

VIRGINIA CODE COMMISSION

APPROVED

August 7, 2013

*Wednesday, June 19, 2013 - 10 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219*

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

4 **MEMBERS ABSENT:** Thomas M. Moncure, Jr.; Robert L. Calhoun

5 **STAFF PRESENT:** Jane Chaffin, Karen Perrine, Lilli Hausenfluck, Viqui Wagner, Andrew
6 Kubincanek, Nicole Brenner, Alan Wambold

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

8 **Approval of minutes:** Mr. Russell made a motion, seconded by Mr. Palmore, to approve the
9 minutes of the May 20, 2013, meeting of the Virginia Code Commission. The motion carried and
10 the minutes were approved as printed and distributed to the members of the Code Commission.

11 **2013-2014 proposed work plan:** The members reviewed the proposed work plan as presented
12 by Ms. Chaffin. The Code Commission first considered which Code of Virginia title to undertake
13 for recodification next year. Titles 23 (Educational Institutions), 36 (Housing), 8.01 (Civil
14 Remedies & Procedures), 22.1 (Education), 40.1 (Labor & Employment), 45.1 (Mines &
15 Mining), and 55 (Property & Conveyances) were presented as candidates at the May meeting.
16 Ms. Chaffin advised that public comment was solicited through June 18 on the titles being
17 considered by publishing notices on the Virginia Lawyers Weekly blog, on the Code
18 Commission's website, and in the Virginia Register. Although no public comment was received,
19 Kirsten Nelson, Director of Communications and Government Relations with the State Council
20 of Higher Education for Virginia (SCHEV), telephoned for more information on the
21 recodification process, and Delegate Habeeb sent an email in support of selecting Title 8.01. It
22 was noted that Ms. Nelson was in the audience and Senator Edwards asked for her input. Ms.
23 Nelson stated that SCHEV is currently looking at statutory provisions as they relate to SCHEV
24 in response to Executive Directive No. 6. SCHEV plans to recommend an omnibus bill for the
25 2014 General Assembly session to remove duplicative and obsolete provisions that are
26 identified. In response to an inquiry as to other reasons Title 23 should be recodified, Tom
27 Stevens, DLS attorney, stated that Title 23 is lacking a definitions section, the existing
28 numbering is cumbersome and unwieldy, the school charter provisions need better organization,
29 and it would be helpful to add some general language that applies to all universities in one place.

30 After discussing the issue at length, Mr. Miller moved that the Code Commission begin working
31 on the recodification of Title 23 next year and to tentatively put Title 8.01 on the work plan for
32 2015. Delegate Habeeb seconded the motion and the motion carried.

33 The Code Commission moved on to the next item on the work plan, Code of Virginia Volume
34 Update Project. Mrs. Hausenfluck, Chief Editor for DLS, explained that this project is intended
35 to make housekeeping changes to the Code on a volume by volume basis, instead of making
36 these types of changes in proposed legislation. Legislators sometimes find such housekeeping
37 changes to be a distraction from a bill's main focus. Titles will be selected based on volumes that
38 are expected to be replaced in the following year. Since it is expected that Volume 6 containing
39 Title 33.1 will be replaced next year in anticipation of the completion of the Title 33.1
40 recodification, the Editing Office currently is reading Titles 34 through 37.2, the other titles in

41 Volume 6. Only nonsubstantive changes consistent with the Code Commission's authority in
42 § 30-149 of the Code of Virginia will be considered, including style, format, cross references,
43 agency names, and punctuation. Mrs. Hausenfluck described the process as follows: (i) Bill
44 Crammé, Deputy Executive Director of DLS, will approve a list of types of changes appropriate
45 for the project, (ii) the DLS Editing Office will review a title and suggest appropriate changes
46 within the scope of the project, (iii) DLS drafters familiar with the title content will review the
47 changes to ensure none are of a substantive nature or beyond the scope of the project, and (iv)
48 Mr. Crammé will conduct a final review and approve or disapprove each change. Mr. Palmore
49 requested that a copy of the list of all types of changes to be made be sent to the Code
50 Commission members for review before starting the process.

51 Jane Chaffin explained the next item on the work plan. The Code Commission is mandated by
52 § 30-151 of the Code of Virginia to identify obsolete provisions in the acts of assembly and Code
53 of Virginia and to make recommendations, as appropriate, to the General Assembly. Although
54 the statute requires this process to be conducted no less than every four years, the Code
55 Commission generally conducts the study every two years and proposes legislation in even-
56 numbered years.

57 Hearing no objections, Senator Edwards declared that the volume update project and the obsolete
58 provisions project were approved for the work plan.

59 The Code Commission agreed to Mr. Miller's suggestion to add to the work plan a review of
60 policy decisions made by the Code Commission over the years related to title recodifications.
61 Ms. Chaffin has compiled a list of these policies and will provide it to members for review and
62 discussion at a future meeting.

63 Ms. Chaffin advised that work plan items continued from last year are the recodification of Title
64 33.1, comparison of the Model State Administrative Procedures Act with Virginia's
65 Administrative Process Act, and update of the Virginia Code Commission Regulations
66 Implementing the Virginia Register Act. Also, Boyd-Graves Conference and the Supreme Court
67 have agreed to the Code Commission's request for assistance in reviewing various code
68 provisions concerning whether to add commercial delivery service as an option in certain code
69 provisions requiring delivery of notices by U.S. postal service, therefore, this work will be
70 monitored.

71 **Policy on codification of compacts.** Ms. Chaffin referred the members to the policy on
72 codifying compacts in their notebooks that was discussed at the May meeting. After discussion,
73 the Code Commission approved the following policy: "Each compact will be assigned a code
74 section number, depending on its proper title location. If a compact is general and permanent in
75 nature, the compact will be set out in full in both the Code and in the Compacts volume.
76 Otherwise, the compact will be set out in full only in the Compacts volume, and the section
77 number in the Code of Virginia will contain only a reference directing the reader to the
78 Compacts volume. The Code Commission expresses its desire to place the full text of all
79 compacts online for free public access."

80 **Administrative Law Advisory Committee (ALAC).** Chris Nolen, ALAC chair, presented the
81 ALAC 2013 work plan for approval. Continuing studies include the review of what constitutes
82 the adoption of a regulation for the purposes of appealing the regulation, hearing officer
83 deskbook updates, and Model State Administrative Procedure Act recommendations. A new

84 study being considered is guidance document availability and dissemination from the public's
85 standpoint. Mr. Nolen moved approval of the work plan. Judge Sharp seconded the motion and
86 the motion carried.

87 Mr. Nolen presented ALAC's proposed 2013-2014 budget for approval. The total amount
88 requested is \$20,000 for meetings and related expenses, consultant and intern expenses,
89 conferences and training, and publications and supplies. Mr. Nolen moved to approve the budget
90 with the caveat that any expenditure related to consultants/interns would be made in consultation
91 with the Director of Legislative Services. The motion was properly seconded and approved.

92 **Recodification of Title 33.1: Highways, Bridges and Ferries.** Nicole Brenner requested
93 approval of the new organization plan, noting that the Chesapeake Bay Bridge and Tunnel
94 District and Commission and the Northern Virginia Transportation Authority are not included on
95 today's agenda. Upon motion of Mr. Russell, seconded by Judge Sharp, the amended
96 organization plan was approved unanimously. Ms. Brenner and Mr. Wambold presented the
97 following chapters:

- 98 • Eminent Domain
- 99 • Highway Construction Contracts
- 100 • Transportation Development & Revenue Bond Act
- 101 • Local Transportation Districts
- 102 • Transportation Districts within Certain Counties
- 103 • U.S. Route 58 Corridor Develop. Fund
- 104 • NoVA Transportation District Fund
- 105 • Transportation District within the City of Charlottesville and County of Albemarle
- 106 • Charlottesville-Albemarle Regional Transit Authority
- 107 • Richmond Metropolitan Authority
- 108 • Washington Metropolitan Area Transit Regulation Compact
- 109 • Washington Metro. Area Transit Auth. Compact
- 110 • Metropolitan Planning Organizations
- 111 • Virginia Coalfield Coalition Authority (Repeal)

112 The Code Commission discussed or took action on the following:

113 Eminent Domain

- 114 • § 33.1-128 B - Delete clause (i), which reads "any (i) interest that accrued before July 1,
115 1970, shall be paid at the rate of five percent" and make related necessary technical changes.
116 This provision is no longer necessary because the Department of Transportation has no
117 outstanding certificates in this category.

118 Transportation Development & Revenue Bond Act

- 119 • § 33.1-268 (lines 79-93) - Mr. Russell inquired if the updates should include the
120 Monitor/Merrimac Bridge. Representatives of VDOT will check on this and report back.
- 121 • § 33.1-269 (new subdivision 13) - The term "railways" was added in one place based on
122 Chapter 639 (Senator Petersen's bill) of the 2013 Acts of Assembly, but the word appears to
123 have been inadvertently omitted later in the subdivision. The Code Commission directed staff
124 to add "railways" where omitted and to notify Senator Petersen and the Department of Rail
125 and Public Transportation of the change. Also, staff will update the drafting note accordingly.

- 126 • § 33.1-293 - The Code Commission discussed removing language that authorizes the board
127 to spend money for something that does not exist. Staff will work with VDOT on the
128 language and bring a recommendation back at a future meeting.

129 Transportation Districts within Certain Counties

- 130 • § 33.1-430 - The Code Commission discussed whether to identify "Fairfax" in the definition
131 of "county" by name instead of by population bracket. The Code Commission decided to
132 leave as a population bracket description.

133 Virginia Coalfield Coalition Authority - The Code Commission voted to repeal this authority at
134 the May meeting.

135 **Administrative Code.** Karen Perrine, Assistant Registrar, presented a mock-up proposed by
136 West for the new administrative code covers. The main volumes will be a dark blue with gray
137 print and the cumulative supplement volumes will be gray with blue print.

138 Also, pursuant to the Virginia Administrative Code Contract, Mrs. Perrine advised the Code
139 Commission that approval is needed when West replaces more than four volumes of the
140 administrative code in any given year. West is recommending issuing five volumes this year as
141 follows:

- 142 • Volume 1: Title 1 to 2VAC5-480 (approximately 796 text pages)
143 • Volume 2: 2VAC5-490 to end of Title 3 (approximately 744 text pages)
144 • Volume 3: 4VAC3-10 to 4VAC20-670 (approximately 802 text pages)
145 • Volume 4: 4VAC20-680 to 4VAC25-130 (approximately 958 text pages)
146 • Volume 5: 4VAC25-140 to end of Title 4 (approximately 679 text pages)

147 Mr. Miller made a motion, which was properly seconded, to replace the five volumes as
148 proposed. The motion was approved.

149 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was
150 no public comment and no further business to discuss, the meeting adjourned at 12:20 p.m.