

Wednesday, October 23, 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, Robert L. Calhoun, Thomas M. Moncure, Jr., E.M. Miller, Jr., Christopher R. Nolen,
3 Wesley G. Russell, Jr., Robert L. Tavenner

4 **MEMBERS ABSENT:** Ryan T. McDougale, J. Jasen Eige

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

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

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
10 September 18, 2013, meeting of the Virginia Code Commission stand approved as printed and
11 distributed to the members of the Code Commission.

12 **Obsolete laws report (required by § 30-151 of the Code of Virginia):** Mindy Tanner
13 presented four sections in the Code of Virginia for amendment or repeal: §§ 23-8, 56-96, 56-
14 46.3, and 56-122. Ms. Tanner reviewed the rationale and background for each recommendation.
15 The Code Commission noted that § 8.9-302 had become § 8.9A-308 and questioned whether the
16 proposed amendment to § 55-96 should be to repeal the phrase "except as provided in subsection
17 (5) of § 8.9-302" or to amend it, and asked for additional research on this question.

18 On motion of Mr. Russell and seconded by Mr. Nolen, the Code Commission unanimously voted
19 to defer a decision on § 55-96 pending receipt of additional information at the November 20,
20 2013, meeting and to approve (i) the repeal of § 23-8; (ii) the replacement of references to
21 "Public Utility Holding Company Act of 1935" with "Public Utility Holding Company Act of
22 2005, which is set out at §§ 1261 et seq. of the Energy Policy Act of 2005" in § 56-46.3; and (iii)
23 the repeal of "and shall comply with the provisions of §§ 56-266 to 56-269" in § 56-122.

24 Delegate Habeeb agreed to carry the legislation for these changes.

25 **Recodification of Title 33.1: Highways, Bridges and Ferries:** Nicole Brenner informed the
26 Code Commission of two lawsuits before the Supreme Court of Virginia that could impact the
27 Code Commission's decision to move provisions regarding the Public-Private Transportation Act
28 (PPTA) from Title 56 to the new Title 33.2. One case involves several issues, including whether
29 certain tolls in the Tidewater area were taxes and the constitutionality of the PPTA. A decision in
30 this case is expected on October 31, 2013. The other case is an appeal from a State Corporation
31 Commission decision in which the commission ruled it lacked jurisdiction in the case based on
32 the definition of "public utility." Ms. Brenner explained that the terms of the PPTA are affected
33 by the definitions in Title 56. Ms. Brenner offered two options: (i) proceed with the current plan
34 to move the PPTA to Title 33.2 and add it to the list of substantive changes if the commission's
35 decision is affirmed or (ii) leave the PPTA in Title 56 with a "Reserved" chapter in Title 33.2 and
36 then add the PPTA during the 2015 Session of the General Assembly.

37 After discussion and receipt of comments from Mr. Mullen and Mr. Abraham, the Code
38 Commission requested staff to consult with the workgroup and other interested parties for a
39 mutually agreed-upon recommendation.

Wednesday, October 23, 2013

40 Ms. Brenner reviewed the organization plan and the proposed schedule noting that, after today,
41 all chapters will have been reviewed. The only outstanding issue, other than the PPTA, is the
42 reorganization of the article on the NVTC that is being reviewed by the workgroup. The final
43 report, executive summary, and special enactment clauses will be presented at the November
44 meeting.

45 Ms. Brenner and Mr. Wambold presented the following chapters, all of which the Code
46 Commission had previously reviewed, with the exception of Chapter 22 (Chesapeake Bay Bridge
47 and Tunnel District and Commission):

- 48 • Highway Systems (Chapter 3)
- 49 • Limited Access Highways, Scenic Highways and Virginia Byways, and Highways over
50 Dams (Chapter 4)
- 51 • HOV Lanes and HOT Lanes (Chapter 5)
- 52 • Toll Facilities and Ferries (Chapter 6)
- 53 • Local Authority over Highways (Chapter 7)
- 54 • Offenses Concerning Highways (Chapter 8)
- 55 • Woodrow Wilson Bridge and Tunnel Compact (Chapter 13)
- 56 • Transportation Trust Fund (Article 5 of Chapter 15)
- 57 • Highway Maintenance and Operating Fund (Article 6 of Chapter 15)
- 58 • Chesapeake Bay Bridge and Tunnel District and Commission (Chapter 22)

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

60 Highway Systems. Ms. Brenner noted that the proposed new wording in § 33.1-41.1 (new
61 § 33.2-319; lines 441-443) is an attempt to tighten a reference to regulatory requirements. Mr.
62 Calhoun asked what the reference to "then-current design standards for subdivision streets"
63 means. Mr. Moncure suggested adding "regulatory" before "design" on line 442. Senator
64 Edwards suggested adding "as established in regulations of VDOT" after "subdivision streets" on
65 line 443. After discussion, the Code Commission requested that staff review the suggestions and
66 report back in November.

67 HOV Lanes and HOT Lanes. Ms. Brenner noted that the requirement that the Commissioner of
68 Highways report on the effects of the HOV program (§ 33.2-501; lines 91-92) was intended to be
69 a one-time report. The Code Commission concurred with staff's recommendation to delete this
70 reporting requirement.

71 Local Authority over Highways.

- 72 • § 33.1-325 (new § 33.2-701; lines 38-41) - At the prior request of the Code Commission
73 that staff determine if the reference to validating certain expenditures made by Giles
74 County is still needed, Ms. Brenner confirmed that Giles County and the Virginia
75 Association of Counties have no objection to the repeal of this language.
- 76 • § 33.1-242 (new § 33.2-708; lines 226-235) - In follow up to a prior request of the Code
77 Commission to determine if the term "viewers" is valid, Ms. Brenner confirmed that the
78 term is not outdated and that localities in Virginia still use viewers. Viewers are
79 appointed by a local governing body to review and report back to the locality on the
80 proposed location or relocation of a road.
- 81 • § 33.1-245 (new § 33.2-721; line 374) - The Code Commission approved the removal of
82 the exception of Henrico County with regard to the amount of compensation of clerks of
83 boards of governing bodies.

Wednesday, October 23, 2013

84 Offenses Concerning Highways. In follow up to a Code Commission question concerning
85 whether the Division of Purchases and Supply still approves tire deflation devices used by law-
86 enforcement officers as provided in § 33.1-345 (new § 33.2-801; lines 28-31), Ms. Brenner
87 reported that Mr. Palmore had checked with the Secretary of Transportation and the Department
88 of General Services, and the language should be retained.

89 **Public comment; other business; adjournment:** The Chair opened the floor for public
90 comment. As there was no public comment and no further business to discuss, the meeting
91 adjourned at 11:15 a.m.