Commonwealth of Virginia

Thomas A. Lisk, Chair

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Administrative Law Advisory Committee

2014 Work Plan
Administrative Law Advisory Committee

CONTINUING

Model State Administrative Procedure Act

The Model State Administrative Procedure Act judicial work group reconvened to discuss amendments relating to default orders in administrative hearings and disqualification of hearing officers. The Administrative Law Advisory Committee (ALAC) will also discuss amendments on administrative hearings by teleconference or videoconference as a full committee.

Guidance Documents

In anticipation of a future study on guidance documents, ALAC will solicit presentations from the Department of Environmental Quality and the Department of Health Professions regarding these agencies' use of guidance documents.

NEW

Executive Review Process

ALAC formed a work group to liaise with the Department of Planning and Budget and the Governor's Office to offer input on EO-17, Development and Review of State Agency Regulations the executive order on regulations. The Governor's Office expressed an interest in hearing suggestions on implementation of this executive order.

Delivery of Administrative Notices

At the request of the Code Commission, ALAC will form a work group to discuss alternative delivery methods, such as email or commercial delivery services, for administrative notices.

Freedom of Information Act Study

Brooks Smith will monitor the FOIA Advisory Council study mandated by House Joint Resolution 96 of the 2014 Session of the General Assembly to determine if the study raises any issues of interest to ALAC.

APA Exemptions

ALAC will review House Bill 955 of the 2014 Session of the General Assembly, which amended § 2.2-4006 and was carried over to the 2015 Session.

ALAC will also review an amendment to § 2.2-4006 enacted by the 2011 Session of the General Assembly, regarding an exemption for regulations that are necessary to conform to changes in Virginia law where no agency discretion is involved. The 2011 amendment required such regulations to be filed with the Registrar's office within 90 days of the law's effective date. Some agencies are now being advised that once the 90-day period passes, they cannot use the exemption and have to go through the full or fast-track process.

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Administrative Law Advisory Committee

2014 Budget

Full and Sub-Committee Meetings and Related Expenses	$4,000.00
Consultant Expenses/Intern Expenses	$10,000.00
Conferences and Trainings	$4,600.00
Publications and Supplies	$1,400.00
Total Expenses	$20,000.00

2007 Code: Options for Statutory Numbering Scheme Presented to the Virginia Code Commission April 20, 2005

In March 2005, staff of the Division of Legislative Services undertook a 50-state code analysis to determine possible numbering schemes for the 2007 Code. Following are options recommended by the workgroup.

Option I

Title-Chapter-Section with Article embedded (Two-dash System)

Eighteen states use some version of this codification method.

1. Title-Chapter-Section (with Article embedded).

   Ex.: Wyoming Stat. §§ 11-19-101 through 11-19-117
   Title 11, Chapter 19, Article 1, Sections 1-17

   Colorado Rev. Stat. §§ 25.5-1-501 through 25.5-1-516
   Title 25.5 (added), Chapter 1, Article 5, Sections 1-16

   Tenn. Code § 26-2-309
   Title 26, Chapter 2, Article 3, Section 9

Advantages:

1. Provides a clear visual distinction between 1950 Code sections and 2007 Code sections.

2. The number gives immediate reference to its placement within the title, chapter, and article. Eliminates the problem of not knowing where article and chapter end when reading language such as: "as used in this article . . ." or "as used in this chapter . . ."

3. Allows room to grow, in that there can be 100 sections per article, rather than 100 sections per chapter as allowed by our current system.

4. Can recodify or renumber a chapter without affecting other section numbering within the title.

5. The numbering is relatively easy to read.

Disadvantages:

1. Adding new articles between existing articles may present challenges. Three solutions are possible: (i) reserve space between articles (e.g., Article 1, Article 2 [reserved], Article 3, Article 4 [reserved]); (ii) amend to the end (i.e., always add new articles at the end of the chapter); or (iii) loosely embed articles, in that an added article continues in the numbering sequence as the article that precedes it (e.g., if adding Article 3.5, continue with numbers in the 300 series)

Option II

Title-Section with Chapter embedded (One-dash System)

Some version of this numbering system is used in eleven states, including Virginia.

Ex.: Idaho Stat. §§ 7-301 through 7-314
Title 7, Chapter 3, Sections 1-14

Va. Code §§ 15.2-2240 through 15.2-2279
Title 15.2, Chapter 22, Article 6, Sections 40-79

Advantages

1. Numbering system is familiar and easy to use.

2. Since the article number is not embedded, it is easier to insert new articles between existing articles than it is with Option I. It is important to note, however, that adding intervening articles necessitates adding a "point" to the end of the section number.
   Ex.: Adding an Article 4.1 to Title 18, Chapter 5: §§ 18-525.1 through 18-525.46. To later add Article 4.2, the numbering would then be §§ 18-525.47 through 18-525.71.

Disadvantages

1. Since the 2007 Code numbering convention will be the same as that used in the 1950 Code, users may be confused distinguishing between an "old Code" reference and a "new Code" reference.

2. Chapters are limited to 100 sections, and the current Code contains numerous examples of chapters exceeding 100 sections.

3. Adding new chapters between existing chapters presents the same challenges as adding new articles presents in Option I.

4. Articles are not identifiable by the section number.

Option III

Title-Chapter-Article-Section (Three-dash System)

Used only in Indiana

Ex.: Ind. Code §§ 20-12-9-1 through 20-12-9-7
Title 20, Chapter 12, Article 9, Sections 1-7

Ind. Code § 1-1-3.5-3
Title 1, Chapter 1, Article 3.5 (added), Section 3

Advantages

1. The numbering system is very logical, making it easy to identify new chapters and articles.

2. Allows for easy distinction between 1950 Code and 2007 Code.

3. Can recodify or renumber a chapter or article without affecting other section numbering.

4. Allows room to grow, in that there can be any number of articles within a chapter, and any number of sections within an article.

Disadvantages

1. The increased series of numbers and dashes is cumbersome. It is hard to read and/or recite the Code section number.

2. Adding new chapters and articles with points or letters may further clutter the already bulky numbering.

3. This option was least favored by bill drafters participating in a pilot renumbering project, due to its unwieldy nature.

Practical Application

Below is a chart offering a comparison of the three numbering schemes, based on Title 22.1, Chapter 5, Articles 1 - 8 (§§ 22.1-28 through 22.1-57.5)

	1950 Code	Option I	Option II	Option III
Article 1	22.1-28 through 22.1-33	22-5-101 through 22-5-107	22-500 through 22-506	22-5-1-1 through 22-5-1-7
Article 2	22.1-34 through 22.1-40	22-5-201 through 22-5-209	22-507 through 22-515	22-5-2-1 through 22-5-2-9
Article 3	22.1-41 through 22.1-46	22-5-301 through 22-5-306	22-516 through 22-521	22-5-3-1 through 22-5-3-6
Article 4	22.1-47	22-5-401	22-522	22-5-4-1
Article 5	22.1-47.1 through 22.1-47.3	22-5-501 through 22-5-503	22-523 through 22-525	22-5-5-1 through 22-5-5-3
Article 6	22.1-48 through 22.1-51	22-5-601 through 22-5-604	22-526 through 22-529	22-5-6-1 through 22-5-6-4
Article 7	22.1-52 through 22.1-57	22-5-701 through 22-5-706	22-530 through 22-535	22-5-7-1 through 22-5-7-6
Article 8	22.1-57.1 through 22.1-57.5	22-5-801 through 22-5-810	22-536 through 22-545	22-5-8-1 through 22-5-8-10

AMENDMENT TO VIRGINIA ADMINISTRATIVE CODE CONTRACT

Section III, subsection F is amended to read

"Beginning May 1, 2014, and in May of each year following for the remainder of the term of the Contract, the annual price of printed sets, ~~and~~ printed volumes, and CD-ROMs may be increased by West by an amount no greater than the change in the Producer Price Index for Book Publishing - Industry Code 2731 ("PPI") for the previous year or 5.0%, whichever is less. West will provide notice of a price increase and the effective date on or before May 1 of each year.

SUPREME COURT OF VIRGINIA

SUPREME COURT BUILDING
RICHMOND, VIRGINIA 23219
804-786-2251

February 19, 2014

The Honorable John S. Edwards
Chairman
Virginia Code Commission
General Assembly Building
201 North 9th Street, Second Floor
Richmond, Virginia 23219

Dear Senator Edwards:

In response to your November 8, 2012 letter, I appointed a committee to study the notice provisions in Titles 16.1, 17.1, 18.2, and 19.2 of the Code of Virginia. I am enclosing the study committee's report. The report references a Boyd Graves study of other titles of the Code. (See attachment #6.). The Court reviewed and approved the report dealing with Titles 16.1, 17.1, 18.2, and 19.2. The Court did not specifically review the Boyd Graves study and report on the other titles of the Code.

If you have any questions, please feel free to contact me.

Very truly yours,

Cynthia D. Kinser

Enclosure

c: Professor Kent Sinclair

REPORT

November 27, 2013

Hon. Cynthia D. Kinser
Chief Justice
Supreme Court of Virginia
VIA Electronic Mail

Study of Notice Provisions
Titles 16.1, 17.1, 18.2 & 19.2
Code of Virginia

Dear Chief Justice Kinser,

In response to the letter sent to you last year by Senator John Edwards, Chair of the Code Commission of Virginia (Attachment 1), you appointed a committee to report on a review of the provisions in the four Titles of the Code of Virginia listed above, looking at the diverse welter of sections containing provisions for the giving of notice, and similar events (*e.g.*, scheduling hearings), in litigations and similar proceedings. The Committee members, who have extensive civil and criminal experience, in government and private contexts, on both sides of the plaintiff/defendant, prosecution/defense aisles, are:

John R. Fletcher, Esq.
TavssFletcher
555 Main Street, Fourteenth Floor
Norfolk, VA 23510

Catherine C. Hill, Esq.
Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Hon. Stephen R. McCullough
Judge, Court of Appeals of Virginia
305 Amelia Street
Fredericksburg, VA 22401.

Professor Kent Sinclair
417 Key West Drive
Charlottesville, VA 22911

David W. Thomas, Esq.
MichieHamlett
500 Court Sq.
Charlottesville, VA 22902

Summary

Conclusions and Recommendation. The present memorandum is the report of this Committee. For the reasons explored in the **Discussion** section immediately below, the Committee recommends that the Court consider advising the Code Commission that generalized or global provisions allowing electronic and other forms of delivery of papers does not seem either needed, or safe, given the wide variety of legal contexts in which such papers are to be delivered. However, one narrow form of global cross-reference section is recommended for possible inclusion in the Code of Virginia relating specifically to use of commercial delivery services as an alternative where Code provisions call for "mail" notice (ordinary, registered or certified). No other change is recommended. For most of the contexts explored it did not appear to the Committee that the Court would want to be in the position of recommending legislation, but this one very modest proposal seemed impact-neutral, and is both safe and beneficial.

Other Study of Code Titles. In addition to contacting the Court, Senator Edwards and the Commission also asked other groups to study different titles of the Code, and in particular the Boyd Graves Conference (on which John Fletcher and Professor Sinclair both serve) was asked to appoint a study Committee to review a number of other titles: Titles 8.01, 11, 20, 25.1, 43, 50, 55, and 64.2. That study resulted in a report issued in late September of 2013, concluding that no change should be proposed in the notice provisions of any of the Titles studied by that group. Its report is discussed below, and is annexed in its entirety to the present memorandum as Attachment #6.

Present Report and Attachments. The discussion in this report is supplemented by a number of attachments:

Attachment #1 – Code Commission Letter (Senator Edwards)
Attachment #2 – Survey of Notice Mechanisms in Title 16.1 of the Code
Attachment #3 – Survey of Notice Mechanisms in Title 17.1 of the Code
Attachment #4 – Survey of Notice Mechanisms in Title 18.2 of the Code
Attachment #5 – Survey of Notice Mechanisms in Title 19.2 of the Code
Attachment #6 – Boyd Graves Report re Study of Other Titles of the Code

Committee Posture. The Committee you appointed has an excellent breadth of experience and perspectives. The Committee has not, however, performed any outreach or specialist fact-finding such as contacting specific Bar sections who practice in specialties such as juvenile or domestic relations law, or the many other interest groups who may have particular and in-depth expertise in specific kinds of litigation and proceedings. We stand ready to undertake that sort of effort in the coming year if the Court would like. However, that may be a task better suited to the work of the Legislature.

Discussion

A. Overview of the Study

The Committee initially contacted the Division of Legislative Services personnel supporting the work of the Code Commission, and learned that no roster of notice mechanics provisions in the Virginia Code exists. Further, staff reported that it was not aware of any other state that had attempted to develop an across-the-board alternative set of provisions along the lines the Code Commission identified – essentially broadening the use of commercial delivery and electronic mail mechanisms.

Thus the present Committee performed numerous electronic searches of the Code databases for the relevant titles, in an effort to capture substantially all of the sections that address these sorts of events and procedures. Key categories searched included:

Service
Notice
Delivery
Mailing
Transmission

The statutory excerpts quoted below in this report and annexed in Attachments #2 through #5, resulted from word searches performed in the electronic databases of the General Assembly and in the Lexis commercial legal research service, using the various key terms relating to these processes.

In the Title 16.1 study, Attachment #2 to this report, the statutory section quotations that were collected from visual inspection of all Code sections containing these concepts and processes are organized into the categories discovered from that study.

In displaying the results uncovered from extended study of Titles 17.1, 18.2 and 19.2, provisions are displayed in similar groupings of provisions, with the operative terms highlighted.

Inclusiveness. While the Committee took a number of steps and cross-checks in its efforts to capture the full range of notice-related provisions in these four Titles of the Code, there would likely be a few similar provisions that were not identified. However, we are confident that the study undertaken over the past year includes essentially all of such provisions and – more importantly – that any additional or obscure parallel provisions would not present any new or different sort of context from those illustrated in the many sections collected and highlighted in this report. Thus the information collected by the Committee in the past year seems fully adequate to permit an assessment of whether any legislative effort would be desirable to expand or unify the delivery and notice provisions now in the Code.

B. Serving initial process in a case or proceeding

There are no service of process sections in Titles 17.1, 18.2 and 19.2, in the sense of process asserting personal jurisdiction over a person or commencing a case.

Essentially all of the Title 16.1 sections that touch upon the concept of making initial service of process to commence a proceeding simply make reference to the one or more of the established service of process options in Chapter 8 of Title 8.01. See, e.g., § 16.1-80, § 16.1-82. A few of the Title 16.1 sections refer to Code § 16.1-264, which generally operates to identify priorities and categories of situations for invoking the various Title 8.01 service of process options (for example, when to do personal service, when to use publication, as governed in the Title 8.01 service sections). Hence, based on our review of these provisions, the Committee does not understand the Title 16.1 sections to be setting up any Title-specific service of process mechanisms.

Conclusion #1: the Committee is not aware of any regular "service of process" mechanism issues of note based on the four Titles which we have been asked to review.

C. Serving summonses.

Specifically with respect to provisions that relate to service of summonses, the general statutes on these matters applicable under Title 8.01 seem to apply by cross-reference or on their face to proceedings affected by the four Titles we were asked to study.

No Title 16.1 section was located that creates any new summons service mechanism. No summons-service provisions were found in Titles 17.1 or 18.2 either.

In Title 19.2 there are summons-service provisions in § 19.2-76, which simply cross-reference the comparable Title 8.01 mechanisms and do not create any other or different service of summons procedures. Also, § 19.2-233 states that "Sections 8.01-292 and 8.01-295 shall apply to process in criminal, as well as in civil cases; and the court may, in the same case against the same person, award at the same time, or different times, several writs of summons or capias directed to officers of different counties or cities," and that a summons "shall be served by delivering a copy thereof to the party in person . . ."

The Committee did note that § 19.2-76.2 creates mail service options for local governments in serving summonses arising from parking violations and trash ordinance violations. "First class mail" is the mechanism specified.

Conclusion #2: there are no summons-service issues in the statutes of Titles 16.1, 17.1 and 18.2 and hence no alternative mechanism issues for consideration.

Conclusion #3: with respect to Title 19.2, no summons service provisions are specified (other than cross-reference to existing Title 8.01 mechanisms) except for a single section dealing with delivery of parking and trash ordinance violation summonses, and hence, apart from that provision, there are no summons-service issues in Title 19.2.

Conclusion #4: with respect to the sole existing summons-service provision in Title 19.2, § 19.2-76.2, the "first class mail" option now on the books is the least burdensome upon on local governments, and it would seem pointless to consider making the vastly more expensive registered or certified mail, or express delivery options available for the service of parking and trash ordinance summonses. In the current state of electronic notification, it does not seem prudent to recommend adding an option for electronic "service" of such summonses. Hence no change appears to be warranted in § 19.2-76.2.

D. Delivering papers to the Sheriff.

Several Code provisions make reference to physically dropping off copies of papers for service, and do not involve any specific procedure. Hence no reform is proposed. See, e.g., § 17.1-214.

Conclusion #5: delivery of papers to the sheriff does not seem to present any legislative drafting issues in any of the four Titles under review by this Committee.

E. Serving papers in existing proceedings after initial service of process.

This focus would refer to transmitting motions, notices of hearings or other papers or applications for interim action or moving the proceeding toward disposition, including scheduling-related communications and those seeking a hearing or ruling.

The initial letter from Senator Edwards on behalf of the Code Commission (Attachment #1) focuses on whether either global or opportunistic individual expansions could be made in delivery mechanisms, and he mentions mail, commercial delivery services, and electronic delivery.

Looking at the four Titles assigned to us by the Chief Justice, based on the Code Commission's request to the Supreme Court, the sections seemed to be two categories, the second being much more important or problematic:

(1) providing notice to the clerk of court (e.g., notice of appearance and its opposite).

This seemed to be the equivalent of filing, though it was in a few places expressed as giving the clerk "notice." No "mechanism" is specified, and thus *physical personal delivery of the notice to the clerk* seemed to be the concept. See, e.g., § 16.1-88.03. The Committee noted that a provision could be crafted to say that getting items to the clerk can be done by personal delivery or commercial delivery service, or even by mail. Until e-filing is available everywhere (the pilot program in Norfolk is underway) any change authorizing electronic transmission to the clerks that way would probably not be safe to adopt. For very specific items, such as warrant-application affidavits, a specific provision exists for filing the paper electronically or by fax. See Code § 19.2-54. There are also specific provisions for delivering search warrants on internet or computer service providers, see § 19.2-56, and filing of the "return" on the warrant by various means. § 19.2-57.

Conclusion #6: no issue has arisen in our study with respect to provisions calling for "filing" of papers with the courts. The Committee is aware of the development and pilot implementation of "e-filing" systems in the Virginia courts, a separate issue that the General Assembly has been addressing in the evolving legislation in recent years to authorize and facilitate that process. E-filing is deemed outside the possible unification of notice mechanisms that the Committee was asked to examine.

Conclusion # 7: those few Code provisions speaking of giving the Clerk "notice" *could* be expanded (or treated by cross-reference to a global provision) to specifically state that notice under these specific sections may be accomplished by personal delivery, delivery by commercial service, or mail. *However* the Committee knows of no problems in practice with these few isolated references as they now stand creating any special need for

specifying the means of "notice" to the clerk under the existing Code provisions. Hence no reform is suggested.

(2) providing notice to parties (private or governmental bodies) for motions or hearings/applications in existing cases or administrative proceedings.

Existing provisions use a plethora of concepts in addressing the procedures for communicating or delivery of a paper (the Committee has set to one side all statutes merely referring to "delivery of a person [or witness or detainee] as not presenting the drafting issues the Code Commission has in mind).

NO MECHANICS for NOTICE – *The General Assembly has provided in a number of the existing Code provisions references to providing notice in the following general terms that do not specify any implementation mechanics:*

- a person "**shall receive notification**" with no specified mechanism -- e.g., § 17.1-107, § 17.1-702, § 18.2-76, § 19.2-11.01, § 19.2-258.1

- notice must be "**provided**" with no specified mechanism -- e.g., § 17.1-331.

- "**notice**" by a court or agency is required with no specified mechanism -- e.g., § 17.1-305, § 18.2-60.3, § 18.2-271, § 18.2-308.010, § 18.2-340.20, § 19.2-130; § 19.2-159; § 19.2-163.01, § 19.2-169.3, § 19.2-182.11, § 19.2-270.4, § 19.2-270.4:1, § 19.2-368.5, § 19.2-386.29

- "**notice**" by a party is required with no specified mechanism -- e.g., § 16.1-69.11:1, § 16.1-252, § 16.1-253, § 16.1-278.18, § 18.2-502, § 18.2-510, § 19.2-168.1, § 19.2-265.01, § 19.2-364, § 19.2-368.5:2, § 19.2-386.34, § 19.2-396

- "**notice**" is to be "**received**" by a court with no specified mechanism -- e.g., § 19.2-169.3

- "**adequate notice**" or "**reasonable notice**," is to be provided to a party, with no specified mechanism -- e.g., § 18.2-258.01, § 19.2-182.3, § 19.2-182.8, § 19.2-182.9, § 19.2-304.

- "**notice forthwith**" is required with no specified mechanism -- e.g., § 18.2-271.1

- "**written notice**" or "**notice in writing**" or "**notify in writing**" required without specified mechanisms -- e.g., § 16.1-88.2, § 16.1-94.01, §

16.1-94.01, § 16.1-88.03, § 18.2-308.08, § 18.2-340.36, § 19.2-9.1; § 19.2-168, § 19.2-182.8, § 19.2-264.3:1, § 19.2-264.3:2, § 19.2-264.3:4, § 19.2-270.5, § 19.2-368.5:1, § 19.2-386.2:1

- "**written notice, or oral notice**" are alternatives to be used in certain specific situations -- e.g., § 16.1-247, § 16.1-250, § 18.2-50.2, § 18.2-119
- a paper shall be "**given**" to the Commonwealth with no specified mechanism -- e.g., § 19.2-264.3:1
- persons are to be "**informed**" with no specified mechanisms -- e.g., § 19.2-11.01
- persons "**shall be advised**" with no specified mechanisms -- e.g., § 19.2-11.01; § 19.2-299
- persons "**shall receive advance notification**" but no specified mechanisms are identified -- e.g., § 19.2-11.01

DELIVERY REQUIRED WITH NO SPECIFIED MECHANICS -- *The General Assembly has provided in a number of the existing Code provisions references to providing notice in the following general terms that do not specify any implementation mechanics for "delivery" or "transmitting" or "sending" various papers:*

- various papers or other items may be "**delivered**" or "**caused to be delivered**" with no specified mechanisms -- e.g., § 16.1-80, § 16.1-82, §16.1-95, § 16.1-103, § 16.1-121, § 16.1-256, § 16.1-256, § 16.1-339, § 16.1-342, § 16.1-352, § 17.1-322, § 17.1-323, § 19.2-45; 19.2-98; § 19.2-114; § 19.2-134; § 19.2-149, § 19.2-278
- some items are to be "**provided**" but with no specified mechanisms -- e.g., §16.1-263, § 19.2-11.01, § 19.2-169.3, § 19.2-187.1
- a report is to be "**furnished**" with no specified mechanisms -- e.g., § 19.2-299
- a report to be "**submitted in advance**" with no specified mechanisms -- e.g., § 19.2-299
- some papers shall be "**sent**" or "**forthwith sent**" with no specified mechanism -- e.g., § 17.1-918, § 18.2-56.1, § 19.2-169.3, § 19.2-182.16, § 19.2-264.3:1
- a paper is to be "**transmitted**" or "**forthwith transmitted**" or "**promptly transmitted**" with no specified mechanisms stated -- e.g., § 16.1-89, § 16.1-112, § 16.1-265, § 16.1-344, § 17.1-100, § 17.1-216, § 17.1-313, § 17.1-328, § 17.1-622, § 17.1-918, § 18.2-186.5, § 19.2-13; § 19.2-142; § 19.2-143, § 19.2-182.6, § 19.2-310, § 19.2-310.01; § 19.2-405

- an order "**shall be caused to be served**" with no specified mechanism -- e.g., § 19.2-68
- an item is to be "**forwarded forthwith**" with no specified mechanism -- e.g. § 19.2-114;

MAILING IS AN OPTION -- *The General Assembly has provided in a number of the existing Code provisions references to providing notice through one or another form of delivery by the United States Mails, prominent examples including:*

- "**mail or electronic mail**" is used to deliver certain permits -- e.g., § 18.2-308.05
- blood samples are to be "**taken or mailed**" to forensic department -- e.g., § 18.2-268.6
- item may be "**mailed or delivered**" to the clerk of court or a party -- e.g., § 16.1-89, § 16.1-106.1, § 16.1-265, § 16.1-269.1, § 16.1-302
- some notices are to be given by "**first class mail**" -- e.g., § 16.1-260, § 18.2-76, § 18.2-271.1, § 19.2-386.24
- other notices are to be "**sent, by certified mail**" -- e.g., § 18.2-118, § 18.2-200.1, § 19.2-327.11, § 19.2-386.2:1
- "**certified mail, return receipt requested**" is specified for use -- e.g., § 16.1-241
- **certified or registered mail** are specified alternatives for use -- e.g., § 16.1-277.01, § 18.2-183, § 18.2-187.1
- **mail or publication of** notice re an obscene book -- e.g., § 18.2-384.
- certain copies are to be sent **by mail or delivery** -- e.g., § 17.1-407.
- notice given "**by mail, delivery, or otherwise**" -- e.g., § 18.2-472.1
- certain process is "**forwarded by mail**" with no particular form of mail specified -- e.g., § 18.2-308.04, § 19.2-235
- a certificate may be "**mailed or delivered**" with no form of delivery specified, and no particular form of mail specified -- e.g., § 19.2-187
- a certificate may be "**mailed or forwarded**" with no form of forwarding specified and no particular form of mail specified -- e.g., § 19.2-187

- a certificate may be "**provide[d] by mail, delivery, or otherwise**" -- e.g., § 19.2-187.1, § 19.2-187.1

MISCELLANEOUS OTHER NOTICE PROVISIONS – *The General Assembly has provided in a number of the existing Code provisions references to providing notice in the following specific forms in particularized situations:*

- certain reports may be "**forwarded by fax or electronic means**" – e.g., § 18.2-265.10
- "**actual notice**" done "**in person or by telephone**" is required in very specific circumstances -- e.g., § 16.1-241
- **notice in writing, by telephone, or by electronic means, posting and statewide media** used re breach of personal information security -- e.g., § 18.2-186.6
- **"delivery"** of custody or detention process may be **made by fax or electronic transmission** specified -- e.g., § 16.1-340, § 16.1-340.2
- a party may "**object in writing**" with no specified mechanisms -- e.g., §19.2-187.1
- some notices are to be **published** -- e.g., § 16.1-69.9:3, § 16.1-69.10, § 16.1-94.01, § 16.1-277.01, § 17.1-507, § 17.1-511

Looking at the broad range of contexts in which these notice situations arise, the procedures appear to run the gamut from perfunctory to dispositional, sometimes with dramatic effects on the rights or liberty of a party. The situations could be characterized:

(A) "**regular**" situations (no time urgency; no fundamental rights or liberty interests to be decided in the particular motion or hearing for which notice is to be given).

(B) "**time urgent**" situations, such as when an involuntary commitment has been initiated and there are strict, short timetables by statute.

(C) **fundamental rights** will be affected by the hearing or proceeding involved, such as terminating parental rights.

(D) **criminal consequences** follow from some outcomes, such as applications involving a juvenile over 14 who could be treated as an adult for felony charges.

Of course, the "regularity" or "urgency" of a particular procedure may be in the eye of the beholder, making any effort to categorize situations into group (A) for example, as a

basis for statutory change to allow use of a wide variety of alternative mechanisms to deliver notice, difficult to implement.

Based on the spectrum just sketched, the idea that any "global" or across-the-board authorization for a roster of mechanisms to deliver notice seems unlikely to prove palatable to the Legislature, and does not respond to any specific problem arising in practice, at least so far as this Committee is aware. No basis for the Court to make a substantive recommendation has been identified by the Committee.

In its deliberations the Committee noted that among the possible "semi-global" mechanism-expansion provisions that present themselves (none of which may work, but which seem responsive to the thrust of what Senator Edwards and the Code Commission wanted to be considered) would be these alternatives:

(i) a section, possibly one in each of the Titles, or located in Title 1, that says in words or substance that *whenever notice is required in this Title and no more specific mechanism is prescribed, such notice may be completed by (1) delivery by hand, (2) delivery by commercial delivery service, or (3) dispatch by First Class mail.*

or,

(ii) a section that says, *whenever a section in this Title provides for "delivery" of an item, without more particularized instructions, that delivery may be completed by (1) personal, in-hand delivery, (2) commercial delivery service, (3) fax if the person to whom notice is to be given has identified a fax number to be used in the proceeding for delivery of papers, (4) by electronic mail if the party to whom the delivery is to be made has agreed in writing to receive delivery proceeding electronically, or (5) First Class mail.*

or,

(iii) alternatively, some sort of cross-reference to Rule 1:12 could be made for certain categories of notice situations. That Rule currently provides:

> *Rule 1:12. Service of Papers after the Initial Process*
>
> All pleadings, motions and other papers not required to be served otherwise and requests for subpoenas duces tecum shall be served by delivering, dispatching by commercial delivery service, transmitting by facsimile, delivering by electronic mail when Rule 1:17 so provides or when consented to in writing signed by the person to be served, or by mailing, a copy to each counsel of record on or before the day of filing.
>
> Subject to the provisions of Rule 1:17, service pursuant to this Rule shall be effective upon such delivery, dispatch, transmission or mailing, except that papers served by facsimile transmission completed after 5:00 p.m. shall

be deemed served on the next day that is not a Saturday, Sunday, or legal holiday. Service by electronic mail under this Rule is not effective if the party making service learns that the attempted service did not reach the person to be served.

At the foot of such pleadings and requests shall be appended either acceptance of service or a certificate of counsel that copies were served as this Rule requires, showing the date of delivery and method of service, dispatching, transmitting, or mailing. When service is made by electronic mail, a certificate of counsel that the document was served by electronic mail shall be served by mail or transmitted by facsimile to each counsel of record on or before the day of service.

We noted, however, that the first paragraph of Rule 1:12 makes service using these various service techniques effective when the material is "sent" (not when it is thereafter received by the recipient). The Rule says that service is the initial act of "delivering, dispatching by commercial delivery service, transmitting by facsimile, delivering by electronic mail when Rule 1:17 so provides or when consented to in writing signed by the person to be served, or by mailing,"

The provisions in Rule 1:12 quoted above are also linked in practice with Rule 1:7 which, in effect, takes cognizance of the fact that service of these post-service-of-process papers is effective upon dispatch, and creates extensions of time or "grace periods" extending other interested parties' time to act when delivery of a deadline-triggering paper is made by one of the various mechanisms other than in-hand delivery, adding three days if an operative paper is served by mail, and (amazingly) adding one day if the paper is served by fax, electronic delivery, or commercial delivery service:

Rule 1:7. Computation of Time

Whenever a party is required or permitted under these Rules, or by direction of the court, to do an act within a prescribed time after service of a paper upon counsel of record, three (3) days shall be added to the prescribed time when the paper is served by mail, or one (1) day shall be added to the prescribed time when the paper is served by facsimile, electronic mail or commercial delivery service. With respect to Parts Five and Five A of the Rules, this Rule applies only to the time for filing a brief in opposition.

The Committee concluded that there is serious doubt that any such grace options would be workable in the Code provisions if done by cross-reference to the Rule itself -- a Rule could not alter a statutory time period given the primacy of statutes, and the language in Code § 8.01-3 regarding the supersession of statutes over rules. And even if *a statutory version of Rule 1:7* were adopted, adding the grace periods of different amounts of days depending on the delivery mechanisms used, and applying those possible periods in

myriad non-commensurate factual and legal contexts, would present daunting issues in which, we may predict, individual contextual issues will predominate over any general goals or systemic benefits of greater uniformity, making adoption of such time-extensions impractical, to say the least.

However, without a Rule 1:7 equivalent, any statute that is revised to allow a range of delivery modalities, some of which methods are inherently "slower" in reaching the designated recipients than other methods, is going to create its own fairness issues.

Conclusion #8: in any situation where manual delivery is one option for transmitting a paper, use of mail delivery (in any form) or use of a commercial service company to achieve delivery raises fairness concerns that have caused legal systems across the United States to adopt Rules comparable to Virginia Rule 1:7, and which should give the General Assembly pause in simply adding such "slower" alternatives since the recipient gets less advance notice time when those non-instantaneous methods are used. However, adopting any system of grace periods for use of certain delivery mechanisms works adequately in all American States, but is limited to litigation contexts that are fairly circumscribed. Whether any sort of grace period statute could be safely crafted to balance the interests affected by adding alternative delivery mechanisms is a legislative judgment on which the Committee assumed that the Court would take no position.

Conclusion # 9: the identification of those situations which are "non-sensitive" or "regular" and hence are such that the full range of manual delivery, commercial delivery, electronic delivery, and mail should be available options, versus those situations where the exigencies of the situation or the particular interests and parties involved may require certain assured transmission mechanisms without alternatives, is a legislative judgment in the prerogative of the General Assembly and a matter on which the Court would express no views.

FURTHER BACKGROUND -- **Boyd Graves Committee Throws In the Towel**

The Committee received thoughts by telephone, in person, and through a written report from the Boyd Graves committee, chaired by Steve Busch, which was asked to do a similar study of several other titles of the Code, including the civil procedure provisions in Title 8.01. That committee recently concluded that it cannot identify any common issues or suggestions to support any change in the statutes.

The BG committee was asked by the Code Commission to look at a large number of Code titles on the general issues we were tasked to consider concerning the four titles identified for us. A copy of the BG written report is attached, which itself annexes a law student's compilation of notice provisions in the several titles of the Code that were assigned to the BG committee.

In the report of this Committee to the Boyd Graves Conference on October 25, 2013, several points were made:

- The BG committee learned of no current problems with the diverse provisions about various means of giving notice in the different contexts covered by these Code titles.
- The BG committee found that the existing notice procedures are not perceived as ambiguous, confusing, or unreliable.
- No support exists in the Bar for allowing initial service of process in any Virginia proceeding by any of the alternatives: commercial delivery service, mail and electronic communication. Concerns expressed relate to the need for certainty and the belief that the formality of steps used to assert valid personal jurisdiction over a defendant is an important feature.
- No across-the-board provision – allowing substitution of existing statutory notice requirements for post-service-of-process notice events with alternatives for commercial delivery, mail or e-mail, should be undertaken.
- Specific statutory amendments of individual sections in particular titles should be undertaken only if there is an identified problem, which should then be studied by subject-specific experts practicing that particular subject area of law.

At the end of the oral presentation at the Boyd Graves Conference, which reviewed the written report annexed to the present memorandum as Attachment #6, the BG Conference chair asked for a show of hands for how many of the 110 attendees (which included 12 circuit court judges and two judges from the Court of Appeals) thought that there should be any sort of unified or broad-alternative for use of commercial delivery, mail or e-mail for giving notice relating to Virginia proceedings. Not one of the judges and attorneys present raised a hand. Nor did anyone believe further study of the question was worthwhile.

In the discussions of the present Committee, it was observed that in an important sense, the conclusion for any study conducted to support consideration of these issues by

the Supreme Court of Virginia seems a fortiori from the above: *if the "law reform" focus of the Boyd Graves Conference does not generate any support for any across-the-board alternative, or for adding alternatives to existing wording of statutes, the Supreme Court of Virginia will likely not wish to be in the position of recommending over-arching modifications to the statutes.* Even in the appellate practice context, the section-by-section approach for improving any problems that may become specifically identified in the future, seems most prudent.

F. Electronic Delivery or Email

For speedy and inexpensive delivery of files e-mail and other electronic transmission systems have great potential. However, the present Committee shares the concerns that the Boyd Graves committee voiced with respect to any generalized option as of 2013 or 2014 to authorize delivery of important notice papers electronically.

While e-filing is arriving in Virginia, and will provide mechanisms for electronic delivery of papers in an electronically filed case, under procedures and safeguards set forth in Rule 1:17, and certain of the Part Three rules of procedure, that system is still in the pilot phase and will likely yield a wealth of experience on the practical issues entailed in using electronic delivery of various dispute-related documents.

Issues noted by the present Committee concern the many glitches experienced today in electronic transmission, such as e-mail and attachments to such communications. Messages that are "not delivered" or are captured or shunted to storage by "spam filters" and hence are not recognized by the recipients were discussed by our Committee. Presently evolving systems require registration or consent to receive materials electronically, and the Committee felt that developing experience gradually through observation and use of the systems going into effect appeared to be a much safer laboratory in which to investigate the mechanical headaches of delivery of papers and notices by electronic means.

Email addresses change frequently, which causes significant concerns in the delivery of legal papers. Moreover, the absence of any authoritative directory of e-mail addresses makes it very difficult to be assured of identifying the correct e-mail address in many instances.

As a result the Committee recommends that no proposal should be advanced to allow electronic delivery as any sort of regular or routinely available across-the-board alternative to presently prescribed delivery mechanisms.

Conclusion # 10: no across-the-board provision should be advanced to allow electronic delivery as any sort of regular or routinely available alternative to the presently prescribed delivery procedures.

G. One Narrow Proposal: Mail and Commercial Delivery

As noted above, a large number of sections presently on the books authorize mailing of notices and similar papers. Some of these statutes allow use of "ordinary mail" while others refer to registered or certified mail. Examples are:

ORDINARY MAIL:

Deliver of certain permits -- e.g., § 18.2-308.05
Blood samples sent to forensic department -- e.g., § 18.2-268.6
Sending to the clerk or a party -- e.g., § 16.1-89, § 16.1-106.1, § 16.1-265, § 16.1-269.1, § 16.1-302
Sending notices -- e.g., § 16.1-260, § 18.2-76, § 18.2-271.1, § 19.2-386.24
Mailing as an alternative to "delivery" -- e.g., § 17.1-407.
As alternative to "publication" re obscene books -- e.g., § 18.2-384.
Sending copies by mail as a form of "delivery" -- e.g., § 17.1-407.
Where delivery is "by mail, delivery or otherwise" -- e.g., § 18.2-472.1
Certain process is "forwarded by mail" -- e.g., § 18.2-308.04, § 19.2-235
Certificate may be "mailed or delivered" -- e.g., § 19.2-187
Certificate to be "provide[d] by mail, delivery, or otherwise" -- e.g., § 19.2-187.1

CERTIFIED OR REGISTERED MAIL:

Notices -- e.g., § 18.2-118, § 18.2-200.1, § 19.2-327.11, § 19.2-386.2:1
With return receipt requested in some cases -- e.g., § 16.1-241
As an alternative -- e.g., § 16.1-277.01, § 18.2-183, § 18.2-187.1

Experience with Commercial Carriers. The Committee is aware of no difficulties with the use of commercial delivery services, for example Federal Express or UPS, as an alternative to use of the U.S. mails in the delivery of legal papers. Lexis searches identified over 100 statutes and court rules in other states recognizing use of "commercial delivery service" as a means of sending papers. In Virginia, we noted that such service is permitted:

* in the Rules governing service of mesne papers in Virginia litigation, ordinary motion papers and the like. See Rule 1:7, quoted in full above, which has included a commercial delivery service option for over a decade without any apparent difficulties.

* in the Rules of Court regarding appellate practice
and the Clerks of both appellate courts have reported no particular difficulties with this sort of delivery mechanism.

* in the Virginia Tort Claims Act, under an amendment to Code § 8.01-195.6 enacted in 2007 to expand the mechanisms for delivery of notices of claim to the Commonwealth, and which specifically added the use of commercial delivery services as an approved means of accomplishing the delivery of notice, and which has not proven problematic in any known respect during the past six years.

* In addition to the Tort Claims Act provision just cited, statutes in Virginia authorize the sending of important papers by commercial delivery service in a variety of situations, including:

Code § 8.01-407.1 (providing information in response to certain subpoenas).
Code § 15.2-209 (lodging notices of claims against localities)
Code § 19.2-70.3 (service of subpoenas for certain electronic records)
Code § 24.1-707 (defining "mail" to include commercial delivery service for purposes of submitting absentee ballots in elections)
Code § 55-69.97:1 (use in delivery of condominium resale certificates)
Code § 55-509.6 (use in delivering property owners' association disclosure packets)
Code § 58.1-9 (provision added in 2011 to recognize commercial delivery of tax returns and payments)

Neither the Advisory Committee on Rules of Practice, serving the Judicial Council of Virginia, nor the Boyd Graves Conference has identified any difficulties with the commercial delivery service option for service of non-service-of-process papers.

In essence this Committee has concluded that – in modern experience – the competing private commercial delivery services are:

-- at least as reliable as the United States mails, and

-- provide tracking and receipting records that are capable of satisfying any proof of service or delivery standards the Virginia court system would require under the Rules of Court and under any of the four Code Titles we were asked to study.

Conclusion # 11: where the United States Mails are currently allowed as an option for service or delivery of papers it would be safe and beneficial to add an option for a party to use one of the commercial delivery services, subject to the same burdens and proof of service requirements now applicable to service or delivery in the same contexts.

Proposal. The Committee respectfully suggests that the Court consider reporting to the Code Commission that:

(1) no global change is recommended to be made with respect to electronic delivery of notices and similar documents, and

(2) across all of the subject matters reflected in the four Titles of the Code that the Court was asked to review, it appears safe and beneficial to contemplate adding a provision – to be located in each Title (or in Title 1) – that would provide in words or substance:

> Where in [specify Titles] service, delivery or transmission of any notice or paper in any proceeding is authorized to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," service or delivery by commercial delivery service shall be deemed to be authorized by such provision. Any applicable requirements in the Code of Virginia or the Rules of the Supreme Court for proof of such service, delivery or transmission shall remain in effect when a commercial delivery service is used.

We do not here propose a definition of the term "commercial delivery service." It may be that the Legislature would prefer greater specificity. However, we note that the Virginia Rules of Court have used the term without definition for several years without difficulty, and we did not notice any definition of the term in the existing Virginia statutes cited on the preceding page where use of a "commercial delivery service" is now permitted in several contexts.

Respectfully submitted,

John Fletcher
Catherine Hill
Hon. Stephen McCullough
Kent Sinclair, Chair
David Thomas

ATTACHMENTS

Attachment #1 – Code Commission Letter (Senator Edwards)
Attachment #2 – Survey of Notice Mechanisms in Title 16.1 of the Code
Attachment #3 – Survey of Notice Mechanisms in Title 17.1 of the Code
Attachment #4 – Survey of Notice Mechanisms in Title 18.2 of the Code
Attachment #5 – Survey of Notice Mechanisms in Title 19.2 of the Code
Attachment #6 – Boyd Graves Report re Study of Other Titles of the Code

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 4.1 of Title 16.1 a section numbered 16.1-69.5:1, by adding in Chapter 1 of Title 17.1 a section numbered 17.1-133, and by adding sections numbered 18.2-6.1 and 19.2-5.1, relating to notice provisions; commercial delivery services.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 4.1 of Title 16.1 a section numbered 16.1-69.5:1, by adding in Chapter 1 of Title 17.1 a section numbered 17.1-133, and by adding sections numbered 18.2-6.1 and 19.2-5.1 as follows:

§ 16.1-69.5:1. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," service, delivery, or transmission by commercial delivery service is deemed to be authorized by such provision. Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a commercial delivery service is used.

§ 17.1-133. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," service, delivery, or transmission by commercial delivery service is deemed to be authorized by such provision. Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a commercial delivery service is used.

§ 18.2-6.1. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by "mail," "ordinary mail," "registered mail," or

"certified mail," service, delivery, or transmission by commercial delivery service is deemed to be authorized by such provision. Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a commercial delivery service is used.

§ 19.2-5.1. Delivery of notice by mail, ordinary mail, registered mail, or certified mail.

Where service, delivery, or transmission of any notice or paper in any proceeding is authorized by any provision of this title to be accomplished by "mail," "ordinary mail," "registered mail," or "certified mail," service, delivery, or transmission by commercial delivery service is deemed to be authorized by such provision. Any applicable requirements in this Code or the Rules of Supreme Court of Virginia for proof of such service, delivery, or transmission shall remain in effect when a commercial delivery service is used.

#

CODE COMMISSION POLICIES FOR DRAFTING AND TITLE RECODIFICATION

I. CODIFICATION OF AUTHORITIES AND COMPACTS

Authorities

Codify an authority only when it has (i) an unlimited duration of existence and (ii) more than local or regional application.

Compacts

Each compact will be assigned a Code section number in accordance with its proper title location. If a compact is general and permanent in nature, the compact will be set out in full in both the Code and in the Compacts volume. Otherwise, the compact will be set out in full only in the Compacts volume, and the section number in the Code of Virginia will contain only a reference directing the reader to the Compacts volume. The Code Commission expresses its desire to place the full text of all compacts online for free public access.

II. STATUTES INCLUDED AND STATUTES OMITTED (see also explanatory note from 1948 recodification report at end)

"Not set out" policy:

1. Set out provisions from the Acts of Assembly in the Code of Virginia only when the provisions have general or permanent application.
2. Exclude policy statements.
3. Exclude sections that establish the purpose of the legislation or legislative intent.

Recodification Report

Include full text of "not set out" sections in recodification reports, and indicate in the drafting note that the section meets the criteria set by the Code Commission to not set out the provision in full in the Code.

III. MISCELLANEOUS DRAFTING POLICIES AND PRACTICES

Special Days Recognizing Certain Events

Avoid recognizing special days and certain events in the Code. In response to a request to draft a bill designating a day, month, or year, or a combination thereof, to recognize, commemorate, honor, or otherwise celebrate any person, group, program, occasion, event, or other period for special consideration, the Division of Legislative Services should prepare such legislation only in the form of a Senate or House Joint Resolution.

Terms Defined in Title 1

1. Avoid replicating in new legislation definitions of terms that are already defined in either Title 1 of the Code of Virginia (General Provisions) or in the title, chapter, or article where such new legislation is to be located.
2. Although the definition of "person" in Title 1 applies to the entire Code of Virginia and should not be repeated in individual titles, some titles may need a narrower definition of "person"; in such cases, it is appropriate to develop a titlewide or chapterwide definition.

Population Brackets

Retain "reasonable" population brackets when a provision is not intended to single out any particular locality; convert to named localities when population brackets are clearly intended to single out a specific locality. Use this rationale for replacing other types of locality descriptions.

Substantive Changes in Title Revisions

1. Substantive changes are appropriate in title revisions to provide for the express repeal of all sunset clauses affected by a title revision.
2. Substantive changes should be clearly noted in drafting notes and explained in the Executive Summary of the final recodification report.

Short Titles and Headings

1. Do not include a "short title" section. Name the chapter/article so it may be cited by its heading (also called a caption). See § 1-244 of the Code.
2. In general, do not use "Virginia" in the heading of a chapter or article.

Penalties

1. When standardizing "felonies," do not go beyond the existing maximum when a range is designated.
2. Add penalties in one place, usually at the end of a chapter, so that the penalties are listed only once.
3. For distinction, specify a penalty as either a "civil penalty" or a "criminal penalty."

Sunset Clauses

Draft sunset clauses as part of the section text so that the provisions are codified.

Code Commission Bill Draft Summary

When legislation is approved by the Code Commission, include a statement in the summary that reflects that the bill is a recommendation of the Virginia Code Commission.

IV. TERMINOLOGY

General Terminology Decisions (this list is NOT all-inclusive—see also DLS Drafting Manual and guidelines for Code Style and Text Update Project by Volume)

1. Change "court of competent jurisdiction" to "appropriate court" and "court of record" to "circuit court."
2. Change "rules and regulations" to "regulations."
3. Change "Virginia" to "the Commonwealth" unless otherwise appropriate.
4. Replace "county, city, or town" with "locality."
5. Avoid use of "or his designee" when delegating authority of "chief executive officer" because such delegation is covered in § 2.2-604.
6. Standardize references to fees charged by attorneys as "attorney fees."
7. Standardize references to Acts of Assembly as "Acts of Assembly of [year]."

GENERAL EXPLANATORY NOTE

STATUTES INCLUDED AND STATUTES OMITTED.

The general policy of the Commission has been to include in the proposed Code only statutes of a general nature and to leave out special and local acts However, acts, by their terms applicable only to particular counties and cities, which appeared in the Code of 1919, have been retained, as also have been retained a number of statutes, whether contained in the Code of 1919 or subsequently enacted, which relate to the courts or the officers and government of particular cities and counties. Acts which except from their application one or two particular counties or cities, presumably intended to be general laws, have been included. Acts referring to particular rivers and tidal waters or other geographic features of the State, to particular educational institutions and other public agencies, and to the state parks, have been considered as general acts and have been included.

It has been the intention of the Commission to omit statutes and parts of statutes which have been in whole or in part repealed, expressly or by clear implication, and statutes which have expired by their own terms, or have been superseded by more recent legislation, or have otherwise become obsolete. Statutes which are now in force, but which by their own terms will expire before it is contemplated that the proposed Code, if adopted, can become effective, have been omitted.

Statutes which have, by the Supreme Court of Appeals of Virginia, been declared unconstitutional in their entirety have been omitted, except in one or two instances where the Assembly has with apparent deliberate intent re-enacted the statute after the decision of the Court. Statutes which have been declared unconstitutional only as applied to certain persons or circumstances have been included. Merely consequential amendments of statutes, required on account of amendments to the Constitution of Virginia, have been made.

Most preambles and preliminary recitals, declarations of emergency and of legislative policy have been omitted. Sometimes, however, preliminary matter, particularly legislative determinations of fact, have been retained, where such preliminary matter has been referred to in the body of the statute, or where for some other reason it has seemed desirable to retain it.

Clauses declaring the provisions of statutes to be separable or severable in relation to their validity or constitutionality, which only declare the existence of a principle deemed to be inherent in a code, have been omitted.

Clauses which expressly repeal specific statutes, their object being accomplished by omission of the statutes specified, have been omitted. General repealer clauses, which do not expressly repeal specified statutes, but which purport to repeal all inconsistent statutes, have likewise been omitted.

Many statutes which the Commission thought it unnecessary to print in full, but which the Commission also thought should not be repealed by omission from the Code, have not been printed but have been continued by reference only, a practice freely used by the Revisors of the Code of 1919. Examples of such statutes are some of the numerous statutes, which, although general in form, are in fact applicable only to one or two counties or cities classified on the basis of

population or land area; statutes providing for the issuance of bonds, where no more bonds may be issued, but where some of the bonds already issued are still outstanding; statutes which by their terms are to become effective only upon the happening of some contingency, which has not yet occurred, and seems unlikely to occur; and statutes which have been to a very large extent superseded by more recent legislation, but not to such an extent as the Commission feels would justify their omission. The statutes continued by reference have not been collected in one place, but have been so continued by short sections inserted throughout the Code at the places where the statutes so continued would have appeared if printed in full.

Acts declared by their terms to be in effect only upon the happening of some contingency have in instances where the contingency has occurred been printed as presently effective statutes, without any reference to the contingency. If the contingency has not yet occurred, the act, where printed at all rather than continued by reference, has been printed in its present conditional form.

Code of Virginia search result

Your search found **94** references in **94** documents. The number of references follows each document description.
Perform another search or look at some **examples** to help you refine your search.

not set out submit

- **2.2-4503 (show hits)** ..Description unavailable.. (1)
- **2.2-5500 (show hits)** ..Description unavailable.. (1)
- **5.1-178 (show hits)** ..Description unavailable.. (1)
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- **13.1-1068 (show hits)** ..Description unavailable.. (1)
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- **15.2-1130 (show hits)** ..Description unavailable.. (1)
- **15.2-1201.1 (show hits)** ..Description unavailable.. (1)
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- **15.2-1213 (show hits)** ..Description unavailable.. (1)
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- **15.2-2277 (show hits)** ..Description unavailable.. (1)
- **15.2-3245 (show hits)** ..Description unavailable.. (1)
- **15.2-4600 (show hits)** ..through 15.2-4618.. (1)
- **15.2-4700 (show hits)** ..through 15.2-4715.. (1)
- **15.2-4800 (show hits)** ..through 15.2-4815.. (1)
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- **15.2-6201 (show hits)** ..Description unavailable.. (1)
- **16.1-69.2 (show hits)** ..through 16.1-69.4.. (1)
- **16.1-69.7:1 (show hits)** ..Description unavailable.. (1)
- **16.1-69.13 (show hits)** ..Description unavailable.. (1)
- **16.1-69.35:1 (show hits)** ..Description unavailable.. (1)
- **16.1-70 (show hits)** ..through 16.1-75.. (1)
- **18.2-76.2 (show hits)** ..Description unavailable.. (1)
- **19.2-309.1 (show hits)** ..Description unavailable.. (1)
- **22.1-57.3:1 (show hits)** ..Description unavailable.. (1)
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- **23-38.19 (show hits)** ..Description unavailable.. (1)
- **28.2-1309 (show hits)** ..Description unavailable.. (1)
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- **29.1-610 (show hits)** ..Description unavailable.. (1)
- **32.1-322 (show hits)** ..Description unavailable.. (1)
- **33.1-23.5 (show hits)** ..Description unavailable.. (1)

- **33.1-320.2 (show hits)** ..Description unavailable.. (1)
- **33.1-391.1 (show hits)** ..Description unavailable.. (1)
- **33.2-1300 (show hits)** ..Description unavailable.. (1)
- **33.2-1400 (show hits)** ..Description unavailable.. (1)
- **33.2-1824 (show hits)** ..Description unavailable.. (1)
- **33.2-3000 (show hits)** ..Description unavailable.. (1)
- **33.2-3100 (show hits)** ..Description unavailable.. (1)
- **36-19.1 (show hits)** ..Description unavailable.. (1)
- **36-19.4 (show hits)** ..Description unavailable.. (1)
- **36-27.1 (show hits)** ..Description unavailable.. (1)
- **36-72 (show hits)** ..Description unavailable.. (1)
- **36-85.4 (show hits)** ..Description unavailable.. (1)
- **40.1-51.18 (show hits)** ..Description unavailable.. (1)
- **45.1-227 (show hits)** ..Description unavailable.. (1)
- **45.1-272 (show hits)** ..Description unavailable.. (1)
- **45.1-285.1 (show hits)** ..through 45.1-285.10.. (1)
- **46.2-341.2 (show hits)** ..Description unavailable.. (1)
- **46.2-341.33 (show hits)** ..Description unavailable.. (1)
- **46.2-1106 (show hits)** ..Description unavailable.. (1)
- **46.2-1138 (show hits)** ..Description unavailable.. (1)
- **46.2-1235 (show hits)** ..Description unavailable.. (1)
- **46.2-1580 (show hits)** ..Description unavailable.. (1)
- **51.1-124.1 (show hits)** ..Description unavailable.. (1)
- **55-297.1 (show hits)** ..Description unavailable.. (1)
- **55-349 (show hits)** ..Description unavailable.. (1)
- **55-422 (show hits)** ..Description unavailable.. (1)
- **55-437 (show hits)** ..Description unavailable.. (1)
- **56-265.27 (show hits)** ..Description unavailable.. (1)
- **56-509 (show hits)** ..Description unavailable.. (1)
- **56-529 (show hits)** .., 56-530. (Repealed effective October 1, 2014).. (1)
- **56-537 (show hits)** ..Description unavailable.. (1)
- **56-575 (show hits)** ..Description unavailable.. (1)
- **57-39.2 (show hits)** ..through 57-39.7.. (1)
- **57-68 (show hits)** ..Description unavailable.. (1)
- **58.1-815.3 (show hits)** ..Description unavailable.. (1)
- **58.1-3229 (show hits)** ..Description unavailable.. (1)
- **58.1-3506.8 (show hits)** ..Description unavailable.. (1)
- **58.1-3650.1 (show hits)** ..through 58.1-3650.1001.. (1)
- **58.1-3814.1 (show hits)** ..Description unavailable.. (1)
- **58.1-3820 (show hits)** ..Description unavailable.. (1)
- **58.1-3821 (show hits)** ..Description unavailable.. (1)
- **59.1-9.18 (show hits)** ..Description unavailable.. (1)
- **59.1-21.18 (show hits)** ..Description unavailable.. (1)
- **59.1-261 (show hits)** ..Description unavailable.. (1)
- **59.1-342 (show hits)** ..Description unavailable.. (1)
- **59.1-428 (show hits)** ..Description unavailable.. (1)
- **62.1-44.19:1 (show hits)** ..Description unavailable.. (1)
- **62.1-44.19:2 (show hits)** ..Description unavailable.. (1)
- **63.2-1400 (show hits)** ..Description unavailable.. (1)
- **63.2-1500 (show hits)** ..Description unavailable.. (1)

SAMPLES OF "NOT SET OUT" SECTIONS IN PRINTED CODE

§ 2.2-4503. Not set out. (2001, c. 844.)

Editor's Note. - This section, relating to investment of public funds of Fairfax County, was enacted by Acts 2001, c. 844 (formerly by Acts 1980, c. 50 as § 2.1-328.2). In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 5.1-178. Not set out. (2001, c. 342.)

Editor's Note. - This section, pertaining to the effective date of Chapter 10, was enacted by Acts 2001, c. 342. Its provisions are deemed to have been accomplished by the following cited federal law: P.L. 99-591, Title VI; 100 Stat. 3341-376; 49 USC 49101 et seq. (October 28, 1986). In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

The text of the act for this section read as follows: "This act shall only become effective upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to the Authority; provided, however, the Governor may make appointments for initial Authority membership at such time or times following the passage of this act as he may deem appropriate."

§ 15.2-1128. Not set out. (1995, c. 328, § 15.1-29.25; 1997, c. 587.)

Editor's Note. - This section, pertaining to exchange of information regarding criminal history of applicants for employment as paramedics or emergency medical technicians in certain cities, was derived from Acts 1995, c. 328, § 15.1-29.25; 1997, c. 587. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 15.2-1130. Not set out. (Acts 1995, cc. 291, 408, § 15.1-132.2; 1997, c. 587; 2000, cc. 829, 840.)

Editor's Note. - This section, pertaining to liability for failure to provide adequate security or crowd control, was derived from Acts 1995, cc. 291, 408, § 15.1-132.2; It was amended by Acts 1997, c. 587; Acts 2000 cc. 829, 840. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 15.2-1201.1. Not set out. (1997, c. 613, § 15.1-539.1.)

Editor's Note. - This section, pertaining to prohibition of discharge for service on board and penalty for such in counties with a population between 31,000 and 31,500, was derived from Acts 1997, c. 613, § 15.1-539.1. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 15.2-1213. Not set out. (1990, c. 895, § 15.1-527.3; 1997, c. 587; 2008, c. 778.)

Editor's Note. - This section, pertaining to a referendum in Loudoun County on election of the county chairman from the county at large, was derived from Acts 1990, c. 895, § 15.1-527.3; 1997, c. 587. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 15.2-1635.1. Not set out. (1998, c. 872.)

Editor's Note. - This section, increasing the compensation of the clerks of the Circuit Court in Arlington, Loudoun, Fairfax, Fauquier and Rappahannock Counties, was enacted by Acts 1998, c. 872. In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§§ 15.2-4600 through 15.2-4618.Not set out. (1997, c. 587. [Amendments: § 15.2-4603: 2000, c. 435; 2002, c. 770. 15.2-4608 and 15.2-4616: 2002, c. 770.])

Editor's Note. - These sections, relating to Multicounty Transportation Improvement Districts, were enacted by Acts 1997, c. 587 as Chapter 46. Section 15.2-4603 was amended by Acts 2000, c. 435 and Acts 2002, c. 770. Sections 15.2-4608 and 15.2-4616 were amended by Acts 2002, c. 770. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, these sections, which are limited in their purpose and scope, are not set out here, but attention is called to them by this reference.

§§ 16.1-69.2 through 16.1-69.4. Not set out. (1956, c. 555; 1972, c. 708; 1973, c. 546.)

Editor's Note. - Sections 16.1-69.2, 16.1-69.3, and 16.1-69.4, enacted by Acts 1956, c. 555, and amended by Acts 1972, c. 708 and Acts 1973, c. 546, pertain to the effect of (1) repeal of Title 16 and amendment of Title 16.1, (2) validity of certain notices, recognizances, and processes issued before July 1, 1973, and (3) references to former provisions of Title 16 or Title 16.1, as amended. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, these sections, which are limited in their purpose and scope, are not set out here, but attention is called to them by this reference.

§§ 16.1-70 through 16.1-75. Not set out. 1956, c. 555. [§ 16.1-70.1: Acts 1972, c. 708; 1973, c. 546; 1974, c. 648; 1977, c. 95.])

Editor's Note. - Section 16.1-70, enacted by Acts 1956, c. 555, pertains to continuance of certain city and town courts of limited jurisdiction as police courts. Section 16.1-70.1, enacted by Acts 1972, c. 708, and amended by Acts 1973, c. 546, Acts 1974, c. 648, and Acts 1977, c. 95, pertains to abolition of courts of limited jurisdiction and place where municipal court of the Town of Herndon is held. Sections 16.1-71 through 16.1-75, enacted by Acts 1956, c. 555, pertain to applicability of provisions of municipal charters, authority of city or town council, removal of actions involving more than fifty dollars, appeals, procedure, and the superseding of the jurisdiction of in mayors, etc., and continuance of certain powers. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, these sections, which are limited in their purpose and scope, are not set out here, but attention is called to them by this reference.

§ 19.2-309.1. Not set out. (1988, cc. 764, 786.)

Editor's Note. - This section, relating to confinement to jail farms maintained by the Cities of Danville, Martinsville, and Newport News, was enacted by Acts 1988, cc. 764 and 785. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 22.1-57.3:1. Not set out. (1993, c. 878; 1994, c. 744; 2002, c. 74.)

Editor's Note. - This section, relating to the staggered terms of the elected school board in Rockbridge County, was enacted by Acts 1993, c. 878. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by reference.

§ 28.2-1309. Not set out. (1992, c. 836.)

Editor's Note. - This section, relating to emergency sand grading activities on nonvegetated wetlands located on the Atlantic Shoreline of Virginia Beach, was originally enacted by Acts 1984, c. 518 and was repealed and reenacted by Acts 1992, c. 836. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 29.1-610. Not set out. (1987, c. 488.)

Editor's Note. - This section, making the James River downstream from Bosher's Dam to the Interstate 95 bridge a no hunting area, was enacted by Acts 1987, c. 488. A comparable provision, former § 29-12.1, was enacted by Acts 1986, c. 286. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 33.2-3100. Not set out. (2014, c. 805.)

Editor's Note. This chapter, relating to the Washington Metropolitan Area Transit Authority Compact of 1966, was enacted by Acts 2014, c. 805, effective October 1, 2014 (formerly by Acts 1966, c. 2, as amended). It is set out in full under § 33.2-3100 in the Compacts Volume of the Code of Virginia.

§ 36-19.1. Not set out. (1952, c. 200; 1975, c. 575.)

Editor's Note. - This section, relating to limitations on the exercise of powers by the Roanoke Housing Authority, derived from Acts 1952, c. 200, as amended by Acts 1975, c. 575. In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 40.1-51.18. Not set out. NO EDITOR'S NOTE.

§§ 45.1-285.1 through 45.1-285.10. Not set out. (1983, c. 3. [Amendment: § 45.1-285.3 - 1984, c. 590.])

Editor's Note. - These sections, relating to the study of uranium mining and development, particularly as pertaining to Pittsylvania County, were enacted by Acts 1983, c. 3 as Article 2 of Chapter 21. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, these sections are not set out here, but attention is called to them by this reference.

§ 46.2-1235. Not set out. (1989, c. 727.)

Editor's Note. - This section, relating to the authority of Chesterfield County law-enforcement personnel to issue tickets, was enacted by Acts 1989, c. 727. In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 51.1-124.1. Not set out. (1994, cc. 4, 85.)

Editor's note. - This section, relating to statement of intent and purpose, was enacted by Acts 1994, cc. 4 and 85. In furtherance of the general policy of the Virginia Code Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§§ 57-39.2 through 57-39.7. Not set out. (1962, c. 264. [Amendments - § 57-39.2: 1964, c. 111; 1985, c. 414; 1986, c. 118. § 57-39.3: 1964, c. 111; 1986, c. 118. §§ 57-39.4 through 57-39.6: 1964, c. 111. § 57-39.7: 1964, c. 111; 1985, c. 414.])

Editor's Note. - This article, providing for the acquisition of abandoned cemetery lots by the city, corporation, association or trustees owning the cemetery, and applicable only in cities having a population in excess of 180,000 but not exceeding 300,000, was added to the Code by chapter 264 of the Acts of 1962. In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, this article, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.

§ 58.1-815.3. Not set out. (2000, c. 681, cl. 1.)

Editor's Note. - This section, enacted by Acts 2000, c. 681, cl. 1, creates a U.S. Route 29 Corridor Development Fund. Acts 2000, c. 681, cl. 2, provides: "That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in an appropriation act up through the 2005 Appropriation Act, passed by the General Assembly, and signed into law by the Governor." No such appropriation was passed in 2000. At the direction of the Virginia Code Commission, the section is not set out.

§§ 58.1-3650.1 through 58.1-3650.1001. Not set out.

Editor's Note. - These sections, which exempt various individually designated properties from taxation, are as follows: § 58.1-3650.1. The Garden Club of Virginia, Richmond, Virginia (1972, c. 1; 1984, c. 675); etc..

These organizations have been specifically designated by the General Assembly as a benevolent, charitable, historical or patriotic organization or public park or playground within the context of Va. Const., Art. X, 6(a)(6); In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, these sections, which are limited in their purpose and scope, are not set out here, but attention is called to them by this reference. For detailed information regarding any limitation of the exemption, including effective dates, reference should be made to the Acts of Assembly.

§ 63.2-1500. Not set out. (Acts 2002, c. 747.)

Editor's Note. - This section, relating to state policy requiring the reporting of suspected child abuse or neglect, was enacted by Acts 2002, c. 747 (formerly by Acts 1975, c. 341 as § 63.1-248.1). In furtherance of the general policy of the Commission to include in the Code only provisions having general and permanent application, this section, which is limited in its purpose and scope, is not set out here, but attention is called to it by this reference.