

1 **VIRGINIA CODE COMMISSION**
2 General Assembly Building, 6th Floor
3 Speaker's Conference Room
4 Richmond, Virginia 23219

5 ***Wednesday, August 17, 2005 - 10:00 a.m.***

6 **MEMBERS PRESENT:** William C. Mims, Chairman; R. Steven Landes,
7 Vice Chairman; Frank S. Ferguson, Diane M. Strickland; Thomas M.
8 Moncure, Jr.

9 **MEMBERS ABSENT:** John S. Edwards, Robert Hurt, S. Bernard Goodwyn,
10 Robert L. Calhoun, E.M. Miller, Jr.

11 **STAFF PRESENT:** Mike Flaherty, Suzan Bulbulkaya, Jane Chaffin

12 **OTHERS PRESENT:** Bob Dautrick, Commonwealth Attorneys Services Council;
13 Martha Moore, Virginia Farm Bureau; Brock Herzberg, Virginia Farm Bureau;
14 Roy Seward, Department of Agriculture and Consumer Services; Donna Pugh,
15 Virginia Agribusiness Council

16 **CALL TO ORDER**

17 Chairman Mims called the meeting to order at 10:10 a.m. It was noted that a
18 quorum was not expected at today's meeting and that the minutes of the July
19 meeting would be taken up at the next meeting.

20 **TITLE 3.1 RECODIFICATION**

21 Mike Flaherty stated that the weights and measures provisions, consisting of
22 three chapters, would be reviewed today.

23 **Chapter 59, Weights and Measures**

24 Frank Ferguson suggested moving § 3.1-931, which deals with collected fees
25 and moneys maintained in the Weights and Measures Fund, and § 3.1-949.2,
26 which establishes the Weights and Measures Fund, into one section, or placing
27 the sections adjacent to each other, following § 3.1-936 on page 14.

28 Senator Mims suggested removing "of the respective counties and cities" and
29 "for their respective counties and towns" from lines 24 and 25, respectively, in
30 § 3.1-937 on page 14.

31 In § 3.1-949.2 on page 22, staff was asked to reinsert language making it clear
32 that moneys specifically designated for inclusion in the fund, not only moneys
33 collected pursuant to the Weights and Measures chapter, may be included in the
34 Weights and Measures Fund. As proposed, a grant, for example, could not be
35 accepted.

36 Regarding the same section, there was discussion about the last sentence
37 pertaining to income and principal of the fund. During a discussion at a prior
38 meeting, there was debate about the interest reverting back to the State
39 Treasury. The meaning of the word "income" was questioned and it was decided

1 that an argument could be made that "income" as used here could mean
2 "interest." Another issue is that the Department of Agriculture and Consumer
3 Services (VDACS) stated that the Weights and Measures Fund is a nonreverting
4 fund; however, the language does not specify that this is the case. Staff will
5 rewrite the sentence and bring it back to the Commission for its review at the
6 next meeting.

7 On page 23, line 17, in § 3.1-949.4 B, staff was asked to change the phrase
8 "shall have the authority to adopt regulations" to "may adopt regulations," which
9 is consistent with the existing law.

10 The Commission discussed whether the words "or exposed" on lines 6 and 9 of
11 page 24 in § 3.1-950 could be removed without causing a problem. After
12 removal, the phrase would read, "offered for sale" instead of "offered or exposed
13 for sale." VDACS representatives stated that they would like to determine any
14 potential impact of removing the word before a final decision is made since the
15 current wording tracks federal language. Staff was directed to consult with
16 VDACS and remove the language unless there is a convincing reason to retain it.

17 Delegate Landes suggested that staff group similar commodities within the
18 chapter.

19 Ms. Bulbulkaya stated that she has not been able to determine whether § 3.1-
20 968 on page 31 (Prosecutions for violation of chapter) is necessary. After review,
21 the Commission directed staff to repeal the section.

22 In § 3.1-966.1 C, page 30, line 9, a discussion arose about whether the phrase
23 "which are not contested by persons" could be deleted since Administrative
24 Process Act procedures are in place for contesting administrative action. For
25 consistency with similar language found in Chapter 60, Weights and Measures
26 Service Agencies and Technicians on page 9, line 24, the Commission changed
27 the sentence to read, "The Commissioner shall prescribe procedures for payment
28 of uncontested penalties."

29 Chapter 60, Weights and Measures Service Agencies and Technicians

30 The Code Commission asked staff to make several minor technical changes to
31 the chapter.

32 Chapter 61, Public Weighmasters

33 The Commission discussed whether the definition of "licensed public
34 weighmaster" was needed and decided that it was not necessary. Staff was
35 asked to delete the definition and make some other minor corrections to the
36 chapter.

37 Placement of Weights and Measures Provisions in Code

38 Frank Munyan, DLS Senior Attorney, presented a proposal to move the weights
39 and measures provisions from Title 3.1 (Agriculture) to Title 59.1 (Trade and
40 Commerce). Mr. Munyan explained that Virginia's weights and measures laws do

1 not primarily relate to agricultural products, many provisions relate to issues
2 currently addressed in laws regulating commercial conduct generally, relocating
3 the provisions to Title 59.1 would not substantively affect the enforcement
4 powers of the Commissioner of Agriculture and Consumer Services, and VDACS
5 is currently responsible for administering programs located in other titles
6 throughout the Virginia Code.

7 Mr. Munyan stated that the proposal surfaced as a result of his involvement in
8 the 2007 Code of Virginia reorganization project. According to Mr. Munyan, there
9 is nothing inherently wrong with the location of the provisions in Title 3.1;
10 however, since staff is taking a code-wide look at logically reorganizing and
11 grouping chapters, it seemed that a good time to consider the issue was during
12 the title revision process.

13 There was discussion among the members, including an opposite view that the
14 provisions currently in Title 59.1 that are enforced by VDACS might be better
15 placed in Title 3.1.

16 Martha Moore, Farm Bureau, stated that she is concerned with moving the
17 weights and measures provisions to Title 59.1 because proposed legislation
18 amending sections within Title 59.1 generally goes to a legislative standing
19 committee other than the agriculture committee and the committee members
20 may lack expertise in the areas relating to agriculture. It was argued that
21 guidance to the Clerk could be given to resolve this issue.

22 Donna Johnson, Agribusiness Council, stated that the agriculture industry has a
23 great dependency on these provisions and does not want the weights and
24 measures laws moved to Title 59.1.

25 The Chairman asked VDACS about its preference for locating the provisions.
26 VDACS supports retaining the provisions in Title 3.1 and would have no objection
27 to moving other agriculture-related provisions from Title 59.1 to Title 3.1.

28 The Chairman stated that since the revision of Title 3.1 will not be introduced
29 until the 2007 session, there is time to decide this issue at a future meeting when
30 the full Commission is present. Senator Mims would like to give the opponents to
31 the proposal a chance to respond so that the Commission can consider both
32 positions.

33 **OTHER BUSINESS AND PUBLIC COMMENT**

34 No one came forward during the designated public comment period.

35 The next meeting of the Commission is scheduled for Wednesday, September
36 21, 2005, in Richmond.

37 There being no further business to come before the Commission, the meeting
38 adjourned at 11:50 a.m.