

VIRGINIA CODE COMMISSION

*Tuesday, December 4, 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; Ryan T. McDougle; Charles S. Sharp; Robert L. Calhoun; Christopher R. Nolen; Wesley G. Russell, Jr.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Jessica Harrison, DLAS; Margaret Schultz, DSS; Charlene Vincent, DSS; Karen Cullen, DSS

**STAFF PRESENT:** Jane Chaffin, Karen Perrine, Lilli Hausenfluck, Sarah Stanton, and Kristen Walsh

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

**Approval of minutes:** The minutes of the November 8, 2012, meeting of the Virginia Code Commission were approved as printed and distributed to the members of the Commission.

**Code Commission website redesign demonstration:** The redesigned Code Commission website, launched this morning, was presented to the Code Commission by graphic designer Jessica Harrison of the Division of Legislative Automated Systems. Ms. Harrison indicated that the goal of redesigning the website was to make the website modern, focused, and transparent. The Division of Legislative Automated Systems is also working with Code Commission staff to redesign the websites for the Virginia Register of Regulations, Administrative Code, and Code of Virginia.

**Report of the Administrative Law Advisory Committee:** Chris Nolen, ALAC chair, presented the ALAC report, beginning with a draft bill amending § 2.2-4011 of the Code of Virginia regarding emergency regulations. Mr. Nolen explained that ALAC recommended this bill to address situations where there has been a gap between the expiration date of the emergency regulation and the effective date of the permanent replacement regulation. The bill (i) extends the duration of an emergency regulation from 12 months to 18 months and (ii) clarifies that any Governor's approval of a six-month extension beyond the 18-month timeframe must occur prior to the expiration of the emergency regulation. A couple of editorial amendments were noted, and Senator Calhoun made a motion, seconded by Mr. Palmore, to approve the legislation as amended. The motion was approved.

Next, Mr. Nolen reported that during the public comment period at the November 26, 2012, ALAC meeting a member of the public expressed concern with procedures for executive review of regulations as required by Governor's executive orders that have carried forward over several administrations. The commenter's primary concerns were that these executive orders appear to be contrary to Virginia law and cause a lack of transparency in the regulatory process. The commenter wanted to emphasize that the executive order procedures tend to delay the regulatory process and overly extend the length of time it takes to finalize a regulation. Mr. Nolen indicated that ALAC will be developing its proposed work plan early next year for submission to the Code Commission and will discuss whether this issue should be addressed by ALAC at that time.

42 Finally, Mr. Nolen explained that Senator Edwards had requested that ALAC review § 2.2-4027  
43 of the Code of Virginia, especially the substantial evidence standard. The question is whether  
44 courts should have more oversight of the administrative process. The concern is that courts  
45 assume the agencies have expertise but many do not. Mr. Nolen explained that ALAC reviewed  
46 similar statutes in other states, but did not review court opinions regarding those laws due to time  
47 constraints. ALAC also did not have an opportunity to obtain input from the Virginia Bar  
48 Association or the Virginia Supreme Court. Mr. Nolen indicated that after a lengthy discussion at  
49 its November 26 meeting ALAC did not arrive at a consensus but was willing to study this issue  
50 if the Code Commission so desires.

51 Senator Calhoun suggested that ALAC conduct a roundtable with members from the  
52 administrative law sections of the Virginia Bar Association and the Virginia State Bar to discuss  
53 this issue. Judge Sharp suggested that ALAC review Virginia Supreme Court opinions to  
54 develop parameters for new language for the statute.

55 After further discussion, Mr. Nolen indicated that ALAC will propose making this issue part of  
56 its work plan.

57 Before consideration of items 5 and 6 on the agenda, Mr. Nolen stated, "Pursuant to §§ 2.2-3112  
58 A 3 and 2.2-3114 G I am declaring that, in consideration of options regarding the Code of  
59 Virginia and Virginia Administrative Code, LexisNexis is a client of my law firm, and that I do  
60 not personally represent or provide services to LexisNexis, and that I am able to participate in the  
61 transaction fairly, objectively, and in the public interest." Senator Edwards asked if any member  
62 of the Code Commission wished for Mr. Nolen to recuse himself. No one requested recusal so  
63 Mr. Nolen participated in items 5 and 6.

64 **2013 Code of Virginia pricing and replacement volumes proposal.** Brian Kennedy, Associate  
65 Director for Government Content Acquisition, LexisNexis, presented the Code of Virginia  
66 proposed replacement volume options and pricing proposal for the 2013 Code of Virginia  
67 replacements and supplements.

68 The Commission considered Mr. Kennedy's (i) pricing proposal for issuing five volumes in 2013  
69 and (ii) proposal to replace Volumes 6B (Titles 40.1-45.1), 7A (Title 47.1-53.1), 7B (Title 54.1),  
70 8A (Title 58.1), and the second volume of the Legal Ethics Opinions (LEO2). A price increase of  
71 4.1% is proposed for state agency and private purchases.

72 Delegate Habeeb made a motion, seconded by Delegate LeMunyon, to accept the Lexis proposal  
73 to replace the volumes recommended by Mr. Kennedy and to approve the pricing proposal as  
74 follows:

	<b>2013 Prices with Five Replacement Volumes</b>	
	<b>State</b>	<b>Private</b>
Cumulative Supplements	\$167.50	\$217.00
Index	\$ 77.50	\$ 82.00
Replacement Volumes 6B, 7A, 7B, 8A, LEO2	\$207.50 (\$41.50 each)	\$260.00 (\$52 each)
Volume 11	\$ 31.50	\$ 41.50
Volume 11 Supplement	\$ 10.50	\$ 10.50
Advanced Code Service	N/A	\$ 60.00
<b>TOTAL</b>	<b>\$494.50</b>	<b>\$671.00</b>

75 **Status report of the Virginia Administrative Code (VAC) Contract Subcommittee.** Mr.  
76 Miller stated that the subcommittee met three times. The mission of the subcommittee was to  
77 review (i) the proposed extension of the current contract for the print publication of VAC and (ii)  
78 the current proposal for renewal of the contract for reasonableness and to see if there were any  
79 alternatives. A contract extension of the current terms and conditions through April 30, 2013,  
80 was signed by West and is now before the chair for his signature.

81 As to the current proposal for renewal, Mr. Miller explained that two factors are the use of the  
82 annotations and use of the print version of VAC. With the assistance of the Brenda Dillard of the  
83 Virginia Bar Association, a survey to determine who uses the print VAC and who uses the  
84 annotations was sent to the mailing list for the VBA Administrative Law Conference annual  
85 meeting. Mr. Miller thanked Ms. Dillard for sending the survey and compiling the results for the  
86 subcommittee. Jane Chaffin explained the results of the survey. Of the 67 responses, just under  
87 half use the print and about half use the annotations. Most responders requested that the  
88 annotations be made available online for free. Mr. Miller stated that the annotations are value  
89 added and are the reason the publisher sells the printed version.

90 Mr. Tavenner moved that the Code Commission meet in closed session pursuant to (i) § 30-  
91 147 B of the Code of Virginia to discuss, consider, review, or deliberate upon proposals which  
92 contain trade secrets or proprietary information submitted by Thomson Reuters - West and  
93 LexisNexis and (ii) § 2.2-3711 A 29 of the Code of Virginia to discuss the award, terms, or  
94 scope of a public contract where discussion in open session would adversely affect the  
95 bargaining position or negotiating strategy of the Commission. The motion was seconded by Mr.  
96 Miller and carried unanimously.

97 The Code Commission returned to open session and all members certified that to the best of each  
98 member's knowledge that (i) only public business matters lawfully exempted from open meeting  
99 requirements under the Virginia Freedom of Information Act and (ii) only such public business  
100 matters as were identified in the motion for the closed session were heard, discussed, or  
101 considered in the closed meeting.

102 Mr. Miller stated that the subcommittee plans to meet to finalize its recommendation and that the  
103 Commission likely will need to convene in January to make a decision on the administrative  
104 code contract.

105 **Barrier crimes study:** Senator Edwards indicated that he wanted the Code Commission to be  
106 aware of a recent study by the Department of Social Services stemming from Senate Bill 97 of  
107 the 2012 Session of the General Assembly. At Senator Edwards' request, Ms. Chaffin briefed the  
108 Commission on its earlier involvement with the issue of barrier crimes. She stated that a former  
109 Division of Legislative Services (DLS) staff attorney had approached the Code Commission in  
110 2010 with technical and organizational issues concerning the listing of barrier crimes in Titles  
111 37.2 and 63.2 and drafted a related bill for the Commission's consideration. The Commission did  
112 not endorse that bill, but voted to request the House and Senate Courts committees to review the  
113 issue. Senator Edwards introduced the legislation at the 2011 and 2012 General Assembly  
114 sessions.

115 Sarah Stanton, DLS Senior Attorney, explained that Senate Bill 97 was sponsored in the 2012  
116 General Assembly session by Senator Edwards and the legislation was continued to the 2013

117 session. Senator Norment, Chair of the Senate Courts of Justice Committee, wrote a letter to the  
118 Department of Social Services (DSS) requesting a study of bill and the proper organization of  
119 barrier crimes and background check requirements in the Code of Virginia.

120 A DSS representative reviewed the handout regarding the study, which contained specific  
121 recommendations for consideration by the General Assembly. Some of the recommendations  
122 related to reorganization of the statutes and others contained substantive amendments. There was  
123 a consensus by the workgroup with regard to the organizational changes; however, the report  
124 contains several issues for which there was no consensus and recommendations for subsequent  
125 study. The Code Commission discussed whether to endorse a bill pertaining only to the  
126 nonsubstantive organizational elements; however, no motion was made.

127 **Other business; public comment; adjournment:** There was no other business brought before  
128 the Code Commission.

129 The Chair opened the floor for public comment. As there was no public comment and no further  
130 business to discuss, the meeting adjourned at 11:50 a.m.