

VIRGINIA CODE COMMISSION

*Monday, May 16, 2016 - 10:00 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219*

1 **MEMBERS PRESENT:** John S. Edwards; James M. LeMunyon; Gregory D. Habeeb; Charles S.
2 Sharp; Robert L. Calhoun, Jr.; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; G. Timothy Oksman;
3 Chris Nolen; Carlos L. Hopkins

4 **MEMBERS ABSENT:** Ryan T. McDougle

5 **STAFF PRESENT:** Kristen Walsh, Amigo Wade, Britt Olwine, Jane Chaffin, Karen Perrine, Lilli
6 Hausenfluck, Ryan Brimmer, Nicole Brenner, Division of Legislative Services (DLS)

7 **OTHERS PRESENT:** Tom Lisk, Mark Courtney, Brian Kennedy, Phil Abraham, Kristina Perry
8 Alexander

9 **Call to order; membership changes:** Senator Edwards, Chair, called the meeting to order at 10:00
10 a.m. Senator Edwards welcomed new member Mark Vucci, who serves on the Code Commission in
11 an ex officio capacity as Acting Director of the Division of Legislative Services. Senator Edwards
12 also advised the members of Judge Baskerville's resignation from the Commission effective April 30,
13 2016. The Speaker has been notified of the vacancy and the need to appoint an active or retired
14 circuit court judge to fill the remainder of Judge Baskerville's term, which expires June 30, 2018.

15 **Approval of minutes:** Hearing no objection, Senator Edwards stated that the minutes of the
16 November 16, 2015, meeting of the Commission stand approved as printed and distributed to the
17 members.

18 **Administrative Law Advisory Committee (ALAC) report:** Tom Lisk, ALAC chair, advised the
19 members that two bills introduced in the 2016 legislative session resulting from ALAC's
20 recommendations to the Commission passed:

- 21 • Chapter 478 (SB 206) on ex parte communication prohibits communication between a hearing
22 officer and any person during the pendency of the hearing without notice and opportunity for all
23 parties to participate, provides a cure if an ex parte communication does occur, and provides an
24 exemption for certain communications. The legislation applies only to formal hearings.
25 Nonsubstantive amendments to the introduced bill were made by the House of Delegates.
- 26 • Chapter 694 (SB 207) on reconsideration of an agency final decision provides a process for a
27 party to petition for reconsideration and for a board to consider the request. The failure to file a
28 petition does not constitute a failure to exhaust all administrative remedies. Nonsubstantive
29 amendments to the introduced bill were made by the House of Delegates and Senate.

30 Mr. Lisk recommended the reappointment of five ALAC members whose terms expired in 2015.
31 Mr. Calhoun made a motion to reappoint Thomas Lisk (Eckert Seamans), Edward Mullen (Reed
32 Smith), Eric Page (Eckert Seamans), Alexander Skirpan (State Corporation Commission), and
33 Brooks Smith (Troutman Sanders) for two-year terms. Mr. Miller seconded the motion, and the
34 motion carried.

35 **Title 23 recodification legislative update:** Ryan Brimmer reported that the Title 23 recodification
36 legislation (Chapter 588) passed with 31 amendments in the 2016 Session of the General Assembly.
37 Staff also reported that a number of technical amendments have been identified that will be
38 recommended to the Commission to be included in a cleanup bill for introduction in the 2017

39 Session of the General Assembly. Staff will present a proposed draft bill to the Commission before
40 the end of the year.

41 **Code of Virginia organizational structure:** Tom Moncure asked if the Commission should
42 evaluate the organizational structure of the Code of Virginia to consider making changes or
43 adjustments for future accommodation and flexibility. The Commission briefly discussed the failed
44 attempt to reorganize and renumber the Code of Virginia 10 years ago and the recent attempt to
45 revive the project a couple of years ago. In response to Mr. Moncure's question about whether or
46 when the print product will become obsolete, Brian Kennedy with LexisNexis indicated that given
47 complications of making electronic codes official, he expects the print product to be around for a
48 long time to come.

49 Mark Vucci advised the Commission that the Division of Legislative Services is preparing to move
50 to another building in the late summer or early fall of 2017, and this move affects staff availability
51 and resources. Also, DLS currently staffs more than 25 commissions and studies. In terms of
52 resources, DLS does not have the manpower to take on a project of this magnitude as well as deliver
53 expected services to members of the General Assembly.

54 The chair called on Lilli Hausenfluck, Chief Editor, who said that the Virginia statutory code has an
55 excellent numbering system that was implemented in 1984. In most of the titles that have been
56 recodified since 1984, the chapter number is embedded in the section number.

57 Senator Edwards indicated that since the Commission recodifies titles of the code individually on an
58 ongoing basis, no action is needed at this time.

59 **Bills referred to Commission by House General Laws and House Courts of Justice**
60 **Committees:** Delegate Habeeb provided background on bills referred to the Code Commission,
61 beginning with two gender-specific terms bills that were referred to the Commission for study last
62 year. Subsequently, the House and Senate leadership requested the Commission to set up a study to
63 evaluate the Code in light of the U.S. Supreme Court ruling on same-sex marriage. During the 2016
64 General Assembly Session, numerous bills amending Virginia's laws governing discrimination were
65 referred to the Code Commission.

66 Delegate Habeeb said that some of these bills might be considered outside the scope of what the
67 Commission generally does, but the underlying issue crosses many subject matter areas. The overall
68 scope of the project is to identify changes that are needed to bring the Code of Virginia into
69 compliance with federal law and recent court cases, which will most likely result in a more typical
70 Commission bill and additional bills making substantive changes introduced by other members of
71 the General Assembly. Delegate Habeeb suggested that the Code Commission review the matter on
72 a macro level and that subject matter work groups be formed to review on a micro level. The work
73 groups will also need to address the implications of the Virginia Attorney General opinion issued on
74 May 10, 2016, addressing Virginia's antidiscrimination statutes. Delegate Habeeb emphasized that
75 the Commission is not the body to make substantive policy changes regarding this matter; however,
76 the Commission is a logical choice to coordinate and provide direction to this project.

77 Delegate Habeeb volunteered to actively participate in work groups and suggested that it would be
78 beneficial for other Code Commission legislative members to be active participants as well. DLS
79 staff will identify the subject matter areas and propose work groups based on subject matter and
80 individuals to serve on each work group for consideration by the Commission.

81 After a brief discussion, the chair asked DLS to develop and present a proposed work plan and
82 timeline for completing the project to the Commission at the June meeting.

83 **Recodification of Title 55, Property and Conveyances:** Amigo Wade introduced himself, Kristen
84 Walsh, and Brittany Olwine as the staff assigned to the Title 55 recodification project. Mr. Wade
85 staffs the House General Laws Committee, and Ms. Walsh and Ms. Olwine staff the House Courts
86 of Justice Committee and the Senate Courts of Justice Committee, respectively.

87 Mr. Wade provided background on Title 55, explaining that this title has not been recodified since
88 1950. He stated that many of the chapters have not been amended since 1919, and other chapters are
89 frequently amended.

90 Mr. Wade presented a broad, initial topical organization showing the title divided into four areas:
91 Real Estate Conveyances, Rental Conveyances, Common Interest Communities, and Miscellaneous.
92 Subtitles will be proposed after the work group meets in June. A number of chapters will likely be
93 proposed for relocation into other titles of the Code and for repeal.

94 Staff has identified an initial list of interested parties and developed a list of proposed work group
95 and sub-work group members. Staff proposes a 14-member work group, including six members of
96 the Real Estate Section of the Virginia Bar Association. Specialty sub-work groups will be
97 established for statutes pertaining to (i) common interest communities, (ii) real estate conveyances,
98 and (iii) rental conveyances.

99 At the June meeting, staff expects to present a more definitive work plan. The objective is to
100 complete a substantial portion of the title recodification this year and finalize the remainder of the
101 title recodification next year in time for legislation to be introduced at the 2018 legislative session.

102 Delegate Habeeb pointed out that many subject areas in Title 55 will overlap with the gender-
103 specific terms study.

104 **Consideration of restructuring § 58.1-322:** Mark Vucci advised the members that § 58.1-322 of
105 the Code of Virginia, which pertains to Virginia taxable income of residents, is frequently amended.
106 He explained that the section includes tax deductions and subtractions and estimates that
107 approximately 35 legislative bill requests to amend this section were submitted to DLS this past
108 year, 20 of which were introduced and considered by the legislature. The section is quite lengthy
109 and has become unwieldy. Most amendments are single paragraph additions to an isolated part of
110 the section.

111 Mr. Vucci explained that the section is structured in a way that lends itself to splitting into multiple
112 sections. Subsection B lists additions to income, subsection C lists above line deductions, and
113 subsection D lists subtractions unrelated to income. In terms of efficiency, Mr. Vucci suggested that
114 the Code Commission consider recommending legislation to implement this change. The
115 Department of Taxation may incur costs related to printing new forms.

116 The Commission briefly discussed Mr. Vucci's suggestion and the consensus was to move forward
117 with drafting legislation to implement Mr. Vucci's recommendation. Mr. Vucci stated that he will
118 reach out to the Department of Taxation for feedback.

119 **2016 Code Commission legislation update:** Jane Chaffin reviewed the chart of legislation
120 approved by the Code Commission for introduction to the General Assembly. All bills introduced
121 and considered by the 2016 legislature passed, some with nonsubstantive amendments.

122 **Other business:** Ms. Chaffin advised the members of a request to correct references throughout the
123 Code of Virginia affected by the elimination of the Appendix to Title 50 of the United States Code.
124 Bill Cramm  has passed these updates on to the publishers for incorporation into the 2016 updates.

125 Ms. Chaffin advised the members that the agreement with LexisNexis to print the biweekly Virginia
126 Register was renewed and noted that there is no cost to the Commonwealth.

127 **Public comment; adjournment:** The Chair opened the floor for public comment. As there was no
128 public comment and no further business to discuss, the Chair adjourned the meeting at 11:10 a.m.