

VIRGINIA CODE COMMISSION

Thursday, October 19, 2006 – 9:30 a.m.

Charlottesville Courtyard Marriot – UVA Medical Center
 1201 West Main Street
 Charlottesville, VA 22901

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards, Vice Chairman; Robert Hurt; Ryan McDougle; James F. Almand; S. Bernard Goodwyn; Thomas M. Moncure, Jr.; Robert L. Calhoun; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: None

OTHERS PRESENT: Leigh Trippe, LexisNexis; Leslie Ostrander, LexisNexis; Karl Hade, Supreme Court; Ken Schrad, State Corporation Commission; Jo Anne Maxwell, Department of Motor Vehicles; Ron Thompson, Department of Motor Vehicles; Robert Harris, Commonwealth Attorneys' Services Council; Director, UVA Law Library; Martha Moore, Virginia Farm Bureau

STAFF PRESENT: Stephanie Bishop, Ken Patterson, Mindy Tanner, Marty Farber, Jane Chaffin

CALL TO ORDER

Delegate Landes called the meeting to order at 9:30 a.m.

APPROVAL OF MINUTES

A motion was made and seconded to approve the minutes of the September 20, 2006, meeting as presented and the motion carried.

CODE OF VIRGINIA 2007 PRICING AND REPLACEMENT VOLUMES PROPOSAL

Leigh Trippe with LexisNexis presented proposed replacement volume options for 2007. After discussion, Mr. Miller made a motion to replace volumes 2, 6A, 8 and 9A. Judge Almand seconded the motion and the motion was approved. The Chairman asked Ms. Trippe to include the year that the volume was last replaced on the proposal next year.

Next, Ms. Trippe presented the 2007 pricing proposal. Ms. Trippe stated that the requested increase reflects the 3.9% increase in the Producer Price Index for Book Publishing.

	2007 Proposal with Four Replacement Volumes	
	State	Private
Cumulative Supplements	\$137.00	\$175.00
Index	\$ 64.00	\$ 69.00
Replacement Volumes (each)	\$ 33.50	\$ 42.50
Volume 11	\$ 25.50	\$ 33.00
Volume 11 Supplement	\$ 7.50	\$ 7.50
Advanced Code Service		\$ 49.50
TOTAL	\$368.00	\$504.00

1 Senator Edwards made a motion, seconded by Mr. Ferguson, to approve the pricing
2 proposal as presented. The motion was approved.

3 **CODE OF VIRGINIA REORGANIZATION PROJECT DISCUSSION**

4 The Code Commission heard from Karl Hade, Supreme Court of Virginia; Joanne
5 Maxwell, Department of Motor Vehicles (DMV); Ken Schrad, State Corporation
6 Commission (SCC); and Robert Harris, Commonwealth Attorneys' Services Council
7 regarding the impact of a wholesale reorganization of the Code of Virginia on their
8 respective agencies. Mr. Hade stated that the Supreme Court's current focus is upgrading
9 its near obsolete computer system that provides support to all courts within the
10 Commonwealth. To take on the task of reprogramming the existing system and new
11 system to comport with the Code reorganization would take additional resources at this
12 time. Ms. Maxwell stated that the most significant costs to DMV would be reprinting its
13 forms and publications. Ken Schrad stated that the SCC will also have similar costs as the
14 Supreme Court and DMV; however, SCC's costs will be paid by the companies it
15 regulates. Mr. Harris said that the Commonwealth's attorneys share the concerns of the
16 Supreme Court and view it as an unfunded mandate. Computer systems, documents and
17 forms would need to be updated. Additionally, officers need training to ensure they cite
18 correct Code sections and there is concern of the consequences of citing Code sections
19 incorrectly.

20 The Director of the UVA Law Library stated that the Virginia Association of Law
21 Libraries supports the Code reorganization project.

22 Mr. Miller stated that the Virginia State Bar has agreed to place the Code of Virginia
23 reorganization project on its agenda, but the issue may not be heard unless a Commission
24 representative is present. Senator Edwards agreed to represent the Commission at the
25 Virginia State Bar meeting.

26 The Chairman directed Mr. Miller to identify other groups to address with regard to the
27 reorganization project. Delegate Hurt offered to speak to the Board of Governors of the
28 Virginia Bar Association.

29 The Commission decided that it might be helpful to get VITA involved with the
30 workgroup and other affected state agencies. The Chairman asked Mr. Miller to
31 coordinate VITA's involvement with the workgroup.

32 Other discussion items with regard to cost savings were the possibility of delaying
33 effective dates on the future recodifications of Titles 8.01, 18.2 and 19.2 so that they
34 coincide with the entire Code reorganization. Also, a savings clause to alleviate or reduce
35 the cost of reprinting forms, publications, etc., could be formulated. Ms. Maxwell will
36 look into the possibility and practicality of eliminating code sections on forms, offering
37 forms and publications in electronic format and charging for those requesting these
38 documents in print form.

39 The Commission agreed that a resolution passed by the General Assembly directing the
40 Code Commission to establish a work group to reorganize the Code of Virginia would be
41 helpful. Mr. Miller stated that he would draft the resolution.

1 Mr. Miller summed up the discussion by stating that the Code Commission's position is
2 that reorganization and renumbering of the Code of Virginia are needed, and the
3 Commission definitely wants to move forward. The major issue is the fiscal impact on
4 the affected state agencies and that the agencies here today will need additional resources
5 no matter when a reorganization takes place. The Commission agreed that costs would be
6 mitigated by doing the project all at once instead of in a piecemeal fashion. The
7 Commission will make it a priority to try to find ways to reduce revenue implications.

8 **STATUS OF CODE REORGANIZATION**

9 Ken Patterson referred to the title reorganization summary, which provides a chart
10 showing the status of each title. The titles outstanding are Title 3.1, which is currently
11 being recodified, and Titles 2.2 and 4.1, which are expected to be proposed at the
12 November meeting. Mr. Patterson stated that approval of the proposed reorganizations
13 would complete Phase 1. Phase 2 would be the renumbering of sections. Mr. Patterson
14 reminded the members that the Division of Legislative Automated Systems would prefer
15 that the renumbering be done all at once.

16 The Commission discussed other strategies for ensuring the success of the reorganization
17 project. It is imperative to garner support from state agencies and the General Assembly.
18 Mr. Miller stated that significant amounts of staff time and effort will continue to be put
19 towards this project and emphasized the need for prior General Assembly approval so
20 that the work is not done in vain.

21 Delegate Landes stated that this project will be continued in the spring. At this time, the
22 Commission will develop talking points, a timeline and options for accomplishing the
23 goal; staff will generate and present samples of renumbered titles; and Commission
24 representatives will brief organizations at their spring meetings,

25 **STAFF REPORT ON OBSOLETE LAWS**

26 Mindy Tanner stated that she reviewed the 2000 and 2001 Acts of Assembly and that
27 none of those acts were identified as obsolete at this time.

28 Ms. Tanner presented three code sections (§§ 10.1-1454.3, 32.1-11.4 and 32.1-102.13)
29 with a recommendation that they be repealed. In addition, she presented her findings on
30 two code sections (§§ 32.1-92.1 and 32.1-92.2) that were previously brought before the
31 Commission as possible candidates for repeal.

32 Section 10.1-1454.3, regulation of road transportation of waste, is recommended for
33 repeal as it has been found unconstitutional under the dormant commerce clause in that it
34 disproportionately burdens trucks carrying waste from outside of Virginia. Mr. Ferguson
35 and Senator Edwards would like to consider amending the section to fix the problem
36 instead of repealing the section in its entirety. Delegate Landes asked Mr. Ferguson to
37 work with Ms. Tanner and Mr. Farber on fixing the statute if possible and appropriate.
38 However, Mr. Farber advised the Chairman that the statute had been reviewed with the
39 intent to fix the problem, but it had been determined that there was no way to fix it. The
40 Commission members asked staff to provide them with a copy of the court case for their
41 review prior to making a final decision.

1 Section 32.1-11.4, worksite health promotion grants program, is recommended for repeal
2 because the program was never funded. The Department of Health has no objection to the
3 repeal of this section. Senator Edwards made a motion, seconded by Mr. Ferguson, to
4 repeal the section. The motion was approved.

5 Section 32.1-102.13, transition of elimination of medical care facilities certificate of
6 public need, is recommended for repeal because the section is no longer necessary. The
7 Joint Commission on Health Care (JCHC) was contacted and agreed that the section
8 should be repealed as the section's provision pertaining to JCHC has been accomplished.
9 Mr. Ferguson made a motion, seconded by Mr. Miller, to repeal this section. Staff was
10 asked to contact Delegate Hamilton to make sure he had no objection to the Commission
11 introducing legislation to repeal this section.

12 Section 32.1-92.1 deals with funding certain abortions where pregnancy results from rape
13 or incest and § 32.1-92.2 deals with funding certain abortions where the fetus is believed
14 to have incapacitating physical deformity or mental deficiency. These sections were
15 brought to the Commission's attention during the proposed organization of Title 32.1 and
16 the staff attorney felt that these sections warranted further research to determine if they
17 were obsolete. Ms. Tanner stated that both the Departments of Health and Medical
18 Assistance Services were contacted. Though not used frequently, these Code sections are
19 used at times. Therefore, the staff recommendation is to retain these sections in the Code.

20 **RECODIFICATION OF TITLE 3.1**
21 **CHAPTER 52, FOOD AND DRINK GENERALLY**

22 Marty Farber presented Chapter 52, Food and Drink Generally, for the Commission's
23 review. This chapter was presented last year and the Commission asked staff to
24 completely rework the chapter.

25 The food and drink laws were passed at different General Assembly sessions, which
26 resulted in duplication. The previous revision of this title did not ameliorate the
27 duplication problem.

28 The Commission discussed adding a definition of "food establishment," but decided to
29 return to the issue after going through the title.

30 Mr. Ferguson made a motion, seconded by Senator Calhoun, to restore §§ 3.1-399 and
31 3.1-405 to existing language. The motion carried.

32 In § 3.1-365, a motion was made a seconded to change the words "for humans" to
33 "intended for human consumption." The motion carried.

34 Senator Edwards made a motion, seconded by Mr. Ferguson, to add the words "for
35 introduction into commerce" in § 3.1-366 (page 5, line 1 after "products") and in § 3.1-
36 385 (page 11, end of line 21). The motion carried.

37 Mr. Miller made a motion, seconded by Mr. Ferguson, to amend the language in § 3.1-
38 377 (page 8, lines 4 and 5) to make either make it more inclusive regarding the types of
39 facilities where employees work with food or to come up with some type of single
40 terminology that is all encompassing. The motion was approved.

1 Martha Moore, Virginia Farm Bureau, expressed concern with moving § 3.1-398 to
2 Article 4 because she the penalties set out in the article would apply not only to human
3 food, but also to animal food. A motion was made a seconded to use the same definition
4 of "human food" in this article as used in Article 3. The motion was approved.

5 Senator Calhoun made a motion to repeal § 3.1-401. Mr. Ferguson made a substitute
6 motion to repeal § 3.1-401 and to move the \$10 fee in that section to § 3.1-415. The
7 substitute motion was seconded and approved.

8 **OTHER BUSINESS AND PUBLIC COMMENT**

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

10 The Chairman reminded members that the Administrative Law Conference was
11 scheduled for Wednesday, November 8, which is the day before the November 9 Code
12 Commission meeting. Any Code Commission member wishing to attend the conference
13 should notify Jane Chaffin who will pay the registration fee from the Code Commission
14 budget.

15 The Chairman announced that the reconvened session for Special Session I will be held
16 November 8.

17 **ADJOURNMENT**

18 There being no further business to come before the Commission, the meeting adjourned
19 at 3:45 p.m.