

VIRGINIA CODE COMMISSION

Monday, April 6, 2015 - 10 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: Pamela S. Baskervill; Gregory D. Habeeb; James M. LeMunyon; Ryan T. McDougle; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; Christopher R. Nolen; G. Timothy Oksman; and Robert L. Tavenner

MEMBERS ABSENT: Robert L. Calhoun; John S. Edwards; Carlos L. Hopkins; Charles S. Sharp

OTHERS PRESENT: Brian Kennedy, LexisNexis

STAFF PRESENT: Jane Chaffin, Karen Perrine, Nicole Brenner, Caroline Stalker, Ryan Brimmer, and Tom Stevens, Division of Legislative Services (DLS)

Call to order: Delegate LeMunyon, Vice-Chair, called the meeting to order at 10 a.m.

Approval of minutes: On motion of Mr. Nolen, seconded by Mr. Miller, the minutes of the November 18, 2014, meeting of the Code Commission were approved as printed and distributed to the members of the Code Commission.

Citizen member appointment: Delegate LeMunyon stated the Mr. Miller's appointment to the Code Commission expires on June 30, 2015. Jane Chaffin explained that under § 30-145 of the Code of Virginia, the Code Commission may recommend individuals to fill the two nonlegislative citizen member slots. Mr. Nolen was appointed by the Speaker of the House of Delegates, and Mr. Miller's seat is appointed by the Senate Committee on Rules. The Senate Committee on Rules is meeting on April 15 to make appointments. Mr. Miller stated that he has enjoyed his work on the Code Commission and would like to be reappointed. Upon motion of Delegate Habeeb, seconded by Mr. Nolen, the Code Commission voted to recommend to the Senate Committee on Rules that Mr. Miller be reappointed to the Code Commission.

Code of Virginia contract - option to renew: As noted previously at the Code Commission's November meeting, Mr. Tavenner stated that the contract for publication of the Code of Virginia, currently held by LexisNexis, is set to expire in 2016. The contract contains a two-year renewal option, which can be exercised a maximum of two times. Mr. Tavenner recommended that the Code Commission exercise the first two-year renewal option. On motion of Mr. Miller, seconded by Mr. Oksman, the Code Commission approved renewal of the contract for two years. Mr. Nolen abstained from voting because LexisNexis is a client of his law firm, although he does not personally represent or provide services to LexisNexis. The motion was approved.

Recodification of Title 23, Educational Institutions: Ryan Brimmer and Tom Stevens reviewed the status of the Title 23 recodification. Mr. Brimmer advised that the Code Commission completed the review of 19 chapters last year, leaving Subtitles I through III and new Chapter 30 regarding the Eastern Virginia Medical School (a total of 13 chapters) to be reviewed this year. An organizational outline of proposed Title 23.1 and a proposed schedule are included in the meeting materials. Staff stated that they are on schedule to complete the recodification this year and plan to have a bill ready for introduction at the 2016 Session of the

General Assembly. Mr. Brimmer advised that the issues regarding the reappointment or removal of a board member, which had been discussed at length previously by the Code Commission, were resolved by passage of legislation in the 2015 Session of the General Assembly.

In response to a question from Delegate LeMunyon, Mr. Brimmer indicated the work group is still active and will continue to make recommendations to the Code Commission. Mr. Miller asked that Mr. Brimmer send the list of the work group members to each Code Commission member.

Delegate LeMunyon thanked Mr. Brimmer and Mr. Stevens for their efforts on the recodification.

Codification of compacts - status and remaining issues: At its November 18, 2014, meeting, the Code Commission decided to set out all compacts in the Code of Virginia. Nicole Brenner reported on the status of the implementation of this decision. The update of the Virginia Law Portal (<http://law.lis.virginia.gov/>) is complete--compacts are included under the "Compacts" heading and all but three compacts have been set out in the Code of Virginia. The Woodrow Wilson Bridge Tunnel Compact was repealed in the 2015 Session of the General Assembly, as recommended by the Code Commission. Ms. Brenner indicated that the three remaining compacts are the Southeastern Interstate Forest Fire Protection Compact, the Middle Atlantic Interstate Forest Fire Protection Compact, and the Nonresident Violator Compact of 1977.

Ms. Brenner advised that the Code Commission's decision at its November 2014 meeting to set out the two forest fire protection compacts in the Code of Virginia section already assigned to the compact, i.e., §§ 10.1-1149 and 10.1-1150, could not be implemented because of the way the current text of the section is written to incorporate the relevant Act of Assembly. Further, the Code Commission's decision at its November 2014 meeting to assign a Code section number in Title 46.2 to the Nonresident Violator Compact of 1977 could not be implemented because staff discovered that the compact was not adopted by the General Assembly. The Division of Motor Vehicles (DMV) has advised that a federal review is being conducted of this compact, and DMV expects changes to the compact. Ms. Brenner anticipates having a bill ready for the 2016 session on these compacts.

Ms. Brenner indicated the last matter is the evaluation of the Compacts Volume. If the Code Commission determines the volume is needed, staff recommends appointment of a subcommittee to conduct a review. Some Code Commission members proposed that the volume be eliminated. Mr. Kennedy advised that LexisNexis has no objection to ceasing publication of the Compacts Volume. After a brief discussion, Judge Baskervill moved to eliminate the Compacts Volume and ask the publisher to list the compacts in the index for the Code of Virginia, if they are not already listed. The motion was properly seconded and carried.

The Code Commission discussed how to set out the two forest fire protection compacts in the Code of Virginia. Senator McDougle moved that (i) these compacts be assigned a section number following the current section number and set out in the Code of Virginia and (ii) §§ 10.1-1149 and 10.1-1150 be repealed. The motion was properly seconded and carried.

Selection of title for next recodification: Mr. Tavenner advised that the Code Commission needed to select a title for the next recodification. A handout with the list of Code of Virginia titles and their recodification dates (if any) was included in the meeting materials. Delegate

LeMunyon reminded the members that they previously had tentatively designated Title 8.01 for recodification after Title 23. The Code Commission discussed the pros and cons of recodifying Title 8.01, including the time and effort versus the need and value. In response to a question, Ms. Chaffin advised that in 2013, public comment was solicited on the titles being considered, including Title 8.01, by publishing notices on the Virginia Lawyers Weekly blog, on the Code Commission's website, and in the Virginia Register. No public comment was received.

Delegate LeMunyon stated that the Code Commission should consider recodifying Title 8.01, and asked staff to seek public comment and report back to the Code Commission. The report should include recommendations from Division of Legislative Services staff as to any title with substantive impact that could be handled quickly. Mr. Nolen recommended that whenever Title 8.01 is recodified, Code Commission members should be assigned to the work group.

Delegate LeMunyon asked that this item be on the agenda for the May meeting.

Letter from Delegate Rust. Delegate LeMunyon explained that Delegate Rust, on behalf of a constituent, requested that the Code Commission consider referencing in Chapter 4 of Title 8.01 all statutes of limitations not presently included in that chapter. Delegate LeMunyon indicated that if Title 8.01 is selected for recodification, this issue could be reviewed and addressed as part of the recodification process. He instructed staff to put this item on the agenda for the next meeting, after which a response letter will be sent to Delegate Rust.

Review of 2015 Code Commission legislation: Ms. Chaffin reviewed the handout summarizing the status of the legislation recommended by the Code Commission for the 2015 Session of the General Assembly. Most of the bills passed; however, two bills failed and two bills were not introduced. The failed bills dealt with use of a commercial carrier for notice or service and were referred to the Boyd-Graves Conference of the Virginia Bar Association for study. The bill on obsolete provisions in the housing laws was not introduced as, during the editing process, staff identified concerns not previously considered. The bill regarding the forest fire protection compacts was not introduced for reasons discussed earlier at today's meeting.

Delegate Habeeb expressed the concern that most members of the General Assembly believe that Code Commission bills are only nonsubstantive; however, he noted that Administrative Law Advisory Committee (ALAC) bills are substantive. Delegate Habeeb suggested that legislation recommended to the Code Commission by ALAC should be identified as ALAC recommendations versus Code Commission recommendations in the legislation summary.

Mr. Miller suggested that the Code Commission have a philosophical discussion of its role. He believes the Code Commission can recommend substantive changes but must always clearly identify the nature of the changes. For example, in a recodification report, the substantive changes are outlined at the beginning of the report. Delegate Habeeb noted that even though the recodification report for Title 33.1 clearly listed the substantive changes, most members of the Transportation Committee believed the changes made through the recodification were only technical.

Staff offered to prepare an information sheet regarding the authority of the Code Commission for discussion at a future meeting.

Other business:

Delegate LeMunyon stated that the schedule for the entire year had been sent to all members. Delegate Habeeb questioned whether the June meeting would need to be rescheduled due to a caucus retreat that weekend.

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