

VIRGINIA CODE COMMISSION

Wednesday, October 3, 2012 - 10 a.m.

General Assembly Building

Speaker's Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards; Gregory D. Habeeb; Ryan T. McDougale; Charles S. Sharp; Robert L. Calhoun; James M. LeMunyon; E.M. Miller, Jr.; Christopher R. Nolen; Jeffrey S. Palmore; Wesley G. Russell, Jr.; Robert L. Tavenner

MEMBERS ABSENT: Thomas M. Moncure, Jr.

OTHERS PRESENT: JoAnne Maxwell and Richard Walton, Virginia Department of Transportation

STAFF PRESENT: Jane Chaffin, Karen Perrine, Lilli Hausenfluck, Alan Wambold, and Nicole Brenner

Call to order and introductions: Senator Edwards called the meeting to order at 10:05 a.m.

Approval of minutes: The minutes of the September 17, 2012, meeting of the Virginia Code Commission were approved as printed and distributed to the members of the Commission.

LexisNexis Code of Virginia bookbinding change: Brian Kennedy of LexisNexis explained that the binding on the Code of Virginia volumes is changing from a sewn binding (Smyth Binding) to an adhesive binding (Burst Binding). Mr. Kennedy stated that Burst Binding is now used in many states, and he passed around a volume of the Idaho Code as a sample of the adhesive binding. He further indicated that a user should not be able to tell the difference between the two bindings. He explained that the new technique is more efficient as it produces books more quickly and helps to keep costs down. The contract between LexisNexis and the Code Commission does not address binding; however, Mr. Kennedy wanted to make the Code Commission aware of the proposed change and asked for any comments or concerns. After brief discussion, the Code Commission indicated it had no objection to the change in binding methods.

Savings clause related to Title 64.2 recodification: Senator Edwards added this item to the meeting regarding SB115 (Chapter 614 of the 2012 Session of the General Assembly). Many of the forms used by attorneys still refer to "64.1" instead of "64.2" and the enactment clause does not address this issue. Delegate Habeeb indicated that the Speaker had asked him to raise the issue with the Code Commission, although it may be an issue beyond the authority of the Code Commission. The matter was deferred while Mr. Miller left the meeting to find and review the savings clause.

Title 33.1 Recodification: Bob Tavenner referred to the schedule for completion of the title recodification and requested that the members think about whether it is reasonable to push the recodification through this year. He suggested discussing this issue after reviewing today's material.

Nicole Brenner and Alan Wambold reviewed several items regarding the work plan and proposed organization before reviewing the recodification draft:

1. Virginia-North Carolina Interstate High-Speed Rail Compact. In response to a concern raised at the last meeting concerning whether changing code section numbers in a compact is

42 tantamount to changing the compact, Ms. Brenner stated that she concluded from her
43 research that this is not the case.

44 2. Upon staff recommendation, the Code Commission decided to move the Washington
45 Metropolitan Area Transit Regulation Compact from Title 56 to Title 33.2 as a new chapter
46 and set the text out in full. Currently, the compact has code section numbers assigned in Title
47 56, but the text is not set out.

48 Mr. Wambold began the review of the Title 33.2 recodification draft dated September 12, 2012,
49 beginning with Article 4 (Primary State Highway System; page 68, line 1785) of proposed
50 Chapter 2 by noting that the drafters are striving for consistency and uniformity in nomenclature.
51 The basic premise is to use "highways" unless there is a reason to use a different word.

52 **Chapter 2. Highways, Bridges, and Ferries**

53 § 33.2-274 (lines 1834-1835): Mr. Wambold asked for guidance with regard to clarifying the
54 definition of "state institution." It is not clear if the meaning extends beyond institutions of
55 higher education. Mr. Palmore stated that he will reach out to the State Council of Higher
56 Education, the Secretary of Public Safety, and the Commissioner of Behavioral Health and
57 Developmental Services with regard to this issue.

58 §§ 33.2-280 (lines 1978-1980), 33.2-310 (lines 2683-2684), 33.2-316 (lines 2993-2995): Mr.
59 Wambold advised that VDOT had made a request to replace references to specific regulations
60 with more general and up-to-date references. After a brief discussion, the Code Commission
61 approved the revised language.

62 § 33.2-281 (lines 2040-2041): Mr. Wambold referred the Code Commission to the drafting note
63 on lines 2046-2051 regarding the references and word choices. He indicated that the sentence
64 "Every provision in the charter of any such town or city insofar as it is in conflict with this
65 section is hereby repealed" may be an unconstitutional repeal as stated and proposed deleting it.
66 Mr. Habeeb asked if this change would cause provisions in charters to suddenly become
67 effective, making the deletion a substantive change that should be done legislatively. Mr. Walton
68 indicated that the entire section may be obsolete; therefore, he will review and report back to the
69 Code Commission. Mr. Miller stated that if the section is obsolete, then the deletion is not
70 substantive and is within the authority of the Code Commission.

71 §§ 33.2-298 (lines 2315) and 33.2-299 (line 2346): The Code Commission instructed staff to
72 change "facility of any utility" to "facility of a utility" on line 2320 (§ 33.2-298) and line 2350 (§
73 33.2-299) to conform to the definition of the term. It was also observed that this term is defined
74 differently in §§ 33.2-298 and 33.2-299.

75 § 33.2-303 (line 2437): At the suggestion of Senator Calhoun, the Code Commission voted to
76 modify the caption for § 33.2-303 by adding "urban county executive form of government" to
77 reflect that the section applies only to Fairfax County. Ms. Brenner stated that it could
78 theoretically apply to other localities in the future.

79 § 33.2-302 (lines 2423-2424): Mr. Wambold pointed out the drafter's note at line 2433
80 explaining that references to existing county road boards or county road commissions were
81 stricken as they were unable to find any still in existence. Although, Mr. Walton stated that he
82 does not believe any county road boards or commissions are still in existence, he indicated that

83 there is a possibility they exist in the coal counties. At Senator Edwards' request, staff will check
84 and report back.

85 § 33.2-311 (lines 2720-2849): Mr. Wambold inquired if the reference to July 1, 1992 in the
86 definition of "street" beginning at line 2752 should be updated. Mr. Walton explained the
87 ramifications of a change in this date. Mr. Miller asked if the section should be divided into
88 several shorter sections, and Mr. Wambold explained how the subsections are interdependent.
89 After brief discussion, the Code Commission made no changes to the proposed draft.

90 § 33.2-337 (line 3329): In Article 8, HOV Lanes and HOT Lanes, Mr. Wambold pointed out that
91 the statute requires the Commissioner of Highways to report on the effects of the program, but it
92 does not say to whom he reports. Mr. Walton stated that the Commissioner would report to the
93 Federal Highway Administration and the chairs of the House and Senate transportation
94 committees. Senator Edwards indicated no change was needed.

95 Repeal § 33.1-252.1 (lines 3914-3920): Mr. Wambold explained the proposed repeal of § 33.1-
96 252.1, which deals with the construction of noise abatement measures and was intended to apply
97 to the Virginia Beach Expressway. The section provides that noise abatement measures would be
98 funded from tolls collected for the use of the facility. The facility has been toll free since 1996,
99 and the population benchmarks do not describe that area anymore. The Code Commission agreed to
100 repeal the section.

101 § 33.2-359 (lines 3985-3988): The Code Commission instructed Mr. Wambold to contact
102 representatives of Giles County to determine if the reference to validating certain expenditures
103 made by Giles County is still needed.

104 §§ 33.2-364 (line 4131) and 33.2-365 (lines 4144-4169): As requested by the Code Commission
105 at its last meeting, Mr. Walton reported that viewers are appointed by a local governing body to
106 review the proposed location or relocation for a road and report back to the locality. He believed
107 that most localities now use professional staff in the planning office, but he stated that localities
108 in the southwest part of Virginia may still be using viewers. He suggested that perhaps the
109 Virginia Association of Counties (VACO) should be consulted. Staff will follow up with VACO.

110 § 33.2-375 (line 4280-4284): Mr. Wambold stated that the term "seminary of learning" is not
111 defined and asked for the Code Commission's guidance on whether the term is correct as used or
112 if it should be changed to "institution of higher education." The Commission determined that the
113 standard dictionary definition applied, and staff was asked to restore the term "seminary of
114 learning."

115 § 33.2-379 (lines 4309-4313): Mr. Russell asked if this section (§ 33.1-245) should be repealed.
116 The amounts of compensation provided for in this section have not changed since the 1970
117 recodification of Title 33. Staff was asked to check and see if the section is still applicable and
118 report back to the Commission.

119 § 33.2-110 (lines 4501-4502): Mr. Palmore will check to determine whether the Division of
120 Purchases and Supply still approves tire deflation devices used by law-enforcement officers.

121 **Unresolved issues from September 17 meeting:** At the request of Ms. Brenner, Mr. Walton
122 reviewed the following unresolved issues from the last meeting. The Code Commission thanked
123 Mr. Walton and made the following determinations:

- 124 § 33.2-103 (line 103): Obsolete; repeal § 33.1-215.
- 125 § 33.2-104 (line 113): Do not combine the two paragraphs; leave as is.
- 126 § 33.2-115 (line 247): Change the second "highways" back to "roads."
- 127 § 33.2-116 (line 273): Retain this section as is.
- 128 § 33.2-132 C (line 895): Strike "for their consideration at the next session of the General
129 Assembly."
- 130 § 33.2-143 I (line 1094): Additional information is needed and Mr. Walton will report back to
131 the Code Commission.
- 132 § 33.2-143 J (line 1116): Although oiling is no longer done, the section should be amended, not
133 repealed. Mr. Walton suggested using "dust control on highways."
- 134 § 33.2-226 (line 567): Section 15.2-4838 was not moved into new Title 33.2 so the reference to it
135 in this section will be restored.
- 136 § 33.2-238 (line 756): Update this section as certain language is obsolete.
- 137 § 33.2-376 (line 1471): As previously discussed, VACO will be contacted regarding the use of
138 viewers.
- 139 § 33.2-270 (line 1746): Repeal § 33.1-23.5:2 as obsolete. The Recycled Materials Committee
140 was disbanded in 1999, and VDOT no longer provides lists of recycled glass supply sites.
- 141 **Other business; public comment; adjournment:** Upon the recommendation of staff and after
142 brief discussion, the Code Commission decided to delay the completion of the recodification of
143 Title 33.2 until next year. Further, the Code Commission voted to change next month's two-day
144 meeting to a one-day meeting on Thursday, November 8 at 10 a.m.
- 145 The Chair opened the floor for public comment. As there was no public comment and no further
146 business to discuss, the meeting adjourned at 12:45 p.m.