

Wednesday, September 18, 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. (by phone); Robert L. Tavenner; Ryan T. McDougle; Christopher R.
3 Nolen; Wesley G. Russell, Jr.; Thomas M. Moncure, Jr.; Jeffrey S. Palmore

4 **MEMBERS ABSENT:** Robert L. Calhoun

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, Marty Farber

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 August 7, 2013, meeting of the Virginia Code Commission stand approved as printed and
11 distributed to the members of the Code Commission.

12 **Title 3.2 technical correction:** Marty Farber presented draft legislation to correct an error in the
13 Title 3.2 recodification legislation (Chapter 860 of the 2008 Acts of Assembly). Mr. Farber
14 explained that the proposed bill reinserts language in § 3.2-301 that was inadvertently omitted
15 during the recodification process. The omitted language was originally enacted at the 2007
16 Session of the General Assembly (Chapter 444). The 2007 legislation added cities and towns to
17 certain provisions of the Right to Farm Act that had previously only applied to counties. The
18 proposed correcting legislation reinstates cities and towns and conforms to current drafting
19 policy by changing "county" to "locality."

20 Mr. Farber requested that the bill go forward as a recommendation of the Code Commission.

21 Judge Sharp moved that the Code Commission approve the draft bill presented by Mr. Farber as
22 a recommendation of the Code Commission. Upon a second by Mr. Russell, the Code
23 Commission unanimously approved the motion. Senator Edwards agreed to carry the bill.

24 **Recodification and drafting policies:** Jane Chaffin explained that, at the request of Mr. Miller,
25 the list of policies of the Code Commission for drafting and title recodification is presented for
26 review and comment. The policies do not include style matters as those are addressed in the DLS
27 drafting manual. Ms. Chaffin briefly reviewed each policy.

28 Ms. Chaffin indicated that the "Not Set Out" policy may need to be revisited in light of the fact
29 that the Code of Virginia is online. The Code Commission discussed the need to add the history
30 of the section to direct the reader to the Acts of Assembly and to discourage drafters and
31 legislators from including provisions that will be omitted in the statutes (e.g., policy statements,
32 purpose of the legislation, legislative intent, or provisions that do not have general or permanent
33 application). After discussion, the Code Commission decided to make no change to the "Not Set
34 Out" policy at this time.

35 Upon motion of Mr. Nolen, seconded by Mr. Palmore, the Code Commission adopted the "Code
36 Commission Policies for Drafting and Title Recodification" as presented in the handout.

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37 **Recodification of Title 33.1: Highways, Bridges and Ferries:** Nicole Brenner reviewed the
38 organization plan and the proposed schedule and noted that, after completing today's agenda, the
39 remaining chapters will be presented at the Code Commission's October meeting and the final
40 report and executive summary will be presented at the November meeting.

41 Ms. Brenner and Mr. Wambold presented the following chapters, some of which the Code
42 Commission had previously reviewed:

- 43 • Definitions; General Provisions (Subtitle I)
- 44 • Transportation Entities (Subtitle I)
- 45 • Transportation Funding (Subtitle III)

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

47 Transportation Entities

48 • § 33.1-7 (line 108) - During the prior review of this section last year, the Code Commission
49 asked that this section be brought back. Ms. Brenner noted that changes during the 2013
50 Session of the General Assembly have obviated the need for further review by the Code
51 Commission. The Code Commission concurred.

52 • Article 2 (beginning on line 148; was numbered Article 3 in September 2012 draft) -
53 Commonwealth Transportation Board; Powers and Duties - At the request of the Code
54 Commission during its prior review of this article in September 2012, staff reviewed each
55 section regarding the use of "may" versus "shall" as it applied to each power or duty of the
56 Commonwealth Transportation Board. Ms. Brenner advised that, in each instance, staff had
57 restored the original language of § 33.1-12 so that the text now reads "The Board shall have
58 the power and duty to..." The Code Commission agreed with this language.

59 • § 33.1-223.2:15 (lines 526-531) - Ms. Brenner noted in the draft discussed in September
60 2012, staff recommended amending this section with the understanding that changes in
61 federal law (MAP-21, Public Law 112-141) may require further amendments to this section.
62 Staff now recommends that this section be repealed instead of amended because the projects
63 contemplated in this section no longer qualify as federal transportation enhancements. The
64 Code Commission concurred.

65 • § 33.1-223.1 (line 645) - Staff stated that the reference to § 15.2-4502 relating to the
66 definition of "transit system" is deleted because § 15.2-4502 does not define a transit system.
67 Also, the remainder of § 33.1-223.1 clearly indicates which transit system is referenced. The
68 Code Commission had no objection to the amendments.

69 • § 33.1-3 (lines 721, 724, and 727) - Commissioner of Highways - Ms. Brenner noted the
70 proposed amendments differ from the prior draft of this section by removing language
71 regarding the residency of the commissioner and the type of appointment, which are now
72 unnecessary. Also, language regarding compensation is removed because the salary of the
73 Commissioner of Highways is addressed in the appropriation act. The Code Commission had
74 no objection to the amendments.

75 • § 33.1-183.1 (lines 802-804) - The reference to "the fund for highway maintenance and
76 construction" was changed to "the Transportation Trust Fund or the Highway Maintenance
77 and Operating Fund." Mr. Palmore asked who determines to which fund the compensation

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78 will be credited and whether this section should state how it is done. Ms. Maxwell of VDOT
79 advised that the funds are generally for construction, so the reference to the Highway
80 Maintenance and Operating Fund can be removed. The Code Commission agreed to this
81 amendment.

- 82 • § 33.1-196 (lines 1751-1762) - At the request of the Code Commission during its prior
83 review of this section, staff determined that this section is still necessary. However, the
84 "oiling" of highways for dust control has been replaced with a different treatment method.
85 Therefore, staff has updated the language. The Code Commission concurred with the
86 amendments.

87 Transportation Funding

- 88 • § 33.1-23.14 - (lines 619-622) - The Code Commission requested that an explanation of the
89 acronym "GARVEE" be included in the definition.

- 90 • § 33.1-23.26 - (line 757) - In follow-up to a point made by Mr. Miller at a prior meeting,
91 staff noted that the reference to localities has been removed in this section.

92 **Other business:** Jane Chaffin provided information regarding the November 2013
93 Administrative Law Conference, which is cosponsored by the Code Commission, and asked for
94 any member who wishes to attend to complete and return the registration form to her as soon as
95 possible. Ms. Chaffin also reminded the Code Commission that the next meeting is Wednesday,
96 October 23, 2013, at 10 a.m.

97 Mr. Moncure noted that Volume 1 of the Code of Virginia, which includes the Foreword, will be
98 replaced in 2014 and suggested that the Foreword include a statement that the Code of Virginia
99 will be completely revised in 2019. After a brief discussion of the prior attempt to completely
100 revise the code in 2007 and issues relating to a complete revision, Senator Edwards directed that
101 this item be placed on the November 2013 meeting agenda for general discussion.

102 Mr. Palmore announced that he has accepted a position with the law firm of Reed Smith, and
103 therefore, this meeting is his last one with the Code Commission. The Chair thanked Mr.
104 Palmore for his contribution to and service on the Code Commission.

105 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was
106 no public comment and no further business to discuss, the meeting adjourned at 11:22 a.m.