

VIRGINIA CODE COMMISSION

Monday, September 19, 2016 - 10:00 a.m.

General Assembly Building, 6th Floor

Speaker's Conference Room

Richmond, Virginia 23219

Approved

October 17, 2016

MEMBERS PRESENT: John S. Edwards; James M. LeMunyon; Gregory D. Habeeb; Carlos L. Hopkins; Leslie L. Lilley; Robert L. Calhoun, Jr.; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; G. Timothy Oksman; Charles S. Sharp; Mark Vucci

MEMBERS ABSENT: Ryan T. McDougle; Chris Nolen

STAFF PRESENT: Kristen Walsh, Amigo Wade, David Cotter, Lisa Wallmeyer, Jane Chaffin, Karen Perrine, Division of Legislative Services (DLS)

OTHERS PRESENT: Senator Adam P. Ebbin; Delegate Marcus B. Simon; Senator Jennifer T. Wexton; Scott Price, Alliance for a Progressive Virginia; Brian Kennedy, LexisNexis

Call to order: Senator Edwards, Chair, called the meeting to order at 10:05 a.m.

Approval of minutes: The minutes of the August 1, 2016, meeting of the Commission as printed and distributed to the members were approved without objection.

2017 Code of Virginia replacement volumes and pricing proposal: This agenda item was continued from the August 1, 2016, meeting. Brian Kennedy stated that LexisNexis proposes replacing the following volumes of the Code of Virginia in 2017: Volumes 1, 7, 8A, and 9A, which he suggests splitting into two volumes (9A and 9B). Volume 9A will consist of Titles 63.2 and 64.2, and Volume 9B will consist of Titles 65.2 through 67. The proposal is based largely on the size of the standalone supplement for each volume. Mr. Kennedy stated that replacing five to six volumes each year is typical. In regard to the pricing information, Mr. Kennedy advised that the Producer Price Index (PPI) for Book Publishing is used as a basis for the proposal. Although the PPI for the most recent period reflects a 6.0% increase, the LexisNexis pricing proposal reflects only a 4.0% increase.

Mr. Calhoun stated that Title 15.2 is large and asked if that title could be split into two volumes next year. Mr. Miller proposed that DLS review Title 15.2 and other volumes of the Code and make recommendations on which volumes should be split. Mr. Kennedy advised that normal practice is for LexisNexis to provide its recommendation to staff for review and comment before presenting the recommendations to the Commission.

On motion of Mr. Oksman, seconded by Mr. Miller, the Code Commission approved (i) the replacement of Volumes 1 (Titles 1-2.2), 7 (Title 46.2), and 8A (Titles 58.1) and splitting Volume 9A into two volumes--Volume 9A (Titles 63.2 and 64.2) and Volume 9B (Titles 65.2 through 67); (ii) a proposed price increase of 4.0% as shown in the following table; and (iii) the recommendation that DLS staff review volumes of the Code of Virginia as suggested by Mr. Miller.

	2017 Prices with Five Replacement Volumes	
	State	Private
Cumulative Supplements	\$191.00	\$247.75
Index	\$92.00	\$97.25
Volumes 1, 7, 8A, 9A, and 9B	\$285.00 (\$49.50 each)	\$355.50 (\$61.60 each)
Volume 11	\$37.50	\$49.50
Volume 11 Supplement	\$12.50	\$12.50
Advanced Code Service	N/A	\$74.75
TOTAL	\$580.50	\$789.75

Discussion of legislation referred from the 2016 Session of the General Assembly: This agenda item was continued from the August 1, 2016, meeting so that the members had an opportunity to review the bills referred to the Commission during the 2016 Session of the General Assembly, the status of the bills, and the point of order regarding the motion to refer bills back to the General Assembly.

Senator Edwards began by advising the members that Delegate LaRock has requested that his bill, House Bill (HB) 397, be removed from the Commission's work plan. Delegate Habeeb stated that a bill should be removed if the Commission determines removal is the appropriate action, and not based solely on a request by a patron. The Commission's function is to review the language of each bill and provide the proper language to accomplish the purpose of each bill and to be consistent with the broader evaluation of the entire Code of Virginia, which is an element of the work plan. He proposed that all referred bills remain in the work plan. Mr. Calhoun stated that the Commission should only be addressing the correct way to draft the bill.

Mr. Oksman renewed his motion from the prior meeting to refer the bills back to the General Assembly. Mr. Hopkins seconded the motion. As a point of parliamentary procedure, Delegate Habeeb stated that the proper motion is for the Commission to reconsider its prior motion that added the 2016 legislation to the work plan. Mr. Vucci stated that he will abstain from voting. Delegate LeMunyon indicated that HB 595 is related to the gender-specific terms study and should remain on the work plan. Mr. Oksman agreed and clarified that HB 595 is not part of his motion. Delegate Simon, patron of HB 595, concurred that HB 595 should remain on the work plan.

Delegate Simon, patron of HB 300, commented that for the other bills, the question for the Commission to ask is whether a bill needed to be addressed vis-a-vis the United States Supreme Court decision in the Hodges case. He believes that upon review of the other bills referred by the General Assembly, the Commission can determine that, based on Hodges, no action is needed because the bill is pure policy. He stated that HB 300 regarding fair housing is not affected by the Hodges case and should not be part of the Commission's work plan.

Senator Wexton, patron of Senate Bill (SB) 67, which is the companion bill to HB 300, stated that she agreed with Delegate Simon. She requested that SB 67 not be part of the work plan.

Mr. Oksman amended his motion to send HB 300 back to the General Assembly using Delegate Simon's statement that the bill is not affected by the Hodges case and no action is needed by the Commission. Delegate Habeeb stated that he will vote against the motion because the leadership of the General Assembly has requested the Code Commission to act and it should do so. Delegate LeMunyon asked if the motion should be stated as sending all bills back except HB 595.

Senator Edwards indicated that the Commission should vote on each bill separately and asked for a roll call vote on HB 300. Delegate LeMunyon, Mr. Calhoun, Mr. Moncure, Mr. Oksman, Mr. Hopkins, and Senator Edwards voted aye. Delegate Habeeb, Judge Sharp, Judge Lilley, and Mr. Miller voted no. Mr. Vucci abstained. The motion passed 6-4.

Using the same motion as that for HB 300, Senator Edwards asked for a roll call vote on a motion regarding SB 67. The motion passed on the same vote as HB 300.

Senator Ebbin, patron of SB 12 (2016) and SB 1211 (2015), addressed the Commission. He stated that SB 12 is not related to the amendments in SB 1211 and, unlike SB 1211, does not fit the charge to the Commission. He requested that SB 12 be removed from the work plan and that the

74 Commission provide a cover letter to explain to the legislature why the bill is not included. He
75 believes that DLS is capable of drafting a correct bill for SB 12.

76 Mr. Calhoun stated that SB 12 highlights the problem. SB 12 uses different definitions for terms
77 than the other bill in the list about housing. He believes that if both bills pass, a clean-up bill will be
78 necessary in 2018.

79 Using the same motion as that for HB 300, Senator Edwards asked for a roll call vote on a motion
80 regarding SB 12. The motion passed on the same vote as HB 300.

81 Mr. Scott Price, Alliance for a Progressive Virginia, spoke on HB 427 on behalf of Delegate Hope
82 and asked that the bill be removed from the Commission's work plan.

83 Using the same motion as for HB 300, the Commission voted on a motion for the remainder of the
84 referred bills: House Bills 77, 179, 397, 427, 429, 913, and 1005. The motion passed on the same
85 vote. House Bill 595 was specifically excluded from the motion and will remain on the
86 Commission's work plan.

87 Senator Ebbin expressed a concern regarding the timeframe of the work plan and urged the
88 Commission to have a recommendation for the 2018 Session of the General Assembly. He
89 confirmed that SB 1211 from the 2015 Session should be included in the Commission's work plan.

90 **Reorganization of § 58.1-322 of the Code of Virginia:** At its May 16, 2016, and June 20, 2016,
91 meetings, the Commission discussed restructuring § 58.1-322 of the Code of Virginia, which
92 pertains to Virginia taxable income of residents, because the section is quite lengthy and has
93 become unwieldy. The section is amended frequently, and a bill to amend this section is so
94 voluminous that it is often difficult to locate a change in the bill. At its June 20, 2016, meeting, the
95 Commission directed staff to prepare a draft bill to divide § 58.1-322 into more manageable
96 sections. Lisa Wallmeyer explained that the section in current form includes deductions,
97 modifications, and additions to taxable income. Ms. Wallmeyer stated that she worked closely with
98 the Department of Taxation in drafting the proposed bill before the Commission.

99 The proposed bill does not make any substantive changes and divides § 58.1-322 into four sections,
100 with § 58.1-322 covering the basic premise of the section. Additions to income are in § 58.1-322.01,
101 subtractions are in § 58.1-322.02, deductions are in § 58.1-322.03, and additional modifications are
102 in § 58.1-322.04. The Department of Taxation advised that any expired provision should be left in
103 the Code for five years after expiration; therefore, provisions that have been expired for more than
104 five years are removed in the proposed bill. Other changes are for grammar, punctuation, or
105 updating text. The proposed bill also includes other Code sections with references to current § 58.1-
106 322 that are amended to reflect the correct new Code section.

107 Mr. Calhoun asked if the older paragraphs of § 58.1-321 could be eliminated. Mr. Vucci indicated
108 that some of the paragraphs could be collapsed, and DLS recommends addressing that issue next
109 year, as there are other sections of the Code that need to be amended in the same fashion. For
110 example, the same issues exist for the corporate tax provisions.

111 Mr. Calhoun proposed that, subject to input from the Department of Taxation (the Department), the
112 proposed bill should include amendments to § 58.1-321 that remove obsolete provisions. Delegate
113 LeMunyon asked if any stakeholders other than the Department had been contacted. Ms. Wallmeyer
114 replied that she planned to take that step once the Commission approved the proposed bill.

115 Staff will follow up with stakeholders and present a revised proposal based on the discussion
116 regarding § 58.1-321 at a future meeting.

117 **Recodification of Title 55, Property and Conveyances:**

118 **Subtitle III, Rental Conveyances.**

119 Amigo Wade presented proposed Chapters 1 (General Provisions) and 2 (Virginia Residential
120 Landlord Tenant Act) of Title 55.1. He explained that Chapter 1 applies to all residential tenancies,
121 following the structure of the Uniform Residential Landlord and Tenant Act, which was recently
122 revised by the Uniform Law Commission. During its review, the Commission discussed or took
123 action as follows:

124 **Part A, Chapter 1 - General Provisions.**

- 125 • Line 248: After review of the applicability section, Judge Lilley requested that a provision be
126 added in Chapter 2 of Part A to clarify that the provisions of Chapter 1 also apply to Chapter 2.
- 127 • Line 978: The Commission directed staff to change "this part" to "Part A" and make similar
128 changes for consistency throughout the draft bill.
- 129 • Lines 1208-1214: Senator Edwards asked staff to review the section on recovery of possession,
130 which refers to "an essential service required by the rental agreement," now that "essential
131 service" is a defined term. His concern is the possibility of a conflict if the rental agreement
132 defines "essential service" differently.

133 **Part A, Chapter 2 - Virginia Residential Landlord Tenant Act.**

- 134 • Lines 7-11: Mr. Calhoun requested that staff expand the drafting note to clarify the differences
135 between Chapter 1 and Chapter 2.
- 136 • Line 559: Mr. Wade explained that the fund to which security deposits that escheat to the
137 Commonwealth are paid is changed from the Virginia Housing Trust Fund to the Literary Fund,
138 which is a substantive change required by Article VIII, Section 8 of the Virginia Constitution.
139 Mr. Wade will advise the Department of Housing and Community Development of this
140 proposed change.

141 **Treatment of enactments and other uncoded acts passed by the General Assembly:** Mark
142 Vucci stated that the Commission requested that staff present a policy regarding codification of
143 Section 1 bills, and a policy is included in the meeting materials. The list of policies includes other
144 provisions previously adopted by the Commission addressing authorities, compacts, and statutes
145 omitted from Code publication.

146 Mr. Vucci described examples where Section 1 bills are appropriate, such as pilot projects and sales
147 of surplus property of the Commonwealth. Some Section 1 bills, however, are of general or
148 permanent nature and should be codified under § 30-148 of the Code of Virginia as reflected in the
149 policy.

150 Jane Chaffin explained the current process for changing a Section 1 bill to a codified section, which
151 is determined by the Executive Committee of the Commission. Mr. Miller stated that the
152 Commission delegated that authority to the Executive Committee many years ago. Mr. Vucci stated
153 that in the future, a list of Section 1 bills that were codified can be presented to the Commission.

154 Delegate Habeeb stated that he does not believe that the Commission should change a Section 1 bill
155 to a codified section. A bill should remain either codified or uncodedified as designated by the
156 General Assembly, and should reflect the Acts of Assembly as closely as possible.

157 Delegate LeMunyon stated that this issue deserves more discussion at a later date.

158 **Other business:** Mr. Vucci requested that Title 27 be removed from the work plan for obsolete
159 laws that was approved at the August 1, 2016, meeting. The Commission had no objection.

160 **Public comment; adjournment:** Senator Edwards opened the floor for public comment. As there
161 was no public comment and no further business to discuss, the meeting was adjourned at 1:00 p.m.