

1 **VIRGINIA CODE COMMISSION**

2 *Wednesday, June 20, 2007 – 10 a.m.*  
3 General Assembly Building, 6th Floor  
4 Speakers Conference Room  
5 Richmond, Virginia 23219

6 MEMBERS PRESENT: R. Steven Landes, Chairman; S. Bernard Goodwyn; James F.  
7 Almand; Robert L. Calhoun; Frank S. Ferguson; E.M. Miller, Jr.

8 MEMBERS ABSENT: John S. Edwards; Ryan McDougle; Robert Hurt; Thomas M.  
9 Moncure, Jr.

10 OTHERS PRESENT: James P. Guy, LeClair-Ryan; Jim Morano, Dairy and Foods,  
11 Department of Agriculture and Consumer Services (VDACS); Ryan Davis, Dairy and  
12 Foods, VDACS; Rebecca Askew, VDACS; Roy Seward, VDACS; Susan Simpson,  
13 VDACS; Frank Graves, VDACS; Robert E. Bailey, OPIS - VDACS; Andy Alvarez,  
14 VDACS; Phyllis Errico, Virginia Association of Counties; Lawrence Getzler,  
15 Department of Planning and Budget; Jeannine Rose, Department of Planning and Budget;  
16 Donna Pugh Johnson, Virginia Agribusiness Council; Martha Moore, Virginia Farm  
17 Bureau

18 STAFF PRESENT: Marty Farber, Ellen Porter, Lilli Hausenfluck, Elizabeth Palen,  
19 Jane Chaffin

20 **CALL TO ORDER**

21 Delegate Landes called the meeting to order at 10:15 a.m.

22 **APPROVAL OF MINUTES**

23 A motion was made by Judge Goodwyn and seconded by Senator Calhoun to approve the  
24 minutes of the November 9, 2006, meeting. The motion was approved.

25 **REGULATION INFORMATION SYSTEM OVERVIEW**

26 Lilli Hausenfluck gave an overview of the electronic regulation filing project that has  
27 been in development for the last year. Mrs. Hausenfluck explained that the Regulation  
28 Information System (RIS) is a web-enabled application for agencies to file regulations  
29 and related items with the Virginia Registrar of Regulations for publication in the  
30 Virginia Register of Regulations.

31 RIS is linked with the Virginia Regulatory Town Hall to facilitate the process agencies  
32 use for filing regulatory actions with Town Hall for executive branch review and then  
33 filing such actions with the Registrar's office for publication in the Virginia Register.  
34 Agencies that do not file through Town Hall, such as State Corporation Commission,  
35 submit regulations directly from RIS.

36 Through the use of this filing system, the Virginia Administrative Code is updated daily,  
37 thus RIS provides the citizens of the Commonwealth with an always current Virginia  
38 Administrative Code.

1 Delegate Landes suggested that a capitol press release should be sent out about the  
2 system when the system is ready. Also, an announcement should be sent to the various  
3 legal publications.

4 **TITLE 3.1 RECODIFICATION**

5 Marty Farber advised the Commission that he has carefully reviewed the material that has  
6 been approved since the revision of Title 3.1 was initially undertaken in June 2000. He  
7 reminded the Commission that this recodification has taken an unprecedented amount of  
8 time to complete because of turnover of staff assigned to the project. Based on Mr.  
9 Farber's review, he has found it necessary to redo many approved chapters to maintain  
10 consistency within the title. Mr. Farber is ensuring that every section is shown in the  
11 report, whether stricken or not, including sections that are currently not set out in the  
12 Code. He will point out policy statements and ask the Commission to review each one  
13 and determine whether to strike from the Code according to policy. Finally, chapter notes  
14 are being added throughout. Ellen Porter stated that 65 pieces of legislation affecting 175  
15 sections had been amended between 2004 and 2007 and these 175 sections had to be  
16 updated.

17 Mr. Farber stated that after the Commission reviews the six chapters presented today,  
18 there are 12 chapters remaining of the 65 total chapters.

19 Chapter 51, Food and Drink. Mr. Farber pointed out a terminology issue beginning on  
20 page 3, line 15. Staff recommends adding "or his designee" after "duly authorized  
21 agents." The Commission discussed defining "delegation of authority," but determined it  
22 was unnecessary because such delegation provisions already exist in Title 2.2. Ellen  
23 Porter indicated that there has been some concern that adding "or his designee" might  
24 limit authority. Frank Ferguson stated that he does not believe that this addition changes  
25 the law and made a motion to add "or his designee" throughout. Mr. Miller seconded the  
26 motion. There was further discussion about the formality of "designee" and whether the  
27 delegation must be in writing. Discussion indicated that an agency head can delegate  
28 verbally unless the Code prohibits delegation of a specific authority. Senator Calhoun  
29 stated that he believes that any delegation of authority should be specific and in writing.  
30 The motion to add "or his designee" throughout was approved.

31 There was discussion about the definition of the term "food" found on page 4, line 22 in  
32 § 3.1-365. Martha Moore, Virginia Farm Bureau, questioned the placement of the  
33 language "introduction into commerce," on page 5, line 6. She wants the language to  
34 apply to everything in Article 2 and Article 4 so you are not regulating home kitchens  
35 serving only themselves. A representative of the Virginia Department of Agriculture and  
36 Consumer Services stated that no change is needed because the right of entry is  
37 established on page 3 and limits authority to foods in commerce.

38 Mr. Ferguson prefers Ms. Moore's suggestion because it uses existing terminology. Mr.  
39 Ferguson made a motion, seconded by Judge Almand, to amend the definition of "food"  
40 in § 3.1-365 (new § 3.2-5105) on line 23 of page 4 by adding "and introduction into  
41 commerce" after "human consumption." The motion was approved.

1 Also, on page 4, line 22, Mr. Ferguson, suggested setting out the definition of "food" in  
2 both Articles 2 and 4 instead of stating in Article 2 that the term also applies to Article 4.

3 Senator Calhoun made a motion, seconded by Mr. Ferguson, to remove the language  
4 "require the Department to" on page 3, lines 7 and 8.

5 Judge Goodwyn made a motion, seconded by Judge Almand to remove "or food products  
6 for introduction into commerce" from line 6 of page 5 (§ 3.1-366).

7 The Commission directed staff to attempt to come up with more generic terms for  
8 language in § 3.1-372 (page 6, line 9) and § 3.1-377 (page 8, line 12) that reads, "Any  
9 place where food is manufactured, produced, prepared, processed, packed, or exposed."

10 Senator Calhoun made a motion to combine § 3.2-5107 and § 3.2-5108. Mr. Ferguson  
11 seconded the motion and it carried.

12 Chapter 49, Animal Remedies. Mr. Farber stated that general definitions have been  
13 removed from Chapter 49 because they are covered in Chapter 1.

14 At staff's suggestion, Senator Calhoun made a motion to change "inspection fee" to  
15 "registration fee" throughout the chapter for clarification. Mr. Miller seconded the  
16 motion. VDACS supports the change. The motion carried.

17 Staff questioned the use of "flagrant" in § 3.2-4903, page 4, line 26. Mr. Farber stated  
18 that this word is used in only two other places and is used in conjunction of "willful or  
19 flagrant." The consensus of the Commission is to remove "for flagrant" on line 26.

20 In § 3.2-4905 (page 6, line 2), the reference to "Feed, Lime, Fertilizer and Animal  
21 Remedies Fund" will be added in the Fertilizer chapter. This fund is currently indicated  
22 in the Code as a special fund, but is on the books of the Comptroller as mentioned above.

23 Senator Calhoun said that the language on page 7, line 14, needs clarification and should  
24 specify that a label that cannot be seen indicates misbranding, as opposed to the  
25 information written on the label. Staff will review and rewrite if deemed appropriate.

26 Section 3.2-4909 sets out a penalty of a Class 3 misdemeanor and § 3.2-4915 sets out  
27 chapterwide penalty of a Class 1 misdemeanor. To resolve this conflict, the words "  
28 except as otherwise provided" was added at the end of § 3.2-4915.

29 Senator Calhoun made a motion to move § 3.2-4914, exemptions from chapter, from the  
30 end of the chapter to an appropriate place near the beginning of the chapter. Judge  
31 Almand seconded the motion and the motion was approved.

32 Chapter 48, Commercial Feed Act. Staff recommended changing "inspection fee" to  
33 "tonnage fee" throughout this chapter. The Commission agreed. Also, staff will change  
34 "tonnage statement" to "tonnage report."

35 On page 14, line 16, a member suggested changing "may use" to "may comply with."  
36 Staff will review and make appropriate change.

37 The Commission recessed for lunch. The two additional chapters will be reviewed after  
38 lunch.

1                                   **ADMINISTRATIVE LAW ADVISORY COMMITTEE**

2 Jim Guy, VBA Administrative Law Section Chair, presented names of potential  
3 appointments to the Administrative Law Advisory Committee (ALAC) as proposed by  
4 the VBA Administrative Law Section. The proposed slate is attached and made a part of  
5 these minutes.

6 Mr. Guy pointed out that Suzette Denslow was listed as a local government  
7 representative; however, Ms. Denslow has recently accepted an appointment at the  
8 Governor's office. Ms. Denslow was contacted and indicated that she would still be  
9 interested in serving on ALAC. Phyllis Errico is willing to represent local government if  
10 the Commission feels Ms. Denslow's appointment would not now be appropriate.

11 Mr. Guy stated that Alan Skirpan with the State Corporation Commission is  
12 recommended as Chair because of the skills he brings to the table. Senator Calhoun feels  
13 that the proposal is overweighted with government and suggested that the Commission  
14 possibly consider increasing the membership to 15.

15 Delegate Landes stated that this issue will come up for a vote at the next meeting.  
16 Delegate Landes conveyed the Commission's gratitude for the VBA Administrative Law  
17 Section's support.

18                                   **TITLE 3.1 RECODIFICATION (continued)**

19 Chapter 35, Farmer's Market. Mr. Farber indicated that the only changes to this chapter  
20 include technical changes and the removal of two unfunded programs—Produce Market  
21 Authorities, which was enacted in 1940 but no authorities have been created, and Produce  
22 Market Loan Fund, which was enacted in 1954 but was never funded.

23 Mr. Miller commented that policy statements continue to be inconsistent within the Code  
24 and suggested that the Code Commission reemphasize its policy to not include such  
25 statements in the Code of Virginia. Mr. Miller made a motion, seconded by Senator  
26 Calhoun, to delete declarations of policy within Title 3.1 if no substance exists in the  
27 policy. The motion was approved.

28                                   **VIRGINIA ADMINISTRATIVE CODE PRICE INCREASE REQUEST**

29 As allowed under the Virginia Administrative Code contract, West is requesting a price  
30 increase of 6.0% for the Virginia Administrative Code printed sets, supplements and  
31 volumes. The request is based on the 6.3% increase in the Producer Price Index for Book  
32 Publishing from January 2005 to January 2006.

	Current Price	6.0% Increase	Current Price	6.0% Increase
	State	State	Public	Public
Set w/o binders	\$174.13	\$184.50	\$286.11	\$303.00
Set w binders	\$242.49	257.00	\$416.73	442.00
Pamphlet sold separately w/o binder	\$22.41	23.75	\$26.08	27.50
Pamphlet sold separately w binder	\$27.42	29.00	\$32.29	34.25
Semiannual Supp, Set	\$43.50	46.00	\$74.70	79.00
Semiannual Supp, Pamphlet	\$11.26	12.00	\$13.15	14.00

1 Mr. Miller made a motion, seconded by Judge Goodwyn, to approve the increase  
2 effective July 1, 2007. The motion was approved.

3

### **LEGISLATIVE UPDATE**

4 Jane Chaffin reported on action taken by the 2007 Session of the General Assembly on  
5 Virginia Code Commission recommended legislation. Legislation from the obsolete laws  
6 project, legislation changing the requirement that meeting notices be published in the  
7 Virginia Register, legislation amending the Code Commission's responsibility with  
8 regard to reporting of obsolete laws, and legislation regarding population brackets were  
9 passed by the General Assembly and signed by the Governor. Of the two bills from the  
10 SJR 308 study relating to identification of tax preferences outside of Title 58.1, Senate  
11 Bill 1054 passed and Senate Bill 1055 was left in Senate Finance.

12 Ms. Chaffin also mentioned legislation initiated by the Attorney General's Regulatory  
13 Reform Task that renumbered the public participation provisions of the Administrative  
14 Process Act, reduced the comment period for fast-track rulemaking actions, and provided  
15 for the extension of emergency regulations for an additional six-month period under  
16 certain circumstances.

17 Finally, Ms. Chaffin mentioned that the Code Commission has been concerned over the  
18 past few years with the number of bills passed that contained enactments providing  
19 funding contingencies in order for the legislation to take effect. Ms. Chaffin mentioned  
20 that she could find only two bills containing such contingency language that passed  
21 during the 2007 sessions and that those two bills were identical bills.

22

### **WORK PLAN**

23 Mr. Miller stated that Title 3.2 is the priority for this year. Marty Farber is dedicated to  
24 completing this title revision and preparing legislation for the Commission's approval and  
25 introduction at the 2008 General Assembly Session. Mr. Miller stated that Frank  
26 Munyan has indicated that Title 6.1, Banking and Finance, is a candidate for  
27 recodification. Title 6.1 was last revised in 1976 and is a relatively short title. In October  
28 2005, a proposal for reorganizing Title 6.1 was reviewed and approved by the  
29 Commission as a part of the 2007 Code reorganization project. Mr. Munyan has indicated  
30 that he believes the recodification of Title 6.1 could be completed during 2008. Mr.  
31 Munyan will be authorized to commence work on the recodification now, with the goal  
32 of presenting the first portion of the new title 6.2 at the Commission's first meeting in  
33 2008.

34 Another potential candidate for revision is Title 64.1, Wills and Decedents' Estates,  
35 which includes the Uniform Trust Code recently adopted by the General Assembly.

36 The Commission agreed with Mr. Miller's suggested plan of action.

37

### **OTHER BUSINESS AND PUBLIC COMMENT**

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

1 The Chairman indicated that he had a conflict with the July 26 meeting and asked staff to  
2 poll the Commission for an alternate date.

3 **ADJOURNMENT**

4 There being no further business to come before the Commission, the meeting adjourned  
5 at 2:25 p.m.