

**VIRGINIA CODE COMMISSION**

*Monday, September 17, 2012 - 10 a.m.*

*General Assembly Building*

*House Room D*

*Richmond, Virginia 23219*

**MEMBERS PRESENT:** John Edwards; Greg Habeeb; Ryan McDougale; Charles S. Sharp; Robert L. Calhoun; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; Christopher R. Nolen; Wesley G. Russell, Jr.; Robert L. Tavenner

**MEMBERS ABSENT:** Jim LeMunyon, Jeff Palmore

**OTHERS PRESENT:** JoAnne Maxwell and Richard Walton, VDOT

**STAFF PRESENT:** Jane Chaffin, Karen Perrine, Lilli Hausenfluck, Alan Wambold, Nicole Brenner, Wenzel Cummings

**Call to order and introductions:** Senator Edwards called the meeting to order at 10:04 a.m.

**Approval of minutes:** The minutes of the August 20, 2012, meeting of the Virginia Code Commission were approved as printed and distributed to the members of the Commission.

**Civil penalties:** Wenzel Cummings provided an update on the civil penalties project. He indicated that staff reviewed existing civil penalties throughout the code and determined, in consultation with Mr. Tavenner, to retrain staff of the Division of Legislative Services on the proper drafting of civil penalties instead of putting together a bill to correct existing civil penalties. The Code Commission concurred. Senator Calhoun commented that staff might want to look into the feasibility of drafting a bill to amend Title 1 to address any inconsistencies currently in the Code.

**Title 33.1 Recodification:** Nicole Brenner and Alan Wambold presented several issues for the Code Commission's consideration before reviewing the recodification draft (proposed Chapters 1 and 2 of Title 33.2), as follows:

1. Regarding the handout titled "Conventions for Title 33.1 Title Revision," Mr. Wambold indicated staff is still working on a few items with the Virginia Department of Transportation (VDOT), including the definitions and use of the following terms: "highway," "road," and "private road." The Code Commission voiced no objections to the naming conventions.
2. Mr. Wambold began the review of the handout titled "Proposed Organization - Title 33.2, Highways and Other Surface Transportation Systems" and explained that the first two chapters of Title 33.2 required a extensive reorganization effort of existing Title 33.1. Ms. Brenner continued the review by recommending that the following sections be retained in Title 15.2 instead of moving them to Title 33.2: Multicounty Transportation Improvement Districts (§ 15.2-4600 et seq.), Transportation Improvement Districts in Individual Localities (§ 15.2-4700 et seq.), and Virginia Transportation Service District Act (§ 15.2-4800 et seq.). The Code Commission agreed and Senator Calhoun suggested cross-referencing them in Title 33.2.
3. Ms. Brenner asked if the Chesapeake Bay Bridge and Tunnel District (§ 33.1-253) should remain an incorporation by reference statute with appropriate updates added or if it should be set out in Title 33.2 in the new chapter (shown on page 3) titled "Local and Regional

- 42 Transportation Districts, Programs, and Authorities." Upon motion by Senator Calhoun and  
43 seconded by Mr. Nolen, the Code Commission unanimously voted to set out the language in  
44 the Code.
- 45 4. In response to Ms. Brenner's inquiry about whether the Federal Highway Reimbursement  
46 Anticipation Notes (FRANs) should be codified, the Code Commission asserted that it would  
47 be unusual to put this type of act in the Code. Rick Walton advised the Commission that  
48 VDOT is not issuing any more FRANs. Mr. Miller moved that FRANs not be included in the  
49 Code. The motion was seconded by Mr. Moncure and passed unanimously.
- 50 5. Ms. Brenner advised that the work group proposes moving the Virginia Highway  
51 Corporation Act of 1988 (§ 56-535 et seq.) (VHCA) and the Public-Private Transportation  
52 Act of 1995 (§ 56-556 et seq.) (PPTA) into new chapters in Title 33.2. Senator McDougle  
53 expressed a concern about this action because the provisions are unique and corporate based.  
54 Mr. Wambold described the history of how the sections were originally placed in Title 56  
55 and indicated that the consensus of the work group is to move the provisions. Mr. Walton  
56 stated that the PPTA is broad enough to cover more than public highways. Mr. Russell  
57 indicated that, at a minimum, the PPTA should be moved out of Title 56. Upon motion of  
58 Senator McDougle, seconded by Mr. Nolen, the Code Commission unanimously voted to  
59 move the PPTA from Title 56 to Title 33.2 and to leave the VHCA in Title 56.
- 60 6. Ms. Brenner requested approval to move the Northern Virginia Transportation Authority  
61 (§ 15.2-4829 et seq.), the Charlottesville-Albemarle Regional Transit Authority (§ 15.2-7022  
62 et seq.), and the Richmond Metropolitan Authority (§ 15.2-7000 et seq.) to Title 33.2. Upon  
63 motion of Senator McDougle, seconded by Delegate Habeeb, the Code Commission  
64 unanimously voted to move these provisions from Title 15.2 to Title 33.2 into a new chapter  
65 titled "Local and Regional Transportation Districts, Programs, and Authorities."
- 66 7. The final item of reorganization presented by Ms. Brenner was the proposed chapter title  
67 "Highway and Transportation Compacts." Ms. Brenner asked for guidance from the Code  
68 Commission as to whether the Virginia-North Carolina Interstate High-Speed Rail Compact,  
69 which currently is not set out in the Code of Virginia, should be included in Title 33.2. Mr.  
70 Miller inquired whether the numbering can be changed without the agreement of the other  
71 party states. The chairman deferred the decision to the next meeting to allow staff an  
72 opportunity to determine if renumbering a compact is tantamount to making a compact  
73 change requiring approval of the other states.
- 74 Ms. Brenner recommended that the Washington Metropolitan Area Transit Regulation  
75 Compact (§ 56-529 et seq.) be moved to Title 33.2. Upon motion by Senator McDougle and  
76 seconded by Mr. Russell, the Code Commission unanimously approved the recommendation.  
77 Senator Calhoun indicated that there was another Washington Metropolitan Area compact for  
78 buses and taxis, the Washington Metropolitan Area Transit Commission and asked if it  
79 would be included, also. Ms. Brenner will look into that question.
- 80 Lastly on compacts, Ms. Brenner asked if the Commission preferred placing all compacts  
81 codified in Title 33.2 together in a single chapter or placing it with the subject matter. The  
82 consensus of the Commission is to place each compact by subject matter within Title 33.2. In  
83 addition, the compacts will be placed in the compact volume.

84 Mr. Wambold began the review of the Title 33.2 recodification draft dated September 12, 2012,  
85 by noting the proposed name change for the title to reflect modern circumstances and requesting  
86 feedback from the Code Commission. Upon motion by Mr. Nolen and seconded by Mr.  
87 Moncure, the Commission voted unanimously to name proposed Title 33.2 "Highways and Other  
88 Surface Transportation Systems."

89 **Chapter 1. General Provisions: Commonwealth Transportation Board; Metropolitan**  
90 **Planning Organizations**

91 § 33.2-100 (line 19): Mr. Wambold noted that Title 33.1 did not have a titlewide definitions  
92 section, unlike many other titles of the Code, so a general definitions section was created for  
93 Title 33.2.

94 § 33.2-103 (line 103): Senator Calhoun recommended deleting § 33.2-103 as it refers to a statute  
95 from 1916. VDOT requested time to review before a decision was made and the Code  
96 Commission agreed.

97 § 33.2-116 (line 273): Senator Calhoun asked VDOT if this section is obsolete and a candidate  
98 for repeal. Mr. Walton indicated the section provided clear statutory authority for VDOT to  
99 construct a sidewalk or walkway for pedestrians if it so desired.

100 § 33.2-118 (line 290): Mr. Wambold noted that the word "incorporated" is not necessary when  
101 referring to towns as it cannot be a town unless it is incorporated. The local government  
102 representatives have no objection to deleting "incorporated" in this section or elsewhere in the  
103 title when used in this context.

104 § 33.2-121 (line 356): Mr. Wambold advised that staff was careful to use the phrase "highway  
105 construction districts" consistently throughout the title. Ms. Brenner reviewed the drafter's note  
106 addressing use of the phrase "metropolitan statistical area" instead of "standard metropolitan  
107 statistical area." The Code Commission made no changes regarding the use of "rural" and  
108 "urban" in this section.

109 § 33.2-128 (line 706): Mr. Wambold explained that existing § 33.1-12 regarding general powers  
110 and duties of the Commonwealth Transportation Board (CTB) was being split into several  
111 sections. He noted the use of "shall" instead of "may" at the beginning of each power or duty in  
112 this section, as well as the other sections derived from § 33.1-1. VDOT and staff asked the  
113 Commission for guidance on whether to use "The Board shall" or "The Board may" in subsection  
114 A as the existing language is not clear. The Code Commission concurred that "shall" is  
115 appropriate on line 706.

116 § 33.2-129 (line 769): Mr. Wambold invited representatives of VDOT to comment on the  
117 combining of existing § 33.1-19 with existing § 33.1-12 (3) to form this § 33.2-129. Mr. Walton  
118 said it appeared to be acceptable, but requested an opportunity to review.

119 *The Commission recessed from 11:50 to 12:40 to allow attendance at the swearing in of Senator*  
120 *Kenneth Alexander and for lunch.*

121 § 33.2-124 (line 401): Ms. Brenner asked the Commission to return to pages 15 and 16 and  
122 suggested changing "the main office of the Board" to "the main office of the Department." Staff  
123 pointed out that there are no offices of the CTB, and that the reference should be to the

124 Department of Transportation instead. Upon motion of Senator Calhoun and seconded by Mr.  
125 Russell, the Code Commission unanimously approved this change.

126 § 33.2-132 (line 881): Mr. Wambold pointed to lines 895-896 where he proposes to delete the  
127 phrase "for their consideration at the next session of the General Assembly." He stated that the  
128 language was added in Chapter 349, 2001 Acts of Assembly and seems to be a candidate for  
129 repeal. Senator Calhoun suggested consulting with appropriations staff before removing the  
130 language.

131 Mr. Walton expressed some concern with the newly added lead-in phrase of "The Board shall"  
132 for each subsection in this section. Senator Edwards agreed and directed staff to take another  
133 look at § 33.2-132 and the other sections that were previously in § 33.1-12 regarding the use of  
134 "may" versus "shall" as it applies to a power or duty of the CTB.

135 § 33.2-143 (line 1114): Mr. Wambold indicated that the "fund for highway maintenance and  
136 construction" has been changed to "Transportation Trust Fund." In response to an inquiry about  
137 the accuracy of this change, Ms. Maxwell indicated she believed it was correct but will confirm.

## 138 **Chapter 2. Highways, Bridges, and Ferries**

139 § 33.2-203 (line 58): Ms. Brenner suggested changing "Board" to "Department" because the  
140 CTB does not have any employees. Ms. Maxwell stated that although the CTB does not currently  
141 have any employees, the board is authorized to hire employees under certain circumstances. She  
142 offered to review the language to ensure that the language is intended for department employees.

143 § 33.2-234 (line 365): Mr. Wambold advised that the capitalization of "Interstate System" was  
144 deliberate.

145 § 33.2-226 (line 567): Mr. Wambold noted that the citation to § 15.2-4838 of the Code of  
146 Virginia will be restored based on the Code Commission's earlier vote to retain the Virginia  
147 Transportation Service District in Title 15.2.

148 § 33.2-238 (line 756): Mr. Wambold indicated that the term "transportation enhancement" may  
149 need to change. Staff and VDOT will look into this and report back to the Code Commission.

150 § 33.2-376 (line 1471): Upon a question from Senator Edwards as to the definition of "viewer,"  
151 Ms. Maxwell indicated that VDOT will check into it and report back to the Code Commission.

152 § 33.2-266 (line 1494): Mr. Wambold explained that the list of towns in subdivision B (iii) was  
153 created based on input from the municipal group. He stated identifying which towns to which  
154 this section was referring has been difficult in the past.

155 § 33.2-XXX (line 1572): Senator Calhoun asked if this section (§ 33.1-223.2:13) should be  
156 referenced in the Code as "not set out" since it applies specifically to the City of Charlottesville.  
157 Staff explained that the section as originally enacted had more general application, but now has  
158 limited application. Mr. Wambold recommended leaving it in the Code because the project is  
159 about to go forward. After discussion, Senator Calhoun agreed that the section should be retained  
160 in full.

161 § 33.2-270 (line 1772): Mr. Wambold reviewed the drafter's note regarding the composition of  
162 the Recycled Materials in Highway Construction Advisory Committee due to the merger of the  
163 Virginia Roadbuilders Association and the Virginia Aggregates Association and the abolition of

164 the Virginia Department of Waste Management. The Code Commission directed staff to obtain  
165 feedback from the Virginia Transportation Construction Alliance, Department of Environmental  
166 Quality and VDOT.

167 Senator Edwards indicated that the Code Commission will continue the review of Title 33.2 at its  
168 next meeting, beginning with Article 4, Primary State Highway System (line 1785).

169 **Other business; public comment; adjournment:** The Commission discussed rescheduling the  
170 November 7 meeting. Not only is it the day after the election but it conflicts with the annual  
171 Virginia Administrative Law Conference, which the Code Commission cosponsors. Staff  
172 indicated that a two-day meeting would be necessary if the Commission intends to complete the  
173 Title 33.1 recodification this year. Senator Edwards asked staff to look into scheduling a two-day  
174 meeting on November 8 and 9.

175 The next meeting is scheduled on Wednesday, October 3, 2012, at 10 a.m.

176 The Chair opened the floor for public comment. As there was no public comment and no further  
177 business to discuss, the meeting adjourned at 1:56 p.m.