

1 **VIRGINIA CODE COMMISSION**

2 *Tuesday, May 22, 2012 - 12 noon*
3 *General Assembly Building, 6th Floor*
4 *Speaker's Conference Room*
5 *Richmond, Virginia 23219*

6 **MEMBERS PRESENT:** John Edwards; Greg Habeeb; Jim LeMunyon; Ryan
7 McDougale; Patricia West; Robert L. Calhoun; Thomas M. Moncure, Jr.; E.M. Miller, Jr.;
8 Jeffrey S. Palmore; Wesley G. Russell, Jr.; Robert L. Tavenner

9 **MEMBERS ABSENT:** Charles S. Sharp

10 **STAFF PRESENT:** Jane Chaffin, Karen Perrine, Alan Wambold, Nicole Brenner, Lisa
11 Wallmeyer, Kristen Walsh, Wenzel Cummings

12 **Call to order and introductions**

13 Senator Edwards called the meeting to order at 12:05 p.m. He welcomed Delegate Greg
14 Habeeb to the Code Commission as its newest member.

15 **Minutes of the December 5, 2011 meeting**

16 Senator Edwards indicated that the minutes will stand as approved unless anyone
17 objected. No objections were voiced.

18 **Virginia Code Commission citizen member vacancy**

19 After introduction of the item by Jane Chaffin and brief discussion, Senator Calhoun
20 moved that the Commission recommend to the Speaker of the House of Delegates that
21 Christopher R. Nolen be appointed to the Commission as a citizen member to replace
22 Frank Ferguson. The motion was seconded and approved unanimously.

23 **2012 legislative update: Virginia Rules of Evidence; Title 64.2 recodification;**
24 **obsolete laws legislation**

25 Jane Chaffin briefly reviewed the history of the legislation regarding the Virginia Rules
26 of Evidence and that changes were made to the bill originally recommended by the
27 Commission. She indicated that the sixth enactment clause of Chapter 688 makes the
28 Commission responsible for ensuring that the catchline of every section of the Code of
29 Virginia from which any rule contained in the Rules of Evidence has been derived
30 includes a notation specifying such rule. Wes Russell moved that the Commission direct
31 the publisher, LexisNexis, to comply with this requirement. Motion was seconded and
32 approved unanimously. At the request of Senator Calhoun, Delegate Habeeb and Senator
33 Edwards addressed the changes made by the General Assembly.

34 Ms. Chaffin indicated that the General Assembly passed the bills recommended by the
35 Code Commission regarding the recodification of Title 64.2 and the repeal of obsolete
36 laws. She will send an email to all Virginia Circuit Courts clerks to advise them of the
37 recodification of Title 64.2 and asked if the Commission was aware of anyone else to
38 whom the notice should be sent. No additional recipients were identified.

39 Title 33.1 recodification

40 Alan Wambold presented the work plan for the recodification of Title 33.1, Highway,
41 Bridges and Ferries, and distributed a document entitled "Title 33.2 - Highways and
42 Other Surface Transportation," which contained a proposed outline and organization of
43 the new title. Senator Calhoun asked whether all areas under the Secretary of
44 Transportation should be in the new title, which would require adding aviation and ports
45 to the work plan. After discussion of the pros and cons of this suggestion, including the
46 number of pages involved, Senator Edwards directed Mr. Wambold to contact the
47 Virginia Ports Authority and the Department of Aviation and obtain their input. If no
48 objection, the Commission will consider adding these areas to Title 33.2.

49 The Commission discussed whether to (i) include certain transportation-related compacts
50 from Titles 15.2, 33.1, and 56 into Title 33.2 or (ii) remove the compacts from the
51 codified titles and retain them only in the Code of Virginia Compacts Volume. After a
52 general discussion of the compacts publication policy, the Commission deferred a
53 decision on this issue to be taken up at a future meeting.

54 The Commission approved Mr. Wambold's recommendation to move the Virginia
55 Highway Corporation Act of 1988 (§ 56-535 et seq.) and the Public-Private
56 Transportation Act of 1995 (§ 56-556 et seq.) from Title 56 into Title 33.2.

57 Mr. Wambold reviewed proposed Articles 1 through 10 of Chapter 4 (Highway
58 Corporations, Public-Private Partnerships, and Special Programs and Funds) and asked
59 whether any articles should be moved to Chapter 2 (Highways, Bridges, and Ferries). The
60 Commission determined to retain Articles 1 through 10 in Chapter 4.

61 Mr. Wambold reviewed proposed Articles 1 through 14 of Chapter 5 (Local and Regional
62 Highway and Transportation Programs) and suggested that the Commission might
63 consider repealing certain articles that do not appear to be used or are duplicative. After
64 discussion, the Commission decided to retain the following proposed articles in new Title
65 33.2: Richmond Metropolitan Authority (Article 9), which will move from Title 15.2;
66 Buchanan County Tourist Train Development Authority (Article 12); US Route 58
67 Corridor Development Program (Article 13); and Chesapeake Bay Bridge and Tunnel
68 District (Article 14). The consensus of the Commission regarding the Transportation
69 District within the City of Charlottesville and the County of Albemarle (Article 11),
70 which was enacted in 2004, was to obtain input from Delegates Danny Marshall and
71 David Toscano. Senator McDougle suggested a 2004 act is relatively recent and to
72 exercise caution when repealing such acts.

73 Mr. Miller asked if a work group has been established. Mr. Wambold explained that he
74 has established contacts at the Virginia Department of Transportation, the Department of
75 Rail and Public Transportation, and the Secretary of Transportation's office.
76 Representatives from the Department of Aviation and Virginia Ports Authority should be
77 added if those titles are moved into Title 33.2. Also, staff suggested involving the
78 Department of State Police, possibly the Department of Motor Vehicles, and the Office of
79 the Attorney General. The Commission discussed involving local governments, and the
80 consensus was to invite a representative from the Northern Virginia Transportation

81 Commission to participate. Further, Mr. Wambold explained that he planned to circulate
82 a draft for comments to all his contacts to obtain their input before any meeting of the
83 Commission regarding the recodification. Delegate LeMunyon reminded members that
84 the recodification work will be posted on the Code Commission's website.

85 The Commission made the following determinations based on questions raised or issues
86 identified by Mr. Wambold:

87 1. The name of the new title will depend on whether ports and aviation are included. The
88 Commission will revisit this issue later in the process.

89 2. The 2011 General Assembly changed the title "Commissioner of Transportation" to
90 Commissioner of Highways," but did not change the department name to correspond with
91 the agency head title. The Commission decided to leave the agency name as is.

92 3. The references to pre-1976 contracts in §§ 33.1-192 and 33.1-192.1 will be retained.
93 Mr. Russell will talk to the attorneys at the Attorney General's office for input.

94 4. The following sections of existing Title 33.1 will be retained in new Title 33.2:
95 §§ 33.1-23; 33.1-183; 33.1-190.2, 33.1-228; 33.1-225.2; 33.1-225.3; and 33.1-241. With
96 regard to § 33.1-247 (Ferry across Corrotoman River), Joanne Maxwell of VDOT will
97 double check on the need for this section. Also, as a general rule, the Commission
98 indicated that anything in the last 15 years be retained.

99 5. The following sections of existing Title 33.1 will be repealed: §§ 33.1-14 (VDOT
100 bookkeeping system), 33.1-225 (levy of road tax; disbursement of taxes levied prior to
101 1932); 33.1-226 (enactment of county road regulations; Craig County); and 33.1-252.1
102 (noise abatement measures; Virginia Beach expressway) .

103 7. Mr. Wambold will obtain additional information about toll bridges before a
104 determination is made whether to retain Article 4 (Toll Bridges Generally) of Chapter 3
105 of current Title 33.1. This article pertains to toll bridges built before 1928. VDOT had
106 suggested removing the article, but Senator Calhoun pointed out that the recent budget
107 affected two sections of this article.

108 In closing, Mr. Wambold said he hopes to have the recodification bill ready for
109 introduction at the 2013 legislative session, but that would depend on the issue regarding
110 aviation and ports.

111 **Delivery of notices provisions in the Code of Virginia**

112 Lisa Wallmeyer submitted her work plan for reviewing the over 1,000 references to
113 delivery of notices provisions in the Code of Virginia and identifying which provisions
114 could include an additional method of delivery, such as a commercial delivery service.
115 She explained the sizeable scope of this project and suggested that the project be divided
116 into workable sections in order to identify appropriate constituencies. Ms. Wallmeyer
117 suggested that the Commission solicit the assistance of the Boyd Graves Conference,
118 Supreme Court, and the Crime Commission to conduct a review of select titles as
119 outlined in her work plan. Options for reviewing notice delivery provisions in other titles
120 include review by the Code Commission as it undertakes a title recodification and
121 requesting the Governor's office to establish a review process of existing notice

122 provisions through the cabinet secretaries. Upon a motion made by Senator Calhoun and
123 properly seconded, the Commission unanimously adopted Ms. Wallmeyer's work plan,
124 except that the Supreme Court will be asked to look at Title 18.2 rather than the Crime
125 Commission and under "Options," the first bullet regarding establishment of a general
126 rule is adopted with the recodification of Title 33.1 being used as a pilot.

127 **Civil penalties**

128 Wenzel Cummings indicated that the civil penalties provisions in the Code of Virginia
129 need to be amended due to the following issues: failure to designate the fund to which the
130 penalty is paid, failure to designate who enforces the penalty, inconsistency in
131 nomenclature (i.e., civil fine vs. civil penalty), and a discrepancy in the purpose of the
132 penalty. He would like guidance from the Commission on the proper use of civil
133 penalties that could be put into a standard for use by drafters at DLS and approval to draft
134 a bill to fix the current penalties provisions in the Code of Virginia. The Commission
135 agreed that Mr. Cummings should present a work plan and guidelines at the next meeting.

136 **Virginia Administrative Code (VAC) contract**

137 Ms. Chaffin advised the Commission that West wants to discontinue use of the binders
138 for the print version of VAC because the binders will not be available after the current
139 year and provide the Commission with alternatives. West plans to address the
140 Commission at the next meeting and provide further details and alternatives. Ms. Chaffin
141 also advised that the current contract with West for publication of VAC will expire in
142 December 2012. Mr. Miller provided a brief history of the original contract with West
143 (Thomson Reuters) and noted that, in addition to West, LexisNexis is really the only
144 other administrative code publisher. He recommended that the Commission listen to the
145 West proposal. Ms. Chaffin indicated that in Texas, there is no contract and the entire
146 code is published every year. However, the cost of the code is considerably higher than in
147 Virginia. The Commission looked forward to receiving information from West regarding
148 its proposal.

149 **Other business; public comment; adjournment**

150 The next meeting will be on Wednesday, June 20, 2012, at 10 a.m.

151 The Chair opened the floor for public comment. As there was no public comment and no
152 further business to discuss, the meeting adjourned at 2:20 p.m.