

1 **VIRGINIA CODE COMMISSION**
2 ***Tuesday, October 18, 2005 - 1 p.m.***
3 ***Wednesday, October 19, 2005 - 9 a.m.***
4 General Assembly Building, 6th Floor
5 Speaker's Conference Room
6 Richmond, Virginia 23219

7 ***Tuesday, October 18, 2005***

8 MEMBERS PRESENT: William C. Mims, Chairman; R. Steven Landes, Vice Chairman; Robert
9 Hurt; S. Bernard Goodwyn; Thomas M. Moncure, Jr.; Frank S. Ferguson; E.M. Miller, Jr.

10 MEMBERS ABSENT: John S. Edwards, Diane M. Strickland, Robert L. Calhoun

11 STAFF PRESENT: Mindy Tanner, Patricia Davis, Ken Patterson, Amigo Wade, Mary Felch, Joan
12 Putney, Jane Chaffin

13 OTHERS PRESENT: Doug McCartney, LexisNexis

14 **CALL TO ORDER**

15 Vice Chairman Landes called the meeting to order at 1:20 p.m. It was noted that a quorum was
16 not present and the next item on the agenda, Review and Approval of the September Minutes,
17 was deferred until the arrival of a quorum.

18 **STAFF REPORT ON OBSOLETE LAWS**

19 Mindy Tanner reported that she reviewed the 1990-1999 Acts of Assembly, which resulted in a
20 recommendation to repeal two acts.

21 Chapter 45 of the 1992 Acts of Assembly authorizes the Department of Conservation and
22 Recreation to develop a pilot program at Douthat State Park to keep the park open throughout the
23 year and annually evaluate the pilot program to consider its expansion to other state parks.
24 Based on information received from the Department of Conservation and Recreation, this act is
25 no longer necessary because all Virginia state parks that are open are open throughout the year.

26 Chapter 598 of the 1991 Acts of Assembly provides for the dispensing of controlled substances
27 prescribed by participating licensed physicians in the Chesapeake CHAMPS program to certain
28 patients. CHAMPS, Inc., was originally incorporated to assist in the coordinated medical care
29 between the health department program and community volunteer physicians who agreed to see
30 patients for episodic care. The program is now defunct. Ms. Tanner stated that she spoke to the
31 Director of the Chesapeake Health Department who said that existing programs would not be
32 affected by the repeal of this act.

33 The members in attendance agreed with Ms. Tanner's recommendation, but deferred action until
34 a quorum arrived.

35 **2007 CODE OF VIRGINIA REORGANIZATION PROJECT**

36 Titles 36 (Housing), 55 (Property), and 57 (Religious and Charitable Matters)

37 At the last meeting, Amigo Wade was asked to discuss the feasibility of moving other community
38 development statutes into the Housing title with other Division of Legislative Services staff. Mr.
39 Wade presented a revised outline that was based on issues that arose at the September meeting.
40 The title was renamed to Housing and Real Estate and consists of four subtitles as follows:
41 Subtitle I, State and Local Administrative Regulatory Programs; Subtitle II, Rental Housing;
42 Subtitle III, Housing Purchase and Sale Transactions; and Subtitle IV, Common Interest
43 Communities. The proposed draft was sent to the Department of Housing and Community
44 Development and the Virginia Housing Development Authority for comments.

45 Mary Felch presented a recommendation to eliminate Title 57 in its entirety by moving sections
46 within the title into various other titles. Sections within the religious freedom chapter will be moved

1 to Title 1 and Title 2.2, as appropriate. However, Ms. Felch questioned the appropriate placement
2 of the provision dealing with hotel advertising that is objectionable because of an individual's
3 religion (current § 57-2.1). She suggested moving the section to either the Human Rights Act in
4 Title 2.2 or Religious Freedom Act in Title 1. Staff was asked to determine if there are other
5 provisions dealing with advertising where the provision could be appropriately moved.

6 The church property, benevolent associations and objects chapter and the cemeteries chapter
7 will be moved to the Property title. The solicitation of contributions chapter will be incorporated
8 into Title 59.1.

9 **APPROVAL OF MINUTES AND OBSOLETE LAWS RECOMMENDATIONS**

10 Chairman Mims assumed the chair and it was noted that a quorum was present.

11 The Chairman returned to agenda item 2 to approve the minutes of the September meeting.
12 Judge Goodwyn made a motion, seconded by Delegate Landes, to approve the minutes of the
13 September meeting as presented. The motion was approved.

14 The Chairman returned to agenda item 3 and Delegate Landes made a motion to approve the
15 recommendation to introduce legislation to repeal Chapter 598 of the 1991 Acts of Assembly and
16 Chapter 45 of the 1992 Acts of Assembly as presented. Mr. Moncure seconded the motion and
17 the motion was approved.

18 **CONTINUATION OF 2007 CODE OF VIRGINIA REORGANIZATION PROJECT**

19 Titles 26, 34, 41.1, 43, 47.1, 49, and 55

20 Ms. Felch continued with the Property title and presented the proposal to move various properties
21 currently scattered throughout the Code into the new Property title. The Property title will now
22 basically consist of property ownership and transfer provisions.

23 After a thorough discussion, the Commission decided to remove Fiduciaries from the Property
24 title and create a separate title that would include Fiduciaries; Wills, Trusts and Estates; and
25 Guardian and Ward into a separate title. In addition, the Uniform Custodial Trust Act, the Uniform
26 Trust Fund Act, and the Uniform Principal and Income Act will be moved into this new title.

27 Chapter 4.2 of Title 13.1, Securities Registered in Joint Names, will be transferred to the Property
28 title because it is purely a registration act for corporations and deals with proof of ownership.

29 The Commission revisited the naming of the Housing and Real Estate title and the Property title
30 and decided to leave the names as "Housing" and "Property" for now.

31 The next titles reviewed were Titles 47.1, Notaries, and Title 49, Oaths, Affirmations and Bonds."
32 Ms. Felch proposed combining these two titles into "Bonds, Oaths and Notaries Public." The
33 provisions dealing with appointment of notaries and appointment of out-of-state commissioners
34 (proposed Chapter 2) were rearranged and Ms. Felch indicated that legislation may be needed to
35 further clean up the chapter.

36 Title 58.1 (Taxation)

37 Joan Putney presented the Tax title and stated that little has changed. The new title consists of
38 three subtitles as before; however, several chapters have been designated as articles, and the
39 duties of the Tax Commissioner and the duties of the Department of Taxation are divided into
40 separate articles.

41 Additional changes include transferring the Low-Income Housing Tax Credit from Title 36 into
42 Chapter 4, Income Tax; moving the Enterprise Zone Tax Credit and Neighborhood Assistance
43 Tax Credit, which are available to corporations, into Chapter 4 under the tax credits article;
44 moving the Land Conservation Incentives Act, which contains tax credits, closer to the other tax
45 credit provisions; and combining the enforcement of illegal sale or distribution of cigarettes
46 provisions into the Tobacco Taxes chapter.

1 Subtitle II consists of taxes administered by other state agencies, mostly, taxes collected by the
2 Department of Motor Vehicles and the State Corporation Commission.

3 Taxes administered by the State Corporation Commission are grouped together. Taxes paid by
4 corporations are contained in one chapter. The Electric Utility Consumption Tax and the Natural
5 Gas Consumption Tax are separate chapters because these taxes are paid by consumers. At the
6 Commission's request, staff will combine the consumer taxes into a single chapter titled,
7 "Consumer Tax," and divide the chapter into articles by tax type.

8 Under Subtitle IV, Taxes Administered by Local Government, the Commission noted that the real
9 property chapter currently consists of over 80 pages. The Commission asked staff to review the
10 chapter with the goal of logically splitting the chapter into more chapters and subsuming
11 Payments in Lieu of Real Property Taxation into one of those chapters.

12 The Commission renamed "Personal Property Tax Relief" to "Car Tax Relief" and incorporated it
13 into Chapter 28, Tangible Personal Property, Machinery and Tools and Merchants' Capital. At the
14 Commission's request, Ms. Putney will shorten the title of Chapter 28 as well as other lengthy
15 chapter names.

16 Due to the overwhelming number of properties exempted by designation, these exemptions will
17 continue to be set out in annotations, but not in the text of the Code. A comment was made that
18 the Commission might wish to consider addressing the special license plates provisions in this
19 same manner.

20 Ms. Putney asked the Commission whether the taxes referenced in Title 4 (Alcoholic Beverage
21 Control) that are administered by the Tax Department should be moved to the new taxation title.
22 Staff will check with the appropriate DLS staff person to discuss the issue further and return with
23 recommendations. Placement of the commodity taxes have been discussed as part of the Title
24 3.1 recodification and there is presently no plan to move those taxes into the new taxation title.

25 The Commission recessed at 4:15 p.m. The meeting will resume at 9 a.m., Wednesday, October
26 19.

27 ***Wednesday, October 19, 2005***

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

31 MEMBERS ABSENT: None.

32 STAFF PRESENT: Mindy Tanner, Patricia Davis, Ken Patterson, Michael Flaherty, Frank
33 Munyan, Jane Chaffin

34 OTHERS PRESENT: Doug McCartney, LexisNexis; Brian Cole, LexisNexis; Heather Hayes,
35 LexisNexis; Theresa Dockery, SPAY; Bob Pitts, VDACS; Angela Bowser, State Corporation
36 Commission

37 **TITLE 3.1 RECODIFICATION**

38 Chapter 67, Comprehensive Animal Laws

39 Michael Flaherty presented proposed Chapter 67, Comprehensive Animal Laws.

40 The Commission discussed whether subsection B of § 3.1-796.68 (page 11, lines 5 and 6) was
41 needed. Section 3.1-796.68 addresses care of animals by owners and provides a penalty for
42 noncompliance. Subsection B provides that game and wildlife species shall be cared for in
43 accordance with Board of Game and Inland Fisheries regulations. Bob Pitts with the Department
44 of Agriculture and Consumer Services (VDACS) stated that the provision was added because the
45 definition of companion animal can include wildlife and the Department of Game and Inland
46 Fisheries (DGIF) is better suited to oversee the care of wildlife. However, a Commission member
47 commented that this subsection is not necessary if DGIF is authorized to promulgate these

1 regulations in its basic law. The Commission asked staff to retain the subsection for now but to
2 contact VDACS and DGIF and inquire if either agency objects to moving the regulatory authority
3 to the game title and to insert "companion" before "animal" in the catchline of § 3.1-796.68 for
4 clarification.

5 Section 3.1-796.71 provides that funds resulting from sale of animals that were seized because of
6 inadequate care by a dealer or pet shop be paid into the Literary Fund; however, "Literary Fund"
7 was changed to "state treasury." The Commission directed staff to retain "Literary Fund" in § 3.1-
8 796.71 as well as in § 3.1-796.115 (see page 69, line 14).

9 Section 3.1-796.75 addresses unclaimed animals left with a veterinarian or boarding
10 establishment and provides conditions under which proceeds are paid into the state treasury.
11 Senator Calhoun made a motion, seconded by Mr. Ferguson, to change "state treasury" to
12 "Literary Fund" in § 3.1-796.75. The motion was approved.

13 In § 3.1-796.97:1 B, Senator Edwards made a motion to replace "in each county in which" with
14 "when," which would provide more flexibility to localities for holding rabies clinics in rural areas.
15 Mr. Miller seconded the motion. After further discussion, Judge Goodwyn asked if the amendment
16 would negatively affect veterinaries that conduct these clinics and VDACS responded that it did
17 not believe so. The motion was approved with Mr. Ferguson stating his dissent.

18 Mr. Calhoun noted that the reference to the urban county executive form of government in
19 subsection B of § 3.1-796.100 only applies to Fairfax County and made a motion to specify the
20 name of the locality. Mr. Miller seconded the motion and the motion was approved. In
21 conformance with the Commission's decision to eliminate population brackets, staff was asked to
22 change descriptions of types of local governments to the named localities throughout the title.

23 Staff was asked to globally replace the term "local ordinance" with "ordinance."

24 Paragraph 1 of § 3.1-796.94 provides authority to localities to adopt ordinances that parallel or
25 make more stringent certain provisions in this chapter. The Commission discussed whether this
26 language is necessary. Senator Mims commented that it seems unnecessary to limit the
27 stringency of such ordinances if the locality is authorized to adopt ordinances. After further
28 discussion, the Chairman asked staff to presume that the Commission has stricken paragraph 1
29 of § 3.1-796.94, go back to the referenced sections within the paragraph and, to the extent that a
30 limitation has been established, presume that those restrictions are deleted. Bring the sections
31 back to a future meeting and show the provisions staff would recommend deleting.

32 In § 3.1-796.94:1 (page 39), which allows counties to regulate by ordinance the keeping of
33 animals and fowl, change "county" to "locality," thereby giving cities the same authority. The
34 Commission noted that this change is substantive, but no one believed that there would be any
35 objection to the change.

36 The Commission decided that it was unnecessary to qualify that animals be "humanely"
37 euthanized rationalizing that the State Veterinarian would not establish inhumane euthanization
38 methods.

39 In the cruelty to animals provisions, specifically in subsection C of § 3.1-796.122, which does not
40 prohibit certain activities such as the dehorning of cattle; authorized wildlife management
41 activities; hunting, fishing or trapping; or farming activities, Mr. Calhoun expressed concerns with
42 the subsection as written and requested staff to rewrite and bring back to the Commission for its
43 review.

44 Before continuing with agenda item 6, 2007 Code of Virginia Reorganization Project, Mr. Miller
45 mentioned that the issue pertaining to the status of the Administrative Law Advisory Committee
46 (ALAC) had recently surfaced. Mr. Miller reminded the Code Commission that ALAC was
47 established in 1994 to assist the Commission with its oversight authority over the operation and
48 effectiveness of the Virginia Administrative Process Act and Virginia Register Act. The Committee
49 was disbanded in December 2002 for budgetary reasons. Once disbanded, the responsibility of
50 coordinating the annual Administrative Law Conference was shifted to the Bar Association. The

1 Commission may want to add this issue to a future agenda to look at whether it wants to revive
2 ALAC. If not, the Commission may wish to consider an amendment to the ALAC provisions in the
3 Code Commission statute. The Chairman asked staff to place this item on the agenda of the last
4 meeting of the year.

5 **2007 CODE OF VIRGINIA REORGANIZATION PROJECT**

6 Title 6.1 - Banking and Finance

7 Frank Munyan presented the proposed outline of the Financial Institutions and Services title. The
8 proposal would transfer the following related provisions from other titles into Subtitle II, Financial
9 Services:

- 10 1. Credit Cards (Chapter 6 of Title 11)
- 11 2. Equal Credit Opportunity Act (Chapter 2.3 of Title 59.1)
- 12 3. Insurance Premium Financing Companies (Chapter 47 of Title 38.2)

13 Mr. Munyan noted that the State Corporation Commission is opposed to the moving the
14 Insurance Premium Financing Companies provisions from Title 38.2. Angela Bowser with the
15 State Corporation Commission indicated that the move might cause confusion as to which bureau
16 has jurisdiction of these companies. Both the Bureau of Insurance and the Bureau of Financial
17 Institutions prefer leaving the provisions in the Insurance title. No motion was made to change the
18 proposal; therefore, the provisions will remain in the Financial Institutions and Services title.

19 The proposal transfers the Wet Settlement Act, Consumer Real Estate Settlement Protection Act,
20 and Real Estate Settlement Agent Registration Act to the Housing title.

21 The Chairman made a general statement that chapter and article headings should be shortened
22 to the extent possible.

23 Title 11 - Contracts

24 Mr. Munyan proposes eliminating Title 11 as a separate title and moving all provisions to other
25 titles of the Code as noted in the proposed draft.

26 Title 12.1 - State Corporation Commission

27 The Commission discussed the possibility of eliminating Title 12.1 as a separate title and moving
28 the provisions into another title. After discussing the various possibilities, Senator Mims made a
29 motion to create two titles--on dealing with the legislative and executive branches and the other
30 dealing with the judiciary and the State Corporation Commission--and to move Title 12.1 into the
31 State Corporation Commission subtitle. Judge Goodwyn seconded the motion and the motion
32 was approved.

33 Title 13.1, Corporations

34 Mr. Munyan proposes moving all provisions from Title 50, Partnerships, to the proposed Business
35 Entities title (current Title 13.1). The Commission agreed to changing the headings of proposed
36 Article 6 of Chapter 2 and Article 6 of Chapter 3 to "Registered Office and Agent" and Article 20 of
37 Chapter 2 and Article 15 of Chapter 3 to "Dissolution and Termination" as suggested by the State
38 Corporation Commission.

39 There was discussion about the use of short titles and how they should be used, if at all, in the
40 Code. Senator Mims instructed Mrs. Davis and Mr. Patterson address this issue at a future Code
41 Commission meeting. Also, the issue of not setting out certain provisions in the Code of Virginia
42 arose. Senator Mims asked that this issue be added to a future agenda for further discussion.

43 The Commission discussed the placement of cooperatives within the title. Mr. Munyan noted that
44 the State Corporation Commission has suggested that these chapters be inserted immediately
45 after the Nonstock Corporation Act (proposed Chapter 3) and before the noncorporate entities.
46 Also, the State Corporation Commission is concerned by the proposal to move Chapter 9.1 of

1 Title 56 (electric cooperatives) to this title. Mr. Calhoun made a motion to move cooperatives after
2 the Nonstock Corporation Act and before noncorporate entities. Senator Mims seconded the
3 motion and the motion was approved. Mr. Miller opposed the motion.

4 Title 38.2 - Insurance

5 Mr. Munyan stated that Title 38.2 was recodified in 1986. As provisions have been added since
6 that time, they have become disorganized.

7 Staff noted that the State Corporation Commission would like to move proposed Article 3 of
8 Chapter 3 (Antitrust) to Article 1 of Chapter 5 (Organization, Admission and Licensing of
9 Insurers), but no rationale was given. Also, The State Corporation Commission has suggested
10 moving Chapter 22 (Regulation of Rates) from Subtitle I into Subtitle II; however, staff disagrees.
11 No motion was made to incorporate the State Corporation Commission suggestions.

12 Title 40.1 - Labor and Employment

13 The Commission discussed the proposed Employment title. Judge Goodwyn noted that labor and
14 employment are distinct and suggested renaming the proposed title to Employment and Labor.
15 Labor Unions and Collective Bargaining would become Subtitle IV. Staff will make the
16 recommended changes.

17 Mr. Munyan proposed moving the Overhead High Voltage Line Safety Act, which is administered
18 by Commissioner of Labor and Industry and deals with health and safety, from Title 59.1 to the
19 Employment and Labor title.

20 The Commission discussed proper placement of the Right to Work provisions and decided to
21 change the title of Subtitle IV to "Labor" and to make the Right to Work provisions Chapter 1 and
22 Labor Unions and Collective Bargaining would become Chapter 2.

23 **OTHER BUSINESS AND PUBLIC COMMENT**

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

25 The Commission recognized that a two-day meeting is needed in November or December due to
26 the heavy workload. After discussion, the Commission scheduled its meetings for the remainder
27 of the year as follows:

28 November meeting:

- 29
 - Wednesday, November 16 from 9:00 a.m. to 4:00 p.m. (Richmond)

30 December meeting (two days):

- 31
 - Thursday, December 8 from 10:00 a.m. to 4:00 p.m. (Richmond)
 - Friday, December 9 from 9 a.m. until 3:00 p.m. (Richmond)

33 **ADJOURNMENT**

34 There being no further business to come before the Commission, the meeting adjourned at
35 3:10 p.m.