

VIRGINIA CODE COMMISSION

APPROVED

June 19, 2013

Monday, May 20, 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; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; Jeffrey S. Palmore; Robert L. Tavenner;
3 Robert L. Calhoun; Christopher R. Nolen; Wesley G. Russell, Jr.

4 **MEMBERS ABSENT:** Charles S. Sharp

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:** Delegate LeMunyon made a motion, seconded by Mr. Palmore, to
9 approve the minutes of the January 7, 2013, meeting of the Virginia Code Commission. The
10 motion carried and the minutes were approved as printed and distributed to the members of the
11 Code Commission.

12 **2013 legislative update.** Jane Chaffin advised that both bills recommended by the Code
13 Commission had passed: Senate Bill 1043 (Chapter 629) extended the duration of emergency
14 regulations from 12 to 18 months and Senate Bill 1052 (Chapter 784) made technical corrections
15 to the Title 64.1 recodification bill (Chapter 614 of the 2012 Acts of the Assembly) by
16 reinserting language inadvertently omitted from that legislation.

17 Senator Edwards explained that his bill, Senate Bill 944, regarding appeals of administrative
18 decisions had passed. He thanked the Office of the Attorney General, especially Elizabeth
19 Andrews, for its assistance with the bill.

20 **Recodification of Title 33.1: Highways, Bridges and Ferries**

21 **Organization plan and naming conventions:** Nicole Brenner reviewed the organization outline
22 and noted that significant reorganization had occurred since the Code Commission last reviewed
23 the outline. The title has now been divided into four subtitles: Subtitle I, General Provisions and
24 Transportation Entities; Subtitle II, Modes of Transportation: Highways, Bridges, Ferries, Rail,
25 and Public Transportation; Subtitle III, Transportation Funding; and Subtitle IV, Local and
26 Regional Transportation.

27 Ms. Brenner reviewed the proposed schedule for reviewing specific chapters. The Highway
28 Maintenance and Operating Fund will be added and other changes made to reflect changes made
29 by the 2013 Session of the General Assembly.

30 Regarding the Virginia Coalfield Coalition Authority (VCCA), Ms. Brenner advised that she
31 researched this authority and was unable to find any evidence that it ever existed. The Secretary
32 of the Commonwealth reported that no appointments were ever made to this authority. Ms.
33 Brenner stated that there is now a Coalfield Development Authority, which may have superseded
34 VCCA. Upon motion of Senator Calhoun and seconded by Delegate LeMunyon, the Code
35 Commission unanimously voted to repeal the VCCA.

36 The Code Commission discussed the placement of the Washington Metropolitan Area Transit
37 Regulation Compact (assigned § 56-529 et seq. in the current Code of Virginia, but not set out in
38 Title 56; only set out in the Compacts volume) and the Washington Metropolitan Area Transit

39 Authority (WMATA) Compact (not assigned a code section number; only set out in the
40 Compacts volume). After discussion, the Code Commission determined to assign a section
41 number in new Title 33.2, not Title 56, to the WMATA compact and cross-reference its location
42 in the Compacts volume.

43 Upon motion of Mr. Miller and seconded by Delegate LeMunyon, the Code Commission
44 unanimously approved the organization plan as presented by Ms. Brenner. Delegate LeMunyon
45 indicated that the Northern Virginia Transportation Authority has become active and he will
46 advise the authority of this decision.

47 As a separate matter, the Code Commission discussed its policy on how compacts are referenced
48 and placed in the Code of Virginia or the Compacts volume. Upon motion of Delegate
49 LeMunyon and properly seconded, the Code Commission unanimously agreed that its new
50 policy regarding compacts would be that every compact will have a Code of Virginia section
51 number, which may simply reference the Compacts volume or which may set out the entire
52 compact. In response to a concern previously raised concerning whether changing code section
53 numbers in a compact is tantamount to changing the compact, Ms. Brenner stated that she
54 concluded from her research that this is not the case and that other states to the compact have
55 changed the numbers.

56 Regarding naming conventions, Ms. Brenner directed the Code Commission's attention to the
57 handout "Conventions for proposed Title 33.2. Highways and Other Surface Transportation
58 Systems." Ms. Brenner (i) reviewed the policy previously adopted by the Code Commission at
59 its November 8, 2012, meeting regarding discontinuance of the use of "and/or" and how this
60 phrase will be replaced; (ii) advised that based on § 1-227 of the Code of Virginia, a word in the
61 singular includes the plural and vice versa; and (iii) indicated that new Title 33.2 will not include
62 short titles, such as the one currently found in § 15.2-4500 of the Code of Virginia, based § 1-
63 244 of the Code of Virginia.

64 Abandonment and Discontinuance of Highways and Roads (part of Subtitle II): Alan Wambold
65 and Ms. Brenner reviewed the draft on abandonment and discontinuance of highways and roads.

66 • Mr. Wambold reviewed the use of the term "highways" as described in the drafting note
67 under the chapter heading on page 1. The Commission asked staff to reword the drafting note
68 on lines 16-17 to clarify that the terms "highways," "roads," "public landings," and "railroad
69 crossings" are entities that can be abandoned, not that the terms will not be used.

70 • Page 2, line 38 (§ 33.1-144) and page 19, line 506 (§ 33.1-154): The Code Commission
71 approved the deletion of the phrase "heretofore or hereafter." Ms. Brenner explained that the
72 deletion of this phrase is consistent with action taken in the Title 6.1 and Title 64.1
73 recodifications.

74 • Page 5, lines 110, 112, and 116 (§ 33.1-145) and page 7, line 173 (§ 33.1-146): As the use of
75 "order" may be outdated for local government, Ms. Brenner suggested using "ordinances,
76 resolutions, and motions" as used in § 15.2-1425 of the Code of Virginia. However, the
77 Virginia Municipal League and the Virginia Association of Counties indicated that
78 "resolution" may be the most appropriate word. Senator Calhoun explained that, in some
79 localities, an ordinance is used and not a resolution, so a more appropriate replacement for

80 "order" would be "resolution or ordinance." The Code Commission deferred action until staff
81 obtains input from the Fairfax County Attorney on this issue.

- 82 • Page 21, line 547 (§ 33.1-157): The Code Commission voted to delete "of the county" as it
83 was unnecessary due to the addition of the definition "governing body."

84 Transportation Act of 1964 (part of Subtitle IV): Mr. Wambold and Ms. Brenner reviewed the
85 draft Transportation Act of 1964.

- 86 • Page 1, lines 21-36 (§ 15.2-4501): Mr. Miller inquired if the declaration of policy was still
87 applicable and accurate. Ms. Brenner stated that the language was not examined for that
88 purpose and indicated that the work group approved retaining this section without change.
89 This issue brought up discussion of the Code Commission's general policy to not set out
90 policy and purpose in the Code. Mr. Palmore noted that an objection was made last year to
91 remove another codified policy statement because that particular policy contained some
92 substantive items, and there was concern about removing them. The Code Commission asked
93 staff to review this policy from the standpoint of whether it can be deleted and report back at
94 a future meeting.

- 95 • Page 3, lines 54-58 (§ 15.2-4502): Mr. Russell noted that the change in the definition of
96 "metropolitan area" is substantive as it gives the federal government the ability to
97 prospectively change this definition. As of today, the definition is set as defined in 1964, but
98 the change allows the definition to change as the term is changed by the federal government.
99 After discussion, the Code Commission directed staff to expand the drafter's note to highlight
100 this change and to explain the change in the executive summary of the recodification report.

- 101 • Pages 6-7, lines 148-171 (§ 15.2-4503.1): The Code Commission requested that staff rework
102 the language and move the provisions regarding the Northern Virginia Transportation
103 District and Commission to a new article (maybe after Article 3), including all exceptions.

- 104 • Pages 9-11, lines 228-277 (§ 15.2-4507 B): The Code Commission requested that staff move
105 this subsection, which appears to apply only to the Northern Virginia Transportation
106 Commission, to the new article based on § 15.2-4503.1 (lines 148-171).

- 107 • Page 14, lines 360-363 and pages 15-16, lines 388-406 (§ 15.2-4515 A 1 and B): Senator
108 Calhoun indicated that lines 360-363 conflict with line 388, etc., and that the Northern
109 Virginia Transportation Commission does not prepare a transportation plan. Ms. Brenner will
110 review these provisions and report back to the Code Commission.

- 111 • Page 17, lines 435-447 (§ 15.2-4515 C): Senator Calhoun stated that this subsection should
112 be deciphered and rewritten to clearly name the entity to which the subsection applies. Mr.
113 Miller agreed that the recodification report should specify the entity to which it is referring
114 (instead of describing the entity) and explain the replacement of the descriptive language
115 with specific language in the executive summary. Further, he requested that staff alert the
116 Code Commission if a description can be replaced by a locality or entity in every place this
117 type of change occurs. Ms. Brenner will take the issue back to the work group for review and
118 bring language back to the Commission at a future meeting.

- 119 • Pages 31-33, lines 811- 861 (§ 15.2-4528): Senator Calhoun requested that the work group
120 review this section as possibly obsolete because the Northern Virginia Transportation

121 Commission (NVTC) does not carry out the planning function (it has been taken over by the
122 Northern Virginia Transportation Authority). If not, then an exception should be added for
123 the NVTC at the beginning of the article.

124 Terminology question: Ms. Brenner referred to a handout showing an example of the deletion of
125 the phrase "heretofore or hereafter" from a prior recodification. This item was discussed earlier
126 in the meeting during the review of Abandonment and Discontinuance of Highways and Roads.

127 **2013-2014 proposed work plan:** Jane Chaffin reviewed the Code Commission proposed work
128 plan. The first item for discussion is deciding on the next title that the Code Commission should
129 undertake. Mr. Tavenner consulted with Division of Legislative Services managers and
130 suggested that the Code Commission consider recodifying Title 23 (Educational Institutions) as a
131 two-year project followed by Title 36 (Housing). Neither title has been recodified. Other titles
132 presented as future recodification candidates include Titles 8.01 (Civil Remedies and Procedure),
133 22.1 (Education), 40.1 (Labor and Employment), 45.1 (Mines and Mining), and 55 (Property and
134 Conveyances).

135 Mr. Moncure suggested that the recodification of Title 23 would be more complicated than many
136 might believe, especially creating an omnibus authority for the universities and incorporating
137 2013 legislation geared to a specific university. Mr. Russell reminded members of pending court
138 cases in which the Attorney General's office is involved. Mr. Moncure also indicated that
139 substantive changes are inevitable if the title is recodified.

140 Delegate LeMunyon recommended that the Code Commission seek public comment regarding
141 which titles to recodify. After discussion, the Code Commission decided to publish the notice in
142 the Virginia Register of Regulations and on the Code Commission website. Also, staff will
143 follow up on Mr. Palmore's suggestion to submit the notice to Virginia Lawyer's Weekly. The
144 decision regarding the next recodification will be delayed until the next meeting.

145 Upon motion of Senator McDougle and properly seconded, the Code Commission unanimously
146 voted to publish a notice seeking public comment on the recodification plan and to delay the vote
147 on the entire work plan until the next meeting.

148 Mr. Miller requested that the work plan be amended to include contract expirations as any occur.

149 **Other business:** Jane Chaffin introduced Andrew Kubincanek, who is replacing Elizabeth Palen
150 as staff support to the Administrative Law Advisory Committee.

151 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was
152 no public comment and no further business to discuss, the meeting adjourned at 12:50 p.m.