a motion, seconded by Judge Goodwyn, to approve the prices as
36 presented. The motion carried.

1 **TITLE 3.1 RECODIFICATION**

2 Suzan Bulbulkaya continued with Chapters 62 and 63 of the Animal Laws subtitle, which
3 the Commission began reviewing at the November meeting.

4 Ms. Bulbulkaya explained that the definition of "horse," currently in Title 1; will be
5 removed from that title and added into Title 3.2 to read, "'Horse' means any stallion, colt,
6 gelding, mare, or filly."

7 At the November meeting, the issue of due process of quarantined persons was
8 discussed and staff was asked to determine whether the Health Department's authority
9 regarding the quarantine of persons should also apply in § 3.1-729 (page 10). Ms.
10 Bulbulkaya conferred with the Health Department and the Attorney General's office with
11 regard to the issue. Bill Diamond with the Attorney General's office stated that, in his
12 view, the constitutional due process issues are satisfied if any person detained under the
13 quarantine is given the right to a hearing in an expeditious manner after the detention
14 has commenced. To satisfy this issue, Mr. Diamond suggested adding the following two
15 sentences to the end of § 3.1-729: "The provisions of § 32.1-48.010 shall apply to this
16 section. References in § 32.1-48.010 to the State Health Commissioner shall, for
17 purposes of this section, be construed as referring to the State Veterinarian." Ms.
18 Bulbulkaya stated that she has incorporated this change into § 3.1-729.

19 On page 13, § 3.1-737, lines 17 and 19, staff was asked to change "slaughteryard" to
20 "slaughter facility."

21 Currently, there are two provisions dealing with compensation to owners of condemned
22 cattle and swine. Ms. Bulbulkaya stated that she had received comments requesting that
23 the statute be broadened to include all livestock and poultry. When asked if the
24 amendment had a fiscal impact, staff responded that the statute states that payment is
25 made "out of funds appropriated for that purpose." Senator Mims made a motion,
26 seconded by Senator Edwards, to broaden the provisions dealing with compensation to
27 owners of condemned animals to include livestock and poultry. The motion was
28 approved. Staff will expand the drafting note to reflect this substantive change. Staff
29 further pointed out that the language needs additional work based on this motion. Staff
30 was asked to take up the issue at a task force meeting for resolution, specifically
31 focusing on the compensation provision on pages 19 and 20 (§§ 3.1-754 and 3.1-763.3).
32 Staff will draft language to bring back before the Commission in 2005.

33 There was discussion about shooting enclosures (§§ 3.1-763.5:1 through 3.1-763.5:8). It
34 was noted that a grandfather clause provides that no new enclosures can be licensed
35 after January 1, 1995 (§ 3.1-763.5:2). Mr. Ferguson asked if the intent is for enclosures
36 that go out of business to not be allowed to reopen at another time. After the agency
37 confirmed that this was the intent, Mr. Ferguson stated that the provisions as written do
38 not necessarily prohibit the reopening of an enclosure. Senator Mims made a motion to
39 update the section to reflect that the Department will only license those shooting
40 enclosures in operation on or before January 1, 1995, continuously operating at the
41 same location and under the same ownership on the effective date of the recodification.
42 Mr. Ferguson seconded the motion and the motion was approved.

1 **OTHER BUSINESS**

2 Mr. Miller distributed a report detailing code sections modified by the budget prepared by
3 Bryan Stogdale, DLS staff attorney. The report will be distributed to staff and to the
4 money committees.

5 Mr. Miller presented a legislative draft that would update references to "feble-minded" in
6 Title 19.2. The intent of this bill is to clean up the Code by removing the last few
7 remaining references to "feble-minded." Since the sections involve the defense of
8 insanity to criminal culpability, Mr. Miller suggested that the Commission refer the draft
9 legislation to the Crime Commission for its review. The Code Commission agreed with
10 Mr. Miller's recommendation and will revisit the draft legislation once the Crime
11 Commission comments on the proposal.

12 The Chairman confirmed that the Code Commission will continue meeting on the third
13 Wednesday of the month beginning in April 2005. Meeting dates are scheduled as
14 follows: April 20, May 18, June 15, July 20, August 17, September 21, October 19,
15 November 16, and December 21.

16 The meeting adjourned at 2:55 p.m.