

VIRGINIA CODE COMMISSION

APPROVED

September 18, 2013

*Wednesday, August 7, 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; Charles
2 S. Sharp; E.M. Miller, Jr.; Robert L. Tavenner; Robert L. Calhoun; Christopher R. Nolen;
3 Wesley G. Russell, Jr.

4 **MEMBERS ABSENT:** Ryan T. McDougale; Thomas M. Moncure, Jr.; Jeffrey S. Palmore

5 **OTHERS PRESENT:** Joanne Maxwell, Dusty Holcomb, Phil Abraham, Edward Mullen

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

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

9 **Approval of minutes:** Hearing no objection, Senator Edwards stated that the minutes of the June
10 19, 2013, meeting of the Virginia Code Commission stand approved as printed and distributed to
11 the members of the Code Commission.

12 **Administrative Law Advisory Committee appointments:** Senator Edwards advised that Chris
13 Nolen had resigned from the Administrative Law Advisory Committee (ALAC) due to his
14 appointment to the Code Commission. Mr. Nolen moved that Thomas Lisk be appointed
15 Chairman of ALAC and that Edward Mullen be appointed to the vacancy left by Mr. Nolen's
16 resignation. Upon second by Mr. Calhoun, the Code Commission unanimously adopted the
17 motion. The Chairman thanked Mr. Nolen for his six years of service as chair of ALAC.

18 **2014 Code of Virginia pricing and replacement volumes proposal:** Before this item was
19 introduced, Mr. Nolen stated, "Pursuant to §§ 2.2-3112 A 3 and 2.2-3114 G I am declaring that,
20 in consideration of options regarding the Code of Virginia and Virginia Administrative Code,
21 LexisNexis is a client of my law firm, and that I do not personally represent or provide services
22 to LexisNexis, and that I am able to participate in the transaction fairly, objectively, and in the
23 public interest." Senator Edwards asked if any member of the Code Commission wished for Mr.
24 Nolen to recuse himself. No one requested recusal so Mr. Nolen participated in the consideration
25 of this item.

26 Brian Kennedy with LexisNexis stated that typically his company presents its proposal for
27 replacement volumes in late fall. However, at the request of Code Commission staff in light of
28 the Code of Virginia volume update project, he was presenting the proposal at this meeting.

29 LexisNexis has identified six volumes for replacement: Volumes 1 (Titles 1-2.2), 4 (Title 18.2),
30 6A (Title 38.2), 7 (Title 46.2), and 9 (Titles 59.1-62.1) based on current sizes of the supplement
31 and Volume 6 (Titles 33.1-37.1) because of the Title 33.1 recodification. A price increase of
32 4.0% based on the Producer Price Index is proposed for state agency and private purchases.

33 Without objection, the Commission approved the LexisNexis proposal to (i) replace the volumes
34 recommended by Mr. Kennedy with the replacement of Volume 6 being contingent on the
35 passage of the Title 33.1 recodification legislation at the 2014 General Assembly Session and (ii)
36 increase the pricing by 4.0% as follows:

	2014 Prices with Six Replacement Volumes	
	State	Private
Cumulative Supplements	\$159.25	\$206.00
Index	\$ 80.75	\$ 85.25
Replacement Volumes 1, 4, 6 (contingent on passage of recodification), 6A, 7, and 9	\$259.50 (\$43.25 each)	\$324.00 (\$54 each)
Volume 11	\$ 32.75	\$ 43.25
Volume 11 Supplement	\$ 11.00	\$ 11.00
Advanced Code Service	N/A	\$ 62.50
TOTAL	\$543.25	\$732.00

37 **Code of Virginia volume update project - list of types of changes:** Lilli Hausenfluck, Chief
38 Editor, explained that the Code Commission approved this project as part of its work plan at the
39 last Code Commission meeting. The project is intended to make housekeeping changes to the
40 Code on a volume-by-volume basis, instead of making these types of changes in proposed
41 legislation. 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. As requested by the Code Commission, staff prepared a list of
44 the types of changes for review by the Code Commission members before starting the project.

45 Mrs. Hausenfluck reviewed the handout titled "Code of Virginia Style and Text Update Project
46 by Volume." After a brief discussion of how these changes will be indicated, Mr. Calhoun
47 suggested that a note to the reader, which explains the housekeeping changes, be included in the
48 new volumes that contain these types of changes.

49 **Recodification of Title 33.1: Highways, Bridges and Ferries:** Nicole Brenner requested
50 approval of the revised organization plan, noting that (i) in Subtitle II, the Virginia-North
51 Carolina Interstate High-Speed Rail Compact will be a separate chapter and the chapter on Rail
52 Funds will move to Subtitle III; (ii) the name of Subtitle III will be Transportation Funding and
53 Development; and (iii) the Hampton Roads Transportation Fund will be added to Subtitle IV.
54 Upon motion of Delegate LeMunyon, seconded by Judge Sharp, the amended organization plan
55 was approved unanimously.

56 Ms. Brenner reviewed the proposed schedule for reviewing specific chapters, and then Ms.
57 Brenner and Mr. Wambold presented the following chapters:

- 58 • Outdoor Advertising in Sight of Public Highways
- 59 • Rail and Public Transportation
- 60 • Public-Private Transportation Act of 1995
- 61 • Northern Virginia Transportation Authority

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

63 **Outdoor Advertising in Sight of Public Highways (part of Subtitle II; reviewed once before):**

- 64 • § 33.1-351 (lines 9-18) - Mr. Calhoun asked if subsection A, containing a policy statement,
65 should be removed as a general matter and not necessarily only in this section. Ms. Brenner
66 stated that concerns previously were raised over removing a policy section in another
67 chapter, so staff decided to leave them in so that the Commission can decide whether to

68 retain or remove such statements on a case-by-case basis. The Commission decided to retain
69 the policy statement in this section.

- 70 • § 33.1-380 (lines 927-928) - Staff was previously asked to check with the Department of
71 Transportation (VDOT) to determine whether the exemption for billboards erected before
72 June 19, 1936, is still needed. Mr. Wambold confirmed with VDOT that the reference to
73 signage before 1936 can be deleted. VDOT reported that the oldest permit noted is from
74 1941.

75 Rail and Public Transportation

- 76 • The Rail and Public Transportation chapter contains two articles that will be elevated to
77 chapter level. Article 1 on Rail Funds will be moved into Subtitle III, Transportation Funding
78 and Development, as a separate chapter, and Article 2 on the Virginia-North Carolina
79 Interstate High-Speed Rail Compact will stay in Subtitle II and moved from article level to
80 chapter level.

81 Public-Private Transportation Act of 1995 (PPTA)

- 82 • § 56-557 (line 16) - Ms. Brenner explained that the proposed amendment to change the word
83 "jurisdiction" to "locality or entity" raised concerns so she recommends adding the word
84 "public" before "entity" here in the definition section and then throughout the chapter for
85 clarification. Dusty Holcomb, Deputy Director of the Office of Transportation Public-Private
86 Partnerships, spoke in support of this change. Upon motion of Mr. Russell and second by Mr.
87 Nolen, the Code Commission unanimously approved this change.
- 88 • Ms. Brenner advised that staff encountered some difficulties in regard to this chapter when
89 trying to implement the Code Commission's policy to avoid using the term "and/or" (e.g.,
90 line 34). She gave some examples where replacing "and/or" works well (e.g., line 66 in the
91 definition of "Revenues") and where it does not work (e.g., line 74 in the definition of
92 "Service payments"). For this chapter only, staff has retained "and/or" in those places where
93 the private partners raised an objection. Phil Abraham representing Transurban and Edward
94 Mullen with Reed-Smith spoke in support of retaining "and/or" in certain places where the
95 replacement language seems to be more cumbersome and causes excessive wordiness.

96 Northern Virginia Transportation Authority

- 97 • § 15.2-4838 (lines 167-168) - Ms. Brenner stated that the references to § 58.1-604.5 are
98 deleted because the section does not exist in the Code of Virginia. The enactment of § 58.1-
99 604.5 was contingent on the passage of a 2002 referendum, and that referendum did not pass.
100 In clause (ii) of § 15.2-4838 B, staff proposes replacing "the counties and cities described in
101 subsections A and B of § 58.1-604.5" with "Northern Virginia." After discussion, Mr.
102 Calhoun moved that "Northern Virginia" be replaced with "localities embraced by the
103 Authority" on line 159. Upon second by Mr. Nolen, the motion passed unanimously. Mr.
104 Nolen moved that on line 168, "Northern Virginia" be replaced with "nonattainment areas
105 embraced by the Authority." Upon second by Mr. Russell, the motion passed unanimously.
- 106 • § 15.2-4838.1 (lines 211, 213, 218, 220, 224, 227, 229, and 230) - Ms. Brenner advised that
107 the proposal to change "locality" to "county or city" will not be made so that towns will be
108 included.

- 109 **Other business:** Jane Chaffin reminded the Code Commission that the next meeting is
110 Wednesday, September 18, 2013, at 10 a.m.
- 111 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was
112 no public comment and no further business to discuss, the meeting adjourned at 11:12 a.m.