

*Wednesday, May 7, 2014 - 10 a.m.*  
*General Assembly Building, 6th Floor*  
*Speaker's Conference Room*  
*Richmond, Virginia 23219*

1 **MEMBERS PRESENT:** John S. Edwards; Gregory D. Habeeb; Ryan T. McDougle;  
2 E.M. Miller, Jr.; Christopher R. Nolen; Timothy G. Oksman; Charles S. Sharp; Carlos L.  
3 Hopkins

4 **MEMBERS ABSENT:** Robert L. Calhoun, Thomas M. Moncure, Jim LeMunyon, Robert L.  
5 Tavenner

6 **OTHERS PRESENT:** Kent Sinclair, Stephen Busch, Tom Lisk, Edward Mullen, Jeff Palmore

7 **STAFF PRESENT:** Jane Chaffin, Karen Perrine, Lilli Hausenfluck, Andrew Kubincanek,  
8 Nicole Brenner, Alan Wambold, Kristen Walsh, Ryan Brimmer, Tom Stevens

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

10 **Introduction of new members:** Senator Edwards recognized two new members of the Code  
11 Commission. Timothy G. Oksman, Opinions Counsel for the Attorney General, has been  
12 designated by the Attorney General as his representative and Carlos L. Hopkins, Counsel to the  
13 Governor, has been designated as the Governor's representative. Mr. Oksman and Mr. Hopkins  
14 each gave brief introductory statements and the members welcomed them to the Commission.

15 **Election of Vice Chair:** Senator Edwards called for nominations for vice chair to meet the  
16 requirements of § 30-145 of the Code of Virginia. Delegate Habeeb nominated Delegate  
17 LeMunyon who was elected unanimously. Staff was asked to notify Delegate LeMunyon of his  
18 election to vice chair of the Code Commission.

19 **Approval of minutes:** Hearing no objection, Senator Edwards stated that the minutes of the  
20 November 20, 2013, meeting of the Code Commission stand approved as printed and distributed  
21 to the members of the Code Commission.

22 **Notice provisions in the Code of Virginia:** In 2012, after exploring the issue of studying the  
23 various ways that notice provisions are handled in the Code of Virginia, the Code Commission  
24 asked the Supreme Court of Virginia and Boyd Graves Conference for assistance with studying  
25 the issue. The Boyd Graves Conference Statutory Notice Study Committee Report was presented  
26 at the Boyd Graves Conference in October 2013, and the Supreme Court's Study of Notice  
27 Provisions Report was forwarded to the Code Commission in February 2014.

28 Professor Kent Sinclair presented the Supreme Court of Virginia's report regarding the notice  
29 provisions in Titles 16.1, 17.1, 18.2, and 19.2 of the Code of Virginia. Professor Sinclair  
30 explained that, although there is a great diversity of language regarding "notice" in the Code of  
31 Virginia, the court was not aware that this was a problem that needed to be addressed. Also, the  
32 committee focused on notice provisions for delivery of papers after the initial service of process  
33 to begin a legal proceeding. In summary, the recommendation is that generalized or global  
34 provisions allowing electronic and other forms of delivery of papers do not seem either needed  
35 or safe given the wide variety of legal contexts in which such papers are to be delivered. The  
36 only possible change was one narrow form of global cross reference in the Code of Virginia  
37 related to use of commercial delivery services as an alternative where Code provisions call for  
38 "mail" (ordinary, registered, or certified) notice. The Supreme Court, however, was not  
39 recommending that a bill be introduced and was not planning on amending its rules.

40 Steve Busch, chair of the Boyd Graves Conference Statutory Notice Study Committee, provided  
41 background on the Boyd Graves Conference and presented the Boyd Grave's report on the study

42 of the notice provisions in Titles 8.01, 11, 20, 25.1, 26, 43, 50, 55, and 64.1. Mr. Busch advised  
43 that the Boyd Graves Conference also recommends that no changes be made. Further, if a change  
44 was made regarding notice, it could not be a global or singular approach but would have to be  
45 carefully considered by subject matter experts in the area as notice provisions vary widely by  
46 subject.

47 When asked by Senator Edwards, both Professor Sinclair and Mr. Busch indicated their  
48 committees had not reviewed administrative notices. Senator Edwards called on Tom Lisk, Chair  
49 of the Administrative Law Advisory Committee (ALAC), and requested that ALAC consider  
50 studying whether to expand ways administrative notice provisions are handled. Mr. Lisk advised  
51 that ALAC was meeting today and that the work plan would be discussed, and he would be  
52 presenting ALAC's work plan to the Code Commission for approval at the next Code  
53 Commission meeting.

54 There was no further discussion or action by the Code Commission. Senator Edwards thanked  
55 Professor Sinclair and Mr. Busch for their work.

56 **Administrative Law Advisory Committee (ALAC) vacancy:** Without objection, Senator  
57 Edwards took up the ALAC agenda item out of order. Mr. Lisk explained that Elizabeth  
58 Andrews, the current representative from the Office of the Attorney General, left that office and  
59 is now working for another state agency. Ms. Andrews will continue on ALAC as a state agency  
60 representative, replacing Cindy Berndt. Mr. Lisk recommended the appointment of Kristina  
61 Perry Stoney of the Office of the Attorney General to ALAC. On motion of Mr. Nolen and  
62 seconded by Senator McDougle, the Code Commission unanimously approved the appointment  
63 of Ms. Stoney to ALAC.

64 **Virginia Law Portal:** Jay Landis, Director, Division of Legislative Services (DLAS), presented  
65 an overview of the new Virginia Law Portal ([law.lis.virginia.gov](http://law.lis.virginia.gov)) accessed through the  
66 Legislative Information System. The portal brings together seven sources of Virginia law in one  
67 location--Code of Virginia, Virginia Administrative Code, Constitution of Virginia, charters,  
68 authorities, compacts, and uncodified acts. The goals of the portal are (i) a professional and  
69 intuitive look for the site, (ii) compatibility with smartphones and tablets, (iii) an option to access  
70 off-line (through the Virginia law library that contains copies in e-book form); and (iv) a  
71 platform for developers to retrieve and reuse the data. The first beta version has received  
72 overwhelmingly positive responses. DLAS is preparing to release the second beta version, which  
73 incorporates feedback from users, including a report feature.

74 Jessica Harrison of DLAS reviewed and demonstrated the new and improved features of the law  
75 portal. The Code of Virginia now displays subtitles, parts, chapters, and articles, which allows  
76 better navigation. A breadcrumbs string was added so a user knows where the user is at all times.  
77 The Create Report feature allows the creation of a report by segment down to the section level.  
78 In the Virginia Administrative Code, a user can quickly drill down to agencies. From the agency  
79 list, a user can drill down to chapters and sections.

80 Delegate Habeeb suggested that older versions of Code of Virginia be made available. Members  
81 discussed backfilling the online Code with older versions, and Ms. Hausenfluck described one  
82 option as a possible method to accomplish this task.

83 **2014 Legislative wrap up:** Jane Chaffin reviewed the status of legislation recommended by the  
84 Code Commission. The three obsolete laws bills (HB 24, HB 25, HB 436) and the technical  
85 correction to Title 3.1 (SB 5) passed without amendment. Senate Bill 358, regarding the date of

86 adoption for purposes of appeal, was passed with minor amendment, which Mr. Lisk explained  
87 to the Code Commission.

88 House Bill 311, to recodify Chapter 33.1 of the Code of Virginia, passed with minor  
89 amendments recommended by the Governor's office. Ms. Brenner advised that all information  
90 has been provided to the publishers, and that she is preparing a technical corrections bill for the  
91 Code Commission's consideration for the 2015 Session of the General Assembly.

92 Delegate Habeeb asked if the term "obsolete law" was defined, as it comes up when the obsolete  
93 law bills are discussed. Ms. Chaffin explained that in 2000, the Code Commission was given the  
94 ongoing responsibility to identify obsolete statutes and Acts of Assembly, and to recommend  
95 repeal or amendment. Although there is no statutory definition of "obsolete laws," the Division  
96 of Legislative Services has a manual for the review and identification process. Ms. Brenner  
97 explained that she is reviewing and updating the DLS manual.

98 **Referral of HB 994:** Delegate Habeeb provided background information regarding HB 994. As  
99 introduced, HB 994 added a new section on human trafficking to the Code of Virginia.  
100 Currently, this crime is prosecuted under § 18.2-47, which defines "abduction" and  
101 "kidnapping," but does not use the term "human trafficking." In lieu of adding new provisions to  
102 address human trafficking, a House substitute was introduced directing the Code Commission to  
103 amend the catchline of § 18.2-47 by adding the term "human trafficking" so it would read  
104 "Abduction, human trafficking, and kidnapping defined; penalty." The Senate Committee for  
105 Courts of Justice passed by indefinitely the substitute and referred the subject matter contained in  
106 HB 994 to the Code Commission for study. Delegate Habeeb pointed out that amending the  
107 catchline is within the scope of the Code Commission's authority in § 30-149 and that catchlines  
108 are not part of law (reference § 1-217).

109 The members thoroughly discussed the viewpoints and policy considerations of amending the  
110 catchline as suggested in HB 994. Some members expressed concern about adding a term in a  
111 catchline when the term is not used or defined in the law. Other members stressed that the  
112 amendment to the catchline simply clarifies for law enforcement, prosecutors, and others that the  
113 section applies to human trafficking crimes.

114 Senator Edwards suggested that staff be requested to study this issue and present options to the  
115 Code Commission. Kristen Walsh, one of the DLS attorneys who staffs the Senate Courts of  
116 Justice Committee, stated that DLS has looked at the issue and has no policy recommendation as  
117 to a law regarding human trafficking. Ms. Walsh further stated that this issue has been studied by  
118 both the Office of the Attorney General and the Uniform Law Commission.

119 Ms. Walsh advised that if the Commission decides to add "human trafficking" to the catchline,  
120 the proposed wording in HB 994 should be revised so that the catchline reads "Abduction and  
121 kidnapping defined; human trafficking; penalty." With this change, staff believes that the order  
122 of the wording in the catchline is appropriate.

123 Senator McDougle moved that the Code Commission amend the catchline of § 18.2-47 by  
124 adding the term "human trafficking" after "defined." The motion was seconded by Delegate  
125 Habeeb. After further discussion, the Chair directed that a roll call vote be taken. The motion  
126 failed 2-6 with Delegate Habeeb and Senator McDougle voting for the motion and Mr. Hopkins,  
127 Mr. Miller, Mr. Nolen, Mr. Oksman, Judge Sharp, and Senator Edwards voting against the  
128 motion.

129 **Recodification of Title 23: Educational Institutions:** Tom Stevens briefly explained that the  
130 proposed Title 23.1 organizational outline presented today was approved by the Title 23 work

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131 group at its April 30 meeting. Ryan Brimmer explained that Title 23 currently consists of 54  
132 chapters and no subtitles. The proposed organizational outline divides Title 23.1 into five  
133 subtitles--Subtitle I, General Provisions of the State Council for Higher Education for Virginia;  
134 Subtitle II, Students and Campus; Subtitle III, Management and Financing; Subtitle IV, Public  
135 Institutions of Higher Education; and Subtitle V, Other Educational Institutions. The subtitles are  
136 further divided into 31 chapters. Mr. Brimmer reviewed the placement of chapters within each  
137 subtitle. On motion of Mr. Hopkins and second of Judge Sharp, the Code Commission  
138 unanimously approved the proposed organizational outline of Title 23.1 as presented.

139 **Virginia Administrative Code Pricing:** Jane Chaffin explained that the current Virginia  
140 Administrative Code (VAC) contract provides that West may increase the price of print VAC by  
141 an amount no greater than the change in the Producer Price Index for Book Publishing for the  
142 previous year or 5.0%, whichever is less, as long as West provides notice of the price increase  
143 and the effective date on or before May 1 of each year. Ms. Chaffin stated that on April 24, 2014,  
144 West provided notice of a 3.1% increase in the print sets and volumes of the VAC effective  
145 May 1.

146 Ms. Chaffin also presented a request on West's behalf for a 3.1% price increase in the VAC CD-  
147 ROM pricing and explained that the contract was silent on this issue. Judge Sharp made a motion  
148 to approve a 3.1% price increase for the CD-ROM. There was no second. Staff advised that Mr.  
149 Miller, who was absent momentarily, had indicated in an email that he thought the request from  
150 West was a fair one. The Chair deferred the discussion until Mr. Miller's return to the meeting, at  
151 which time he was briefed by staff on the agenda item. Mr. Miller provided a brief history of the  
152 Virginia Administrative Code contract and explained that the CD-ROM price had not been raised  
153 significantly since the first contract was executed in the 1990s.

154 Delegate Habeeb questioned whether the CD-ROM pricing should be based on the PPI for Book  
155 Publishing or some other industry data. After further discussion, Mr. Miller made a motion to  
156 approve a 3.1% price increase for the CD-ROM. There was no second to the motion.

157 The Chair requested the Virginia Administrative Code Subcommittee, consisting of Mr. Miller,  
158 Mr. Tavenner, and Mr. Nolen, to review the matter and make a recommendation regarding the  
159 CD-ROM price increase request as well as a longer term solution for the Code Commission's  
160 consideration at the next meeting.

161 **Other business:** Jane Chaffin advised that Lexis had agreed to extend the Virginia Register of  
162 Regulations printing agreement for an additional two years. She explained that Code  
163 Commission staff provides Lexis a print-ready copy of the Virginia Register every two weeks.  
164 Lexis prints the Virginia Register and distributes it to subscribers. There is no cost to the  
165 Commonwealth.

166 The Chair called on Brian Kennedy with LexisNexis. Brian advised that the annual Code of  
167 Virginia updates normally contain notations to the budget bill under certain affected sections;  
168 however, due to the fact that the budget has not been enacted, this information will not be  
169 included in the supplements, but will be available in the advance sheets once a budget passes.

170 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was  
171 no additional public comment or further business to discuss, the meeting adjourned at 12:15 p.m.