

1 **VIRGINIA CODE COMMISSION**

2 **Wednesday, October 29, 2008 – 10 a.m.**

3 General Assembly Building, 6th Floor

4 Speaker's Conference Room

5 Richmond, Virginia 23219

6 **MEMBERS PRESENT:** R. Steven Landes, Chairman; Ryan McDougle; James F. Almand;
7 Jane M. Roush; Robert L. Calhoun; Thomas M. Moncure, Jr.; E.M. Miller, Jr.

8 **MEMBERS ABSENT:** John S. Edwards, William R. Janis, Frank S. Ferguson

9 **OTHERS PRESENT:** Leslie Ostrander and Anders Ganten, LexisNexis; Phyllis Errico;
10 Eric Finkbeiner

11 **STAFF PRESENT:** Frank Munyan, Alan Wambold, Mindy Tanner, Jane Chaffin

12 **CALL TO ORDER**

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

14 **APPROVAL OF MINUTES**

15 Mr. Moncure made a motion to approve the minutes of the September meeting as written.
16 Senator McDougle seconded the motion and the motion was approved.

17 **TITLE 3.1 TECHNICAL REVISION**

18 Marty Farber advised the Commission that a local government attorney notified staff that a 2005
19 amendment allowing towns to adopt by reference certain ordinances of surrounding counties was
20 omitted from the Title 3.1 recodification legislation (Chapter 860, 2008 Acts of Assembly) last
21 year. Legislation is needed to return the provision to the Code of Virginia. After a brief
22 discussion, Mr. Miller made a motion, seconded by Senator Calhoun, to introduce legislation to
23 amend § 3.2-6543 to incorporate the provision that was inadvertently omitted from the title
24 revision as follows: at the end of the first paragraph of subsection A, insert "Any town may
25 choose to adopt by reference any ordinance of the surrounding county adopted under this section
26 to be applied within its town limits, in lieu of adopting an ordinance of its own." The motion was
27 approved. Delegate Landes stated that he will carry the legislation.

28 **STAFF REPORT ON OBSOLETE LAWS**

29 Mindy Tanner presented four recommendations to the Commission for consideration as obsolete
30 laws:

- 31 1. Section 51.1-900, relating to pensions paid to the widows and maiden or widowed daughters
32 of Confederate veterans, is considered obsolete. The Department of Social Services reported
33 that the last eligible person passed away several years ago. Staff recommends that the
34 Commission repeal this section.
- 35 2. Section 58.1-20, relating to the filing of informative tax returns by fiduciaries paying or
36 distributing intangible personal property to beneficiaries, is reportedly not being used and

1 recommended for repeal. The Tax Commissioner was consulted and has no objection to
2 repealing the section.

3 3. The income tax credits for renewable energy source expenditures, steam producers, and
4 purchasing of machinery and equipment for processing recyclable materials as found in
5 §§ 58.1-331, 58.1-431, 58.1-439.3, and 58.1-439.8 have expired and are recommended for
6 repeal. The Tax Department was consulted on this recommendation and had no objection.
7 The legislation would include amendments to §§ 58.1-490 and 58.1-439.7 to strike cross
8 references to the sections being repealed.

9 4. Section 44-121 is recommended for repeal. This section provides that nothing in Chapter 1 of
10 Title 44 (Military Laws of Virginia) shall be construed to repeal § 56-385. Section 56-385,
11 which dealt with transportation of troops by railroads in times of peril, was repealed by
12 Chapters 114 and 157, 1996 Acts of Assembly. The Department of Military Affairs was
13 consulted and had no objection to this recommendation.

14 At the conclusion of Ms. Tanner's presentation, Senator Calhoun made a motion to approve the
15 four recommendations in a block. Judge Almand seconded the motion and the recommendations
16 presented by Ms. Tanner were approved. Delegate Landes agreed to carry the legislation.

17 **CODIFICATION OF THE RICHMOND METROPOLITAN AUTHORITY**

18 Alan Wambold presented draft legislation to accomplish the Code Commission's decision to set
19 out the full text of the Richmond Metropolitan Authority (RMA) in the Code of Virginia. Mr.
20 Wambold explained that the legislation relocates the RMA provisions from Title 33.1, where the
21 provisions are incorporated by reference, to Title 15.2, where the entire text is set out in full.

22 The draft eliminates a provision in present law requiring the approval of the Richmond-
23 Petersburg Turnpike Authority for connection of an Authority-controlled highway to the
24 Richmond-Petersburg Turnpike. In connection with "operation of vehicle for transportation of
25 persons or property for compensation" on Authority facilities, a reference to the State
26 Corporation Commission has been changed to the Department of Motor Vehicles. A requirement
27 that no action be taken by the Authority to contravene any bond indenture governing the
28 Richmond-Petersburg Turnpike has been removed. A further reference to the Richmond-
29 Petersburg Turnpike in connection with exercise of the power of eminent domain by the
30 Authority is also removed. References to "the State Highway Commission" are changed to "the
31 Commonwealth Transportation Board." The bill also removes the definition of "Commonwealth"
32 and alphabetizes the remaining definitions. It also renumbers the subdivisions of the section that
33 sets forth the powers of the Authority. An anachronistic reference to the Virginia Constitution of
34 1902 is updated to refer to the parallel provision of the Virginia Constitution of 1971. Present §
35 33-225.44:25 dealing with the relationship between the RMA and the Richmond-Petersburg
36 Turnpike Authority is not carried forward into Title 15.2, since other sections already deal with
37 the relationship of the RMA to the Commonwealth Transportation Board. The bill contains
38 numerous technical changes.

39 Judge Almand made a motion, seconded by Senator Calhoun, to approve the draft. The motion
40 was approved.

1 **2009 CODE OF VIRGINIA SUPPLEMENTS AND REPLACEMENT VOLUMES**

2 Leslie Ostrander with LexisNexis presented the Code of Virginia proposed replacement volume
3 options and a pricing proposal reflecting a 4% increase. After review and discussion, Mr. Miller
4 made a motion to replace and add five volumes as follows:

- 5 • Volume 4, Crimes (Title 18.2)
- 6 • Volume 5A, Fiduciaries to Health (Titles 26 through 32.1)
- 7 • Split Volume 7A into two volumes by adding new Volume 7B. Volume 7A would contain
8 Titles 47.1 through 53.1 (Notaries to Corrections) and Volume 7B would contain Title 54.1
9 (Professions and Occupations)
- 10 • Volume 8A, Taxation (Title 58.1)

11 Judge Almand seconded the motion and the motion was approved.

12 With regard to pricing, Ms. Ostrander noted that the Producer Price Index reflected an increase
13 of over 7% this year, but the pricing proposal before the members is only 4% higher than in
14 2008.

15 Judge Almand made a motion to approve the pricing proposal as follows.

	2009 Proposal with Five Replacement Volumes	
	State	Private
Cumulative Supplements	\$141.00	\$183.50
Index	\$ 64.50	\$ 69.50
Replacement Volumes 4, 5A, 8A, 7A and 7B	\$175.00 (\$35 each)	\$ 220.00 (\$44 each)
Volume 11	\$ 26.50	\$ 35.00
Volume 11 Supplement	\$ 8.50	\$ 8.50
Advanced Code Service		\$ 50.50
TOTAL	\$415.50	\$567.00

16 Mr. Moncure seconded the motion and the motion was approved.

17 Mr. Miller stated that he has been working with LexisNexis representatives Anders Ganten and
18 Leslie Ostrander on a new Code of Virginia contract. The current contract expires in August
19 2009, but the new contract contemplates the printing of the facsimile reproduction of the 1819
20 Code of Virginia, which will be available in April if the contract is in place. The contract will be
21 ready for the Chairman's signature by January.

22 **ADMINISTRATIVE LAW ADVISORY COMMITTEE**

23 Elizabeth Palen reported on the work of the Administrative Law Advisory Committee (ALAC).
24 ALAC formed three subcommittees to study issues pertaining to the Administrative Process Act
25 (APA) and regulations in Virginia. The Incorporation by Reference Subcommittee is studying
26 issues related to incorporating outside documents into regulations by reference (e.g., national

1 standards, federal regulations, etc.) and will continue next year; the Administrative Process Act
2 Appeals Subcommittee developed proposed revisions to Part 2A of the Virginia Supreme Court
3 rules titled "Appeals Pursuant to the Administrative Process Act"; and the Subcommittee on
4 Exemptions from APA Rulemaking studied issues related to emergency regulations and
5 regulations promulgated under an exemption to the APA.

6 ALAC approved two recommendations from two of the subcommittees as follows:

- 7 1. The Incorporation by Reference Subcommittee recommends adding a disclaimer to the
8 Virginia Administrative code website to cover website links to outside sources that agencies
9 provide in regulation text. The suggested language for the Code Commission's approval
10 follows:

11 "The attached link(s) provided herein are for the reader's convenience only, may not necessarily be
12 active or current, and should not be relied upon. In order to ensure that the information
13 incorporated by reference is accurate, the reader is encouraged to independently go to the source
14 document described for verification."

15 Judge Roush suggested changing "independently go" to "go independently." Senator Calhoun
16 made a motion, seconded by Judge Almand, to approve the disclaimer as amended by Judge
17 Roush. The motion was approved.

- 18 2. The Appeals Subcommittee report explains that Part 2A of the Virginia Supreme Court's
19 rules has not been significantly amended since the early 1990's. Since that time, court
20 decisions, changes in statutes and other parts of the rules, and developments in the practice of
21 administrative law have pointed to the need for modernization and change.

22 Mr. Moncure made a motion, seconded by Judge Roush, to approve ALAC's
23 recommendation to submit the proposed revisions to Part 2A of the Supreme Court rules to
24 the Supreme Court for consideration. The motion carried.

25 ALAC also approved the report of the Exemptions Subcommittee, which submitted initial
26 findings of a review of emergency regulations based on legislative mandates and APA exempt
27 regulations based on federal mandates. It also briefly reported on APA exemptions that are
28 located in codified and uncodified law, but not cross referenced in the APA. This subcommittee
29 will continue its work next year.

30 **COMPILATION OF CODE COMMISSION POLICIES**

31 Jane Chaffin presented a draft compilation of Virginia Code Commission policies considered and
32 adopted by the Code Commission since 1972. Mr. Moncure suggests organizing by substantive
33 procedural policies and drafting guidelines. Ms. Chaffin will finalize the draft and bring back to
34 the Commission so that it can review and adopt or reaffirm the policies next year. Mr. Miller
35 suggested that Bill Cramme be invited to the meeting to participate in the discussion.

36 The Commission recessed for lunch.

37 **REVISION OF TITLE 6.1, BANKING AND FINANCE**

38 Chapter 11, Savings Institutions

1 Mr. Munyan stated that the initial outline for Title 6.2 was to separate savings associations and
2 savings banks into two chapters. Because of the history and development of these two entities
3 and the fact that there are no chartered state savings banks (since 2002), staff was to reorganize
4 the chapter so provisions specific to savings banks would be set out to address problems with the
5 existing structure. The Savings and Loan Act was adopted in 1972; Chapter 3.01 (Virginia
6 Savings Institutions Act) was added in 1975; and in 1991, Article 12 (Savings Banks) was added
7 at the end of Chapter 3.01. Mr. Munyan has integrated these provisions into one chapter, Chapter
8 11. Although no savings banks exist today, the workgroup wants to retain the provisions as an
9 option.

10 Mr. Munyan explained the draft to the members and the following issues were raised:

- 11 1. Staff was asked to verify the existence of the Federal Home Loan Bank and, if necessary,
12 make amendments accordingly.
- 13 2. Page 9, § 6.2-1109, representation that savings institutions accounts are insured--Judge
14 Roush questioned whether the language "without the written approval of the Commission" on
15 line 234 is necessary. Mr. Munyan will take the question to the work group for discussion
16 and bring back before the Commission.
- 17 3. Page 13, § 6.2-1113 B and C, compliance review committee records, reports and other
18 documents--Senator Calhoun asks staff to review for clarification.
- 19 4. Staff will check with industry experts about the proper term for "drive up teller windows";
20 conform the term, as appropriate; and change consistently throughout.
- 21 5. The Commission discussed § 6.2-1137 A, which, by definition, limits "off premises financial
22 services" to use of a customer's residence or place of business. Judge Almand made a motion,
23 seconded by Senator Calhoun, to remove "located in such customer's residence or place of
24 business," from this definition. The motion was approved.
- 25 6. The Commission asked staff to revisit § 6.2-1168 (page 66) with regard to whether mutual
26 savings banks should be added to section.
- 27 7. In § 6.2-1197 (page 89), the Commission discussed whether to include "director" along with
28 "officer or agent" with respect to those who are prohibited from knowingly making false
29 statements about the condition of a savings institution. The Commission decided to err on the
30 side of caution and to add "director" to this section.

31 **PUBLIC COMMENT**

32 No one from the public came forward during the public comment period.

33 **OTHER BUSINESS**

34 The Commission determined that the December 3rd meeting should be canceled.

35 **ADJOURN**

36 Upon a motion made by Judge Almand, seconded by Senator Calhoun, and approved by the
37 Commission, the meeting adjourned at 2:20 p.m.