

VIRGINIA CODE COMMISSION
Thursday, December 8, 2005 - 2 p.m.
Friday, December 9, 2005 - 9 a.m.
 General Assembly Building, 6th Floor
 Speaker's Conference Room
 Richmond, Virginia 23219

Thursday, December 8, 2005

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

MEMBERS ABSENT: Robert Hurt and Diane M. Strickland

STAFF PRESENT: Patricia Davis, Ken Patterson, Jeff Sharp, Kevin Stokes, Brian Stogdale and Jane Chaffin

OTHERS PRESENT: Leigh Trippe, LexisNexis; Doug McCartney, LexisNexis

CALL TO ORDER

Chairman Mims called the meeting to order at 2:15 p.m. It was noted that a quorum was not present and the next item on the agenda, Review and Approval of the November Minutes, was deferred. Also, agenda item 5, 2007 Code of Virginia Reorganization Project - 2006 Proposed Legislation, was deferred until a quorum arrives.

2006 CODE OF VIRGINIA PRICING AND REPLACEMENT VOLUMES PROPOSAL

Doug McCartney, Associate Director of Government Relations & Contracts, LexisNexis, presented the Lexis 2006 pricing and replacement volume proposal for the Code of Virginia.

	2006 Proposal with Three Replacement Volumes	
	State	Private
Cumulative Supplements	\$150.00	\$187.50
Index	\$ 64.00	\$ 69.00
Replacement Volumes (each)	\$ 33.00	\$ 41.00
Volume 11	\$ 25.00	\$ 32.00
Volume 11 Supplement	\$ 7.00	\$ 7.00
Advanced Code Service		\$ 48.00
TOTAL	\$345.00	\$466.50

The Commission deferred final action until a quorum arrives.

VIRGINIA ADMINISTRATIVE CODE REPLACEMENT VOLUME PROPOSAL

Jane Chaffin advised the Commission that staff recommends replacing only one volume of the Virginia Administrative Code in spring 2006. Volume 8, which is the third volume of Title 9, Environment, was replaced in 2002; however, regulation changes within this volume over the last few years have increased the size of the supplement to an estimated 933 pages. The Commission deferred action until a quorum arrives.

1 apply to one specific locality and another city has since grown into the bracket, Mr.
2 Sharp has added the latter locality's name. Mr. Sharp indicated that he will point out
3 these situations to the affected localities. Mr. Sharp stated that he believes this
4 legislation will require a two-thirds vote of the General Assembly. The Chairman asked
5 staff to alert the chairmen of the appropriate standing committees that this bill will appear
6 before them. Senator Calhoun made a motion, seconded by Senator Edwards, to
7 approve the legislation. The motion was approved. Delegate Landes was asked to carry
8 the bill.

9 City Reversion to Town Status

10 Kevin Stokes presented legislation that updates Code references to the former cities of
11 Clifton Forge and South Boston to reflect their new town status. Senator Calhoun made
12 a motion, seconded by Senator Edwards, to approve the legislation. The motion was
13 approved. The Chairman appointed Delegate Hurt to carry the legislation.

14 The Chairman deferred agenda item 5c, Transition/Savings Clauses legislation, until
15 tomorrow and the Commission amended the agenda by moving agenda item 9
16 scheduled at 9 a.m. tomorrow to the end of today's agenda.

17 **GENERAL MATTERS RELATING TO THE 2007 CODE OF VIRGINIA**
18 **REORGANIZATION PROJECT**

19 Patricia Davis provided a summary of the decisions made by the Code Commission over
20 the year relating to the 2007 Code of Virginia reorganization project. Mrs. Davis
21 indicated that she would like to focus today on the treatment of code sections that exist
22 in the acts but should not be included in the code for such reasons as the provisions do
23 not have general applicability. For example, the Commission directed removal of certain
24 educational consortia and the staff now questions how to handle the removal of these
25 provisions from the code. After discussion a number of options, Mr. Miller made a motion
26 to make a general statement in the preface of the code about removal of sections not
27 having general applicability and where these provisions can be located, list the
28 provisions in the tables volume and in the index. Mr. Ferguson seconded the motion and
29 the motion was approved. This procedure will be used for sections currently not set out
30 in the code and for ones currently in the code that may be removed.

31 **PROPOSED LEGISLATION REGARDING ADMINISTRATIVE LAW ADVISORY**
32 **COMMITTEE APPOINTMENTS**

33 Mr. Miller explained two drafts making technical changes to the Administrative Law
34 Advisory Committee (ALAC) statute. The first draft makes the authority to appoint
35 members of ALAC permissive rather than mandatory. The second draft also makes the
36 appointments permissive rather than mandatory and provides that the chair of ALAC
37 shall be a member of and appointed by the Code Commission. After discussion, the
38 Commission unanimously approved the second draft with amendments that would allow,
39 but not require, that the chair of ALAC be a member of the Commission.

40 **PROPOSED EDUCATION TITLE (REVISED)**

41 Bryan Stogdale explained that the Commission had reviewed the Education title
42 previously and asked for a number of changes to be made. The outline before the
43 Commission incorporates those changes, which include creating three subtitles—K-12,
44 Higher Education, and Libraries/Museums; removing, but not repealing, the educational

1 consortia; and repealing the Virginia Scholars and Work-Study Programs administered
2 by the State Council of Higher Education of Virginia, which have not been funded for
3 several years. Delegate Landes made a motion to introduce legislation to repeal the
4 Virginia Scholars Program and Work-Study Program. The motion was seconded by
5 Senator Calhoun and the motion was approved.

6 The Commission recessed until 9 a.m. Friday, December 9, 2005.

7

1 **Friday, December 9, 2005**

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

5 MEMBERS ABSENT: Robert Hurt

6 STAFF PRESENT: Patricia Davis, Ken Patterson, Mary Spain, Jane Chaffin

7 OTHERS PRESENT: Doug McCartney, LexisNexis; Brian Cole, LexisNexis; Marine
8 Resources Commission representatives; Charlie Sledd, Department of Game and Inland
9 Fisheries

10 The Commission reconvened at 9:10 a.m. and began with agenda item 5c,
11 Transition/Savings Clauses legislation.

12 Mary Spain presented proposed legislation stating that the Code Commission is
13 authorized to publish a renumbered code and delineating savings provisions to ensure
14 that references to prior and new code provisions are given effect. The consensus of the
15 Commission was that § 30-149 currently provides sufficient authority to the Commission
16 to reorganize and renumber the Code; however, members agreed that it would be a
17 good idea to clarify the language. To lay to rest any possible argument that the Code
18 Commission's authority might be limited to revising the code on a title-by-title basis,
19 language was added that explicitly states that the Code Commission may adopt an
20 entirely new numbering system when the old numbering system has become
21 convoluted, solidifying the notion that the renumbering process can take place without
22 action by the General Assembly.

23 Savings language was added that states when a newly numbered code is printed,
24 references to the previous code are given effect and references to the newly numbered
25 code will be given effect. The savings provisions ensure that the contents of a previous
26 code will be construed to reference the contents of a newly numbered code. Use of a
27 previous code section, chapter, title, article, etc., shall have the same legal effect as
28 reference to or use of the newly renumbered or renamed section, chapter, title, article,
29 etc. This savings language carries forward to local and state regulations, forms, and
30 other documents that reference statutory citations.

31 After further discussion and making several changes to the proposal, Senator Calhoun
32 made a motion, seconded by Judge Strickland, to approve the draft as amended. The
33 motion was approved.

34 **REORGANIZATION OF TITLES 10.1, 28.2, 29.1, 61.1 AND 62.1**

35 Marty Farber explained that he was able to condense Titles 10.1, 28.2, 29.1, 61.1 and
36 62.1 into three titles. His goal was to make each title user friendly and to logically
37 reorganize the sections within the titles. Titles 28.2 and 29.1 will continue as two
38 separate titles, Titles 10.1 and 62.1 will be combined into a single title, and Title 61.1 will
39 be eliminated by moving its sections to other titles of the Code.

1 Titles 101. and 62.1

2 Mr. Farber noted that the State Park Development Revenue Bond Act has never been
3 used to his knowledge, but the Department of Conservation does not favor eliminating
4 the act in case it is needed one day.

5 The Commission made the following changes to the proposal:

6 1. Move the Virginia Museum of Natural History to the Education, Libraries, and
7 Museums title.

8 2. Change the name of the title to Conservation, Preservation and Environment.

9 3. Chapter 23, move Article 6, Radioactive Waste, to Article 15 in closer proximity to
10 Chapter 24, Southeast Interstate Low-Level Radioactive Waste Management
11 Compact.

12 4. Chapter 25, change heading to "State Waters Generally."

13 5. Chapter 26, move Article 11, Pollution from Boats, after Article 5, Water Resources
14 and Wetland Protection.

15 6. Chapter 28, eliminate "State Water Control Board" from the chapter title. Water
16 Control Board provisions are founding Chapter 26.

17 7. Chapter 33, move Articles 5, 6 and 7 to compacts volume only. The other River
18 Basin Commissions are regional and active and will remain in Chapter 33.

19 The Commission asked staff to follow up on the following issues:

20 1. A motion was made to eliminate Subtitle III by (i) removing all compacts listed under
21 Chapter 33 from the Code, but retaining them in the compacts volume and (ii)
22 moving Chapter 34, Impoundment of Surface Waters to the end of Subtitle II. Before
23 removing the compacts from the Code, Delegate Hurt requested staff to contact the
24 appropriate representatives of the affected river commissions for feedback. Mr. Miller
25 will report back after consulting with the affected compact agencies.

26 2. Senator Calhoun suggested that staff talk with applicable lobbyists about moving the
27 Emissions Inspections Law from the Department of Environmental Quality to the
28 Department of Motor Vehicles.

29 3. Staff will evaluate the provisions in Chapter 25 and determine whether it is logical to
30 incorporate Chapter 25 into Article 1 (General Provisions) of Chapter 26.

31 Title 61.1

32 Except for the warehouse receipts provisions, Mr. Farber recommended moving the
33 provisions in Title 61.1 to the Agriculture title and eliminating Title 61.1. Since the
34 warehouse receipts chapter contains fraud provisions that invoke criminal penalties, Mr.
35 Farber suggested moving these provisions to the criminal code. Judge Strickland made
36 a motion, seconded by Mr. Miller, to move the warehouse receipts provisions into a new
37 article in the false and fraudulent acts provisions of the criminal code. The motion was
38 approved.

1 Title 28.2

2 The Commission made the following changes to the proposed Fisheries and Habitat of
3 the Tidal Waters title:

- 4 1. Chapter 8 (Health and Sanitation Provisions). Staff and the Marine Resources
5 Commission will develop a more relevant chapter title.
- 6 2. Habitat subtitle. Mr. Miller made a motion, seconded by Senator Calhoun, to remove
7 Chapter 16, Water Column Leases for Aquaculture Purposes, from the Code since
8 the implementation of the chapter is contingent on an appropriation and funds have
9 not be appropriated. If an appropriation is given, move the chapter into the code. The
10 motion was approved.
- 11 3. Change the name of the title to "Tidal Fisheries and Habitat."

12 Title 29.1

13 The Commission reviewed the proposed outline of Title 29.1 relating to game, inland
14 fisheries and boating and proposed no additional changes.

15 **PROPOSED REORGANIZATION OF TITLE 54.1**

16 Norma Szakal presented the proposed outline for Title 54.1, Professions and
17 Occupations. Mrs. Szakal stated that this title was recodified in the late 1980s and she
18 recommends retaining the existing organizational structure.

19 Mrs. Szakal suggested moving §§ 54.1-106 and 54.1-106.1 Chapter 1 of Subtitle I into
20 Subtitle III since these sections relate only to health professions.

21 The consensus of the Commission was to move the Health Care Decisions Act and the
22 article dealing with sexual sterilization to another title in the Code rationalizing that the
23 title is a licensing code and these types of provisions do not belong. The Commission
24 asked staff to find a more appropriate place for these provisions.

25 Judge Strickland commented that there are numerous criminal provisions in Title 54.1
26 and made a motion to move Articles 10, 11, and 12 of Chapter 34 to the criminal code.
27 Judge Goodwyn seconded the motion and the motion was approved.

28 **OTHER BUSINESS AND PUBLIC COMMENT**

29 The Commission discussed whether it would be possible to earn continuing legal
30 education credit for explaining the 2007 Code reorganization project to various groups
31 and associations and for conducting title recodifications and reorganizations. Mr. Miller
32 will make a request to the State Bar.

33 No one came forward during the public comment period.

34 **ADJOURNMENT**

35 There being no further business, the meeting adjourned at 2:20 p.m.