

VIRGINIA CODE COMMISSION

Thursday, November 8, 2012 - 10 a.m.

General Assembly Building

Speaker's Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: John S. Edwards; Gregory D. Habeeb; James M. LeMunyon; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; Jeffrey S. Palmore; Robert L. Tavenner

MEMBERS ABSENT: Ryan T. McDougle; Charles S. Sharp; Robert L. Calhoun; Christopher R. Nolen; Wesley G. Russell, Jr.

OTHERS PRESENT: JoAnne Maxwell, Virginia Department of Transportation; Jeff Allen, Office of the Attorney General

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

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

Approval of minutes: The minutes of the October 3, 2012, meeting of the Virginia Code Commission were approved as printed and distributed to the members of the Commission, with minor typographical corrections.

Title 64.2 technical corrections: David Cotter presented draft legislation to correct an error in the Title 64.2 recodification legislation (Chapter 614 of the 2012 Acts of Assembly) that became effective October 1, 2012. Mr. Cotter explained that the language makes technical corrections to Title 64.2 by reinserting language that was inadvertently omitted during the recodification process. The omitted language was originally enacted at the 2011 Session of the General Assembly (Chapters 354 and 679). The bill contains an emergency clause and provides that it is effective retroactively to the date Title 64.2 took effect. Mr. Cotter requested that the bill go forward as a recommendation of the Code Commission.

Delegate LeMunyon moved that the Code Commission approve the draft bill presented by Mr. Cotter as a recommendation of the Code Commission. Upon a second by Mr. Miller, the Code Commission unanimously approved the motion.

Title 33.1 Recodification: Nicole Brenner brought up a policy issue concerning use of the grammatical shortcut "and/or" in legislative drafting. She advised that the term "and/or" is used throughout Title 33.1 and recommends avoiding its use in conformance with current drafting policy. Throughout Title 33.2, staff has changed the term "and/or" to "and" when the meaning is intended to be all inclusive and to "or" when the meaning is intended to include either, both, or all items. Ms. Brenner indicated that, although there was not a consensus among the work group, some work group members voiced concern with this decision, stating that such change (i) could affect contracts that became effective under current law and (ii) could be construed as one item or the other, but not both. Ms. Brenner directed the Code Commission's attention to the Public-Private Transportation Act draft (page 2, line 34) as an example.

Lilli Hausenfluck explained her research on this issue and the applicable grammatical rules. She suggested that the language could say "A or B, or both." Mr. Moncure moved to replace "and/or" with "A or B, or both," in the recodification bill where warranted and if the list were three or more, to use "A, B, C, or D, or any combination thereof." Mr. Miller seconded the motion.

42 The chair recognized Jeff Allen who is with the Attorney General's office and represents the
43 Department of Transportation. Mr. Allen indicated that some provisions where "and/or" is
44 currently used list a series of items where it would be very important to say "any combination
45 thereof" instead of "or" and that each replacement should be reviewed on a case-by-case basis.

46 Mr. Miller suggested that the Code Commission reaffirm its general policy about the use of
47 "and/or," which is that "and/or" should always be avoided in legislative drafting and the text
48 should be written to specifically state what is meant, even if more words need to be used. Mr.
49 Moncure withdrew his previous motion and Mr. Miller offered his statement as a substitute
50 motion, which was seconded by Delegate LeMunyon. The Code Commission unanimously
51 approved the motion. Ms. Brenner indicated that staff will revise the draft bill to make the
52 changes to replace "and/or" in accordance with the Code Commission's motion and bring the
53 changes back to the Code Commission to review.

54 Chapter 6, Outdoor Advertising in Sight of Public Highways. Mr. Wambold indicated that the
55 outdoor advertising chapter has been circulated to the work group, but staff has not met with
56 them yet to discuss each section.

57 Mr. Miller asked if there is a grandfather clause for signs in the existing chapter. Mr. Wambold
58 indicated there is one referring to 1936 in § 33.1-380 (§ 33.2-633) that staff is proposing to
59 repeal (lines 910 to 913). The Commission named several signs that could be older than 1936
60 and asked staff to be sure that none of these signs would be affected before removing the
61 grandfather clause. Ms. Brenner stated that VDOT maintains an index of signs and the dates they
62 were erected. She assured the members that staff would check on the age of these signs before
63 removing the grandfather clause from the title.

64 § 33.2-625 (lines 795-796): Mr. Wambold explained that the last sentence of this section (§ 33.1-
65 373) was added in 1994 and does not make sense as written. He further noted that the language
66 seems to nullify the entire chapter. Mr. Allen stated that he believes the language was added to
67 address signs temporarily placed in the right of way (e.g., political signs). Joanne Maxwell with
68 VDOT stated that she will research the legislation that enacted the provision. Staff will report
69 findings back to the Code Commission.

70 § 33.2-631 (lines 873-875): Ms. Brenner recommended repealing § 33.1-378, Construction of
71 article, and the Code Commission concurred. (Note: later in the meeting, the Code Commission
72 voted to restore this section).

73 Chapter 7, Rail and Public Transportation. Ms. Brenner reviewed that chapter and explained that
74 the chapter title was broadened to include items related to rail and public transportation that are
75 not directly related to the Department of Rail and Public Transportation. Technical changes have
76 been made throughout the chapters.

77 Chapter xx, Transportation Funding.

78 § 33.1-23.6 (line 15): Ms. Brenner asked if § 33.1-23.6, Legislative findings and purposes,
79 should be adopted but not set out in accordance with Code Commission policy. The current
80 policy is to codify provisions from the acts into the Code of Virginia only when the provisions
81 have general or permanent application; otherwise, a section number is assigned, but the text is
82 not set out in full. Mr. Palmore's indicated his position is to be more inclusive and set out the
83 provisions for public accessibility. Mr. Palmore moved that the section be set out. Delegate

84 LeMunyon seconded the motion. On a vote of 4-3, the motion failed. The consensus of the
85 Commission was to revisit the existing "not set out" policy at a later time.

86 § 33.1-223.4 (line 464): Ms. Brenner indicated that clarification changes have been made to the
87 language pertaining to the creation and management of the Virginia Alternative Fuels Revolving
88 Fund. Specifically, "alternative fuels" is changed to "alternative fuel-powered vehicles" in
89 subdivision 6. Mr. LeMunyon made a motion, seconded by Mr. Palmore, to change "electric" to
90 "electric-powered" on line 465. The motion was approved.

91 § 33.1-23.25 (line 780): Mr. Miller directed the members' attention to the end of § 33.1-23.25
92 and made a motion to strike "and by any municipality, county, or other political subdivision
93 thereof" as obsolete. Upon a second by Mr. Moncure, the Code Commission unanimously
94 adopted the motion.

95 Public-Private Transportation Act of 1995. This act is being relocated from Title 56 to Title 33.2.

96 § 33.2-918 (line 95): The Code Commission discussed whether this section (§ 56-558), which
97 states findings and policy, should be set out in the Code of Virginia or assigned a section number
98 titled "not set out." Mr. Palmore indicated subsections B, C, and D should be set out. VDOT
99 agreed and indicated the sections are directions and guidance for the agency. Mr. Allen indicated
100 that the Office of the Attorney General supported setting out the section in the Code of Virginia.
101 On motion of Mr. Palmore and second by Delegate LeMunyon, the Code Commission
102 unanimously approved setting out the full text of this section in the Code of Virginia.

103 Revisit Chapter 6, Outdoor Advertising in Sight of Public Highways: The Commission revisited
104 its earlier motion to repeal § 33.1-378 and decided to restore the section. Upon a motion by Mr.
105 Miller, seconded by Mr. Palmore, the Code Commission reconsidered its prior motion to repeal
106 § 33.1-378 at lines 873-875 in Chapter 6, Outdoor Advertising in Sight of Public Highways, and
107 will retain this section in Title 33.2. The motion was adopted with Mr. Moncure voting against
108 the motion.

109 Virginia Coalfield Coalition Authority. The Code Commission discussed whether this authority
110 exists. Ms. Maxwell stated she found a few references to this authority in some VDOT
111 documents and will check the implementation reports. Mr. Palmore will check with the Secretary
112 of the Commonwealth. Senator Edwards stated that the Code Commission will not take any
113 action on this chapter at this time.

114 Status report of the Virginia Administrative Code (VAC) Contract Subcommittee. Mr.
115 Miller indicated that the subcommittee is conducting a survey to determine who uses the print
116 VAC and who uses the annotations. Also, the subcommittee, after due diligence, identified two
117 other publishers--Darby Printing in Atlanta and Conway-Greene in Cleveland--and contacted
118 them to see if they have any interest in printing VAC. So far there has been no response from
119 these publishers. LexisNexis has also been contacted. Mr. Miller is working with West on
120 possible refinements to its offer. Mr. Miller indicated that the extension to the current contract
121 with West still needs to be signed. The subcommittee will report again at the December meeting.

122 Other business; public comment; adjournment: Jane Chaffin requested permission to use a
123 portion of the Code Commission special funds to expand the office space to include additional
124 filing cabinets and to secure the area where the active regulations are kept. Upon motion by Mr.

- 125 Tavenner, seconded by Delegate LeMunyon, the Code Commission unanimously approved an
126 expenditure of special funds not to exceed \$25,000 for this project.
- 127 The next meeting will be held on Tuesday, December 4 at 10 a.m.
- 128 The Chair opened the floor for public comment. As there was no public comment and no further
129 business to discuss, the meeting adjourned at 12:10 p.m.