

VIRGINIA CODE COMMISSION

Charlottesville Courtyard - University Medical Center
1201 West Main Street, Blue Ridge Room
Charlottesville, Virginia 22903

Wednesday, April 20, 2005 - 9:00 a.m.

MEMBERS PRESENT: William C. Mims, Chairman; John S. Edwards; Robert Hurt; S. Bernard Goodwyn; Diane Strickland; Thomas M. Moncure, Jr.; Robert L. Calhoun; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: R. Steven Landes

STAFF PRESENT: Ginny Edwards, Jane Chaffin, Pat Davis, Cheryl Jackson, Ken Patterson

OTHERS PRESENT: Leigh Trippe, LexisNexis; Doug McCartney, LexisNexis; Brian Cole, LexisNexis; Heather Hayes, LexisNexis; Mark Bowles, McGuire Woods; Russ Armstrong, Geronimo; Bill Wilson, Division of Legislative Automated Systems

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman William C. Mims called the meeting to order at 9:00 a.m. Judge Goodwyn made a motion to approve the minutes of the December 15, 2004, meeting as written. Mr. Moncure seconded the motion and the motion was approved.

LEGISLATIVE UPDATE

Jane Chaffin reported on legislation sponsored by the Code Commission. The five bills that resulted from the obsolete laws project and the two title revisions passed the General Assembly and were signed by the Governor. Also, Senate Joint Resolution 388 dealing with the Code Commission's intent to reorganize and renumber the 1950 Code of Virginia passed. Other legislation affecting the Code Commission includes Senate Joint Resolution 308, which directs the Code Commission to identify tax preferences located outside of Title 58.1 and to report to the General Assembly with recommendations for legislation to cross-reference these preferences in Title 58.1. Finally, Ms. Chaffin advised the Commission of an amendment to the Administrative Process Act, which requires that the impact of regulations on small businesses be addressed in the Department of Planning and Budget's economic impact analysis on proposed regulations.

2005 WORK PLAN

Mr. Miller informed the members of resignations of the staff assigned to the recodifications of Titles 3.1 and 64.1. Suzan Bulbulkaya left the Division to become the Executive Director of the Chesapeake Bay Commission and Ellen Bowyer moved to Charlottesville. Mr. Miller has arranged for Ms. Bulbulkaya to continue working on the Title 3.1 revision one day per week. Once hired, Ms. Bulbulkaya will work with her replacement to complete the title revision. The goal is to complete Title 3.1 this year.

After discussion about whether to defer work on Title 64.1, the Commission decided that, at a minimum, the entire title should be reviewed in conjunction with the Uniform Trust Code, which was enacted at the 2005 General Assembly session and will become effective July 1, 2006.

1 Senate Joint Resolution 388 alerted interested parties of the Code Commission's intent
2 to replace the 1950 Code of Virginia with a new code compilation in 2007 (2007 Code
3 Project). The resolution unanimously passed both houses. Every effort is being made to
4 identify those individuals and groups most affected by the renumbering and
5 reorganization of the code and notify them of the project's progress. Participation in the
6 work group is strongly encouraged.

7 Mr. Miller mentioned the ongoing outreach efforts that are taking place concerning the
8 2007 Code Project. Cheryl Jackson and Mr. Miller are coauthoring an article about the
9 project for publication in *Virginia Lawyer*. Senator Mims has spoken to the Virginia Trial
10 Lawyers Association; Senator Mims and Mr. Miller are scheduled to speak at the Virginia
11 State Bar annual meeting and to the leadership of the State Bar. A web site has been
12 created for the project and all information pertaining to the project will be posted in a
13 timely manner.

14 The Commission concurred with Mr. Miller's recommendation that the directive to identify
15 tax preferences located outside of Title 58.1 (SJR 308) be integrated into the 2007 Code
16 Project. Also, the Commission agreed that the obsolete laws project should be
17 conducted in conjunction with the 2007 Code Project. There was discussion about the
18 obsolete laws project getting to a point where it is becoming more and more difficult to
19 identify obsolete provisions. After the conclusion of the 2007 Code Project, the
20 Commission will reevaluate the provision requiring the Commission to identify obsolete
21 laws and whether to eliminate the annual reporting requirement.

22 At the December meeting, the Commission reviewed a legislative draft that was intended
23 to clean up the Code by removing the reference to "feeble-minded" in §§ 19.2-167 and
24 19.2-180. Since the sections involve the defense of insanity to criminal culpability, the
25 Commission directed staff to ask the Crime Commission to review the legislation and
26 provide its comments to the Code Commission on how to best remove this obsolete term
27 from these sections. Kim Hamilton, Executive Director of the Crime Commission, has
28 indicated that the Crime Commission will review the legislation and report to the Code
29 Commission in the fall.

30 **WOODROW WILSON BRIDGE COMPACT AND OTHER TITLE 1 ISSUES**

31 Ginny Edwards stated that the Commission discussed repealing the Woodrow Wilson
32 Bridge Compact at the December meeting and agreed to include the repeal in the Title 1
33 revision legislation. Subsequently, Ms. Edwards discovered that Maryland and the
34 District of Columbia had not repealed the compact even though the construction project
35 was taking place under a separate agreement authorized by federal law. The Virginia
36 Department of Transportation (VDOT) was contacted and confirmed that the compact
37 had not been executed; however, staff was advised that the compact should be retained
38 in case the authority in the compact, for example toll collection, is needed in the future.
39 VDOT has no objection to removing the compact from the code and placing it only in the
40 compacts volume. Mr. Ferguson made a motion, seconded by Judge Strickland, to
41 remove the Woodrow Wilson Bridge Compact from the code, to retain the compact in the
42 compacts volume, and to add appropriate cross-references to the compact in the code.
43 The motion was approved.

44 Ms. Edwards advised the Commission of an error resulting from the revision of Title 1
45 and suggested that a technical corrections bill be introduced at the 2006 General
46 Assembly session. The error involves the inadvertent omission of the state fish from the

1 title revision legislation. A motion was made and seconded to prepare legislation to add
2 the state fish into Title 1 with other official emblems and designations of the
3 Commonwealth. The motion was approved.

4 There was a brief discussion about special designations and emblems sometimes being
5 designated by resolution and other times by code section. Staff asked if the Commission
6 would like to consider moving such uncodified designations into the code; however, the
7 Commission declined to undertake this project.

8 Staff discovered a discrepancy with the "December 13, 1788" date referenced in § 1-303
9 A 3 and noted that the date should be corrected to "December 30, 1788." In 1988 when
10 code volume 1B was replaced, date formats in the volume were changed from day,
11 month, year (e.g., thirtieth of December, 1788) to month, day, year (e.g., December 30,
12 1788). Apparently, the error occurred during the process of converting the dates to the
13 present format. A motion was made and seconded to correct the date without legislation
14 under the Code Commission authority to make such changes. The motion was
15 approved.

16 **NOT SET OUT POLICY**

17 The Code Commission policy of not setting out the text of certain sections of the Code
18 was discussed. Currently, there are more than 100 sections in the Code that are
19 identified as "Not Set Out." In these instances, an editor's note briefly summarizing the
20 section appears in the printed version of the Code, gives references to the Acts of
21 Assembly where the full text is located, and explains the Commission's policy to include
22 in the Code only provisions having general and permanent application. However, users
23 of the Internet version of the Code accessed from the General Assembly website may
24 find it frustrating since the "not set out" sections are presented without any explanation
25 or reference to the appropriate Acts of Assembly since the editor's notes are copyrighted
26 and, therefore, not displayed on the Internet.

27 There was discussion about where a researcher or practitioner would go to find the acts
28 containing sections referenced as not set out in the Code. Currently, acts from 1994 to
29 the present are accessible on the Internet through the General Assembly website. There
30 is no plan to recreate acts prior to 1994 for Internet display. The Division of Legislative
31 Services is creating an uncodified acts database beginning with the acts of 1950 through
32 the present. A suggestion to request the publisher to compile a local government laws
33 volume was mentioned and Leigh Trippe offered to bring samples of such volumes
34 prepared by LexisNexis for other states to the next meeting for the Commission's review.
35 Also, there was discussion about maintaining the obsolete 1950 Code and future
36 obsolete versions of the 2007 Code on the Internet.

37 Mr. Miller made a motion to (i) confirm the Code Commission's policy to codify provisions
38 from the acts into the Code only when the provisions have general or permanent
39 application and (ii) review each section in the Code as part of the 2007 Code Project and
40 determine whether the section should be set out in full or remove the Code section
41 reference in its entirety from the Code. The motion was seconded by Judge Strickland
42 and approved.

43 **GENERAL PRICING PROPOSAL FOR 2007 CODE**

44 Leigh Trippe indicated that she envisioned amortizing the costs of the replacement 2007
45 Code of Virginia over a four- or five-year period. Mr. Miller asked Ms. Trippe if

1 LexisNexis would develop a cost plan by year covering the next several years for the
2 Code Commission's approval. Ms. Trippe indicated that the size of the Code would need
3 to be determined before a detailed cost plan could be developed.

4 **2007 CODE OF VIRGINIA**

5 Mr. Miller introduced Ken Patterson and Pat Davis as the co-directors of the 2007 Code
6 Project. Mr. Patterson gave an overview of the project's progress to date. During the
7 2005 Session, the General Assembly approved SJR 388, which advises the citizens of
8 Virginia of the Code Commission's intent to reorganize and renumber the 1950 Code of
9 Virginia and publish it as the 2007 Code of Virginia. The resolution also states that the
10 Division of Legislative Services will provide staff to the commission to complete the
11 project in a timely manner.

12 A work group was formed to coordinate the work of individual attorneys and staff of the
13 Division of Legislative Services in reorganizing and renumbering the entire Code. The
14 work group has expanded over the course of its five meetings to include representatives
15 of the Virginia State Bar, Commonwealth's Attorneys, the Supreme Court of Virginia,
16 local government attorneys, the Department of Motor Vehicles, and legal publishers.
17 Further outreach efforts, by the work group and by members of the Code Commission,
18 are ongoing.

19 During its first four meetings, the work group developed proposals regarding a
20 numbering scheme for the 2007 Code and "global" changes to standardize usage in the
21 new Code (e.g., using Arabic numerals instead of written numbers for numbers 10 and
22 above).

23 Following a review of the numbering systems used by the other 49 states, the work
24 group considered three alternatives to recommend to the Code Commission. Although
25 one proposal garnered significant support, the members of the work group decided to
26 present all three to the commission. Cheryl Jackson, DLS Reference Center Manager,
27 presented the numbering scheme options recommended by the work group to the
28 Commission:

- 29 • Option 1: "two-hyphen" system with embedded article number.
- 30 • Option 2: enhanced status quo, with chapter number embedded.
- 31 • Option 3: "three-hyphen" system with a separate element for article number.

32 In addition to the three options mentioned, a fourth option, a two-hyphen system without
33 an embedded article, was considered by the Commission. Judge Strickland and Mr.
34 Miller voiced their preference for the fourth option. However, after a thorough discussion
35 of the advantages and disadvantages of all three systems, the Code Commission voted
36 to approve Option 1, which will become the numbering scheme used in the 2007 Code.
37 Judge Strickland voted against Option 1.

38 The commission agreed to the suggested global changes to the Code, all of which are
39 minor and therefore do not require legislation to effect. The commission also approved
40 the updating of obsolete references to the Internet, which will require legislation in an
41 upcoming session.

42 The next step in the process of revising the Code is developing recommendations for
43 reorganizing (without substantively changing) the Code and for the names and numbers

1 for individual titles in the new Code. Preliminary proposals will be presented at the Code
2 Commission's May meeting in Richmond.

3 The Commission discussed the advantages and disadvantages of identifying localities
4 by name instead of by population brackets in the Code. An effort to convert population
5 brackets to named localities took place in the mid-1990s as part of the recodification of
6 Title 15.1; however, due to last minute opposition, population brackets were reinstituted.
7 For the past few years, the Speaker has been treating legislation containing population
8 brackets as special legislation requiring a 4/5 vote, just as if the localities were being
9 specifically named. That being said, the question is whether the Code Commission
10 wishes to undertake the task of converting population brackets to named localities. A
11 separate bill would be required to implement these changes. A motion was made and
12 seconded to convert population brackets to named localities in conjunction with the 2007
13 Code Project and prepare legislation to implement the changes. The motion was
14 approved.

15 **OTHER BUSINESS AND PUBLIC COMMENT**

16 Leigh Trippe advised the Commission that LexisNexis has acquired Weil Publishing, the
17 company that prints the Virginia Register and a number of other states' codes and
18 registers. For the immediate future, no changes in the Weil Publishing business process
19 are expected.

20 Mr. Miller presented an agreement granting the Commission approval to use the
21 Jamestown 2007 logo (3 ships). The agreement gives the Commission an option to use
22 the logo if it so chooses and does not obligate the Commission in any way.

23 Delegate Hurt requested staff to prepare a one-page document of talking points to be
24 distributed to all Code Commission members to address questions about the 2007 Code
25 Project.

26 Several members indicated that they could not attend the May 18 meeting, therefore, the
27 meeting was rescheduled to Monday, May 23, in Richmond.

28 No one came forward during the public comment period. The meeting adjourned at
29 12:35 p.m.

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