

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

5 ***Wednesday, September 21, 2005 - 10:00 a.m.***

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

9 MEMBERS ABSENT: None.

10 STAFF PRESENT: Lilli Hausenfluck, Mike Flaherty, Patricia Davis, Ken Patterson, Ginny
11 Edwards, Bryan Stogdale, Amigo Wade, Jane Chaffin

12 OTHERS PRESENT: Doug McCartney, LexisNexis; Martha Moore, Virginia Farm
13 Bureau; Roy Seward, Department of Agriculture and Consumer Services

14 **CALL TO ORDER**

15 Chairman Mims called the meeting to order at 10:10 a.m.

16 **REVIEW AND APPROVAL OF MINUTES**

17 The Commission reviewed the minutes of the July and August meetings. Mr. Ferguson
18 made a motion, seconded by Mr. Miller, to approve the minutes of the July and August
19 meetings as written. The motion was approved.

20 **VIRGINIA ADMINISTRATIVE CODE**

21 Replacement Volumes Proposal

22 Lilli Hausenfluck presented the Commission with a comprehensive chart showing the
23 size of each of the 19 volumes of the Virginia Administrative Code (VAC) and their
24 supplements. For the past three years, the Commission approved replacing three
25 volumes each spring. This year West suggests replacing volumes 3, 8 and 11 in the
26 spring of 2006. However, Mrs. Hausenfluck stated that staff recommends replacing only
27 one volume at this time. Traditionally, replacement volumes are chosen when a
28 supplement reaches approximately 500 or more pages. Supplements for volumes 3 and
29 11 currently contain only 457 and 463 pages respectively. Volume 8 is recommended for
30 replacement because of the unwieldy size of its supplement, which consists of 933
31 pages.

32 Impact of 2007 Code Reorganization Project on the Virginia Administrative Code

33 Mrs. Hausenfluck presented information regarding the need for changes to VAC when
34 the Code of Virginia is reorganized in 2007. She shared examples that showed the
35 statutory authority for each section of VAC and examples of cross references to the
36 Code of Virginia within VAC. She presented suggestions for including a blanket
37 statement at the beginning of each volume's supplement and on each page of the
38 electronic version that would refer the reader to a conversion chart of former and current
39 Code of Virginia sections. With approximately three volumes being recompiled annually,
40 the print version would be up to date in about six years. The staff would work with the
41 appropriate agencies for recompiling those volumes and updating the Code of Virginia

1 references. The electronic version would be up to date as those same volumes were
2 updated in print. All sections being amended in the interim would use the new Code of
3 Virginia section numbers.

4 The commission members directed staff to look at alternatives to this plan that would
5 have VAC updated on a timelier basis. Mr. Miller said he would discuss the situation with
6 West, VAC's publisher, to explore other available options.

7 At Mr. Miller's request, the Commission deferred action on both the replacement volume
8 proposal and staff's proposal to update Code of Virginia sections in the Virginia
9 Administrative Code until a future meeting.

10 **2007 CODE OF VIRGINIA REORGANIZATION**

11 General Matters for Discussion

12 Pat Davis advised the members that some concerns have been expressed about moving
13 sections from one title to another and how that might affect to which General Assembly
14 standing committees legislation containing those sections would be referred. Mr. Miller
15 stated that the Division of Legislative Services (DLS) prepares a guide each year to
16 assist the Speaker and Senate Clerk in assigning bills to the various standing
17 committees and this guide could be adjusted to address these concerns. It was noted
18 that the Speaker and Senate Clerk are not obligated to use the guide provided by DLS
19 and assignments will be made as they deem appropriate. Mr. Miller suggested that he
20 contact the Speaker and Senate Clerk to see how these issues can be addressed.

21 The Commission discussed the need to draft several housekeeping bills to (i) repeal
22 short titles; (ii) split up or combine sections; and (iii) make certain language adjustments.
23 The Commission's preference is to minimize the number of these bills and to introduce
24 as many as possible in the 2006 General Assembly session.

25 Mrs. Davis noted another issue regarding existing sections within the Code of Virginia
26 that have been designated as "reserved." Since these reserved sections were enacted
27 by the General Assembly, the question becomes whether a separate bill should be
28 drafted to repeal these reserved sections or whether the sections can be ignored in the
29 Code reorganization. Staff was directed to ignore the sections in the recompilation.

30 Review of Proposed Reorganization of Individual Titles

31 *Title 22.1 (Education)*

32 Bryan Stogdale presented the proposed reorganization of Titles 22.1 and 23. Some of
33 the chapter and article headings have been renamed to better reflect the subject matter.
34 The Commission discussed the advantages of combining Titles 22.1 and 23 into a single
35 Education title. In an effort to make things easier to find in the Code by the general
36 public, one goal is to utilize fewer titles covering broader subject areas. Judge Strickland
37 made a motion to combine Titles 22.1 (Education) and 23 (Educational Institutions) into
38 a single Education title and divide the title further into appropriate subtitles, such as
39 "Elementary and Secondary Education" and "Higher Education." Senator Edwards
40 seconded the motion and the motion was approved.

41 During the discussion of proposed Chapter 6, Public School Funds, the Commission
42 decided to rename the chapter to "Public School Funds and Grants" and move grant
43 programs as articles under the chapter. Also, instead of setting out the Literary Fund as
44 a separate chapter, it will be moved to an article level under Chapter 6. Staff was asked

1 to review and determine if any of the grant programs or funds under this title could be
2 considered for repeal and, if so, to draft legislation to repeal them.

3 The Commission considered moving The Virginia School for the Deaf and the Blind at
4 Staunton and the Virginia School for the Deaf, Blind and Multi-Disabled at Hampton, to
5 article status under the chapter heading of Schools for Students with Disabilities.

6 It was suggested that research be conducted to determine if the entities in Chapter 21,
7 Educational Consortia, have been formed, whether they are currently active and, if so,
8 whether they should be retained in the Code of Virginia or only in the Acts of Assembly.

9 The status of the Commission on Civics Education and the Advisory Board on Teacher
10 Education and Licensure was questioned. They will be moved to a portion of the new
11 Code related to executive commissions.

12 It was noted that the Compact for Education; Education Commission of the States, and
13 Southern Regional Education Compact will be moved to a portion of the new Code with
14 other compacts.

15 Title 23 (Educational Institutions)

16 Mr. Stogdale noted that Title 23 will be combined into the new Education title and given
17 subtitle status as discussed earlier.

18 Changes suggested to the proposed Title 23 worksheet include:

- 19 1. The Commission renamed Chapter 3 as "Bonds and Institutional Financing" and
20 incorporated chapters titled "Bonds," "Virginia College Building Authority" and
21 "Educational Facilities Authority" within Chapter 3 as articles.
- 22 2. Under Chapter 6, Financial Aid, staff will look for programs that are not utilized or
23 funded and determine which ones, if any, can be repealed.
- 24 3. The Commission moved Chapter 22, Campus Police Departments, and Chapter 23,
25 Restructuring Higher Education Financial and Administrative Operations Act, before
26 the colleges and universities chapters because they contain general provisions that
27 apply to all colleges and universities.
- 28 4. The Commission asked staff to review the programs under Chapter 24, Other
29 Educational Programs, to determine if would be appropriate to remove any of these
30 programs from the code and retain them only in the Acts of Assembly.
- 31 5. The Commission asked staff to move the Museums chapter from the existing
32 Education title (Title 22.1) and incorporate Title 42.1, Libraries, into a third subtitle
33 called, "Libraries and Museums," within the new Education title.

34 Chapter 30 (General Assembly)

35 Ginny Edwards presented the proposed reorganization of current Title 30, General
36 Assembly. Under Legislative Commissions, Councils and Committees staff chose to list
37 commissions in order of creation to avoid the future problem of maintaining the list of
38 commissions in alphabetical order. This change is consistent with the Commission's
39 adopted scheme to add new articles at the end of a chapter.

40 Mrs. Edwards noted that new Chapter 3, General Assembly Conflicts of Interests Act,
41 contains a declaration of legislative policy. If the Commission wants to be consistent in
42 its practice of omitting such statements from the Code of Virginia, legislation will be

1 needed to split the section because part of the section is substantive and must be
2 retained in the Code.

3 The Commission asked Mrs. Edwards to rename Chapter 7, Legislative Audit and
4 Oversight, to clarify that "oversight" is not necessarily fiscal oversight. Staff changed the
5 chapter title to "Legislative Audit and Project Oversight."

6 Title 36 (Housing)

7 Amigo Wade explained that proposed Chapter 1, Department of Housing and
8 Community Development, and Chapter 2, Virginia Housing Development Authority, each
9 have regulatory authority. Chapter 3, Housing Authorities Law, provides a process for
10 establishing a regional local housing authority. Mr. Wade said that he struggled with
11 whether Chapter 3 should be moved to the local government title and, after considerable
12 thought, recommends retaining it in the Housing title. Chapter 4, Defense Housing
13 Projects, and Chapter 5, Housing Projects for Veterans, were created in the 1940s,
14 authorized housing authorities to provide housing to veterans after World War II, and
15 might be candidates for repeal. The consensus of the Commission is to repeal Chapters
16 4 and 5 unless Mr. Wade finds a reason to retain them.

17 The Commission approved combining Chapter 6, Manufactured Housing Construction
18 and Safety Standards Law, and Chapter 7, Manufactured Housing Licensing and
19 Transaction Recovery Fund Law, into a single chapter.

20 Other items of discussion included suggestions to (i) move the Uniform Statewide
21 Building Code chapter closer to the Department of Housing and Community
22 Development chapter; (ii) collapse the Industrialized Building Safety Law with
23 manufactured housing; and (iii) move some of the fund programs designated at the
24 chapter level under the appropriate agency chapter at the article level (e.g., move
25 Virginia Housing Partnership Revolving Fund under Virginia Housing Development
26 Authority, and move the Virginia Removal or Rehabilitation of Derelict Structures Fund
27 and the Housing Revitalization Zone Act under the Department of Housing and
28 Community Development).

29 The consensus of the Commission was to move the low income housing tax credit
30 provisions from the Housing title to the Tax title. This decision is consistent with the goal
31 of SJR 308, which requires the Code Commission to identify tax preferences outside of
32 current Title 58.1.

33 The Commission discussed transferring community development statutes outside of the
34 current Housing title into the new Housing title. The Chairman asked Mr. Wade to
35 discuss with other Division of Legislative Services staff whether it would be logical to
36 move other community development statutes into the Housing title, such as the
37 Residential Landlord Tenant Act, Condominium Act, and other similar acts. Staff will
38 bring back recommendations to the Commission at a future meeting.

39 Due to time limitations, the Chairman deferred the remaining proposed title
40 reorganizations on the agenda until the next meeting.

41

TITLE 3.1 RECODIFICATION

42 Mike Flaherty presented Chapter 54, Eggs and Hatchery Products; Chapter 64, Cattle
43 Branding and Registration; Chapter 65, Equine Activity Liability Act; and Chapter 66, Ox
44 Activity Liability Act. For the most part, only technical changes were made to these

1 chapters. Mr. Flaherty explained that the requirement that the internal temperature of
2 eggs not exceed 65 degrees Fahrenheit (Chapter 54, page 5, § 3.1-769.1) is stricken
3 because the provision is inconsistent with federal regulations, which provide that this
4 temperature cannot exceed 45 degrees Fahrenheit. Staff was asked to change the
5 drafting note to reflect that the temperature requirements are "established in" federal
6 regulation instead of "preempted by" federal regulation.

7 **OTHER BUSINESS AND PUBLIC COMMENT**

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

9 The Commission recognized that a two-day meeting is needed in October due to the
10 heavy workload. The next meeting of the Commission is scheduled in Richmond for two
11 days on Tuesday, October 18, 2005, beginning at 1:00 p.m., and Wednesday, October
12 19, 2005, beginning 9:00 a.m.

13 **ADJOURNMENT**

14 There being no further business to come before the Commission, the meeting adjourned
15 at 2:10 p.m.