

VIRGINIA CODE COMMISSION

*Monday, June 20, 2016 - 10:00 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219*

MEMBERS PRESENT: John S. Edwards; James M. LeMunyon; Gregory D. Habeeb; Charles S. Sharp; Robert L. Calhoun, Jr.; Thomas M. Moncure, Jr.; E.M. Miller, Jr.; Ryan T. McDougale; Chris Nolen; Carlos L. Hopkins; Mark Vucci

MEMBERS ABSENT: G. Timothy Oksman

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

OTHERS PRESENT: Tom Lisk, Eckert Seamans; Anders Ganten, LexisNexis

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

Approval of minutes: Hearing no objection, Senator Edwards stated that the minutes of the May 16, 2016, meeting of the Commission stand approved as printed and distributed to the members.

Administrative Law Advisory Committee (ALAC) report: Mr. Lisk, ALAC chair, presented the ALAC work plan for 2016 for approval by the Commission. The work plan contained the following items:

- Update of the Virginia Supreme Court's hearing officer deskbook - The update will account for recent changes to the Administrative Process Act.
- Guidance document requirements; definition of "agency" in the Virginia Register Act - The review will consider whether the guidance document list filing requirement should apply to agencies without rulemaking authority that issue guidance documents that interpret or implement a statute.
- Model State Administrative Procedure Act - The judicial work group will reconvene to consider additional sections of the model act, including the section on intervention.
- Executive review process - The work group will continue to discuss recommendations to future administrations on ensuring the efficiency and effectiveness of the executive review process for regulations.

After a brief discussion, the Commission approved the work plan upon motion by Mr. Nolen and second by Mr. Hopkins.

Proposed work plan for study of (i) use of gender-specific references throughout the Code of Virginia and (ii) referred bills from the 2016 Session of the General Assembly: Mr. Cotter reviewed the issues prompting this study, including gender-specific terms bills referred to the Commission, a request from House and Senate leadership for the Commission to set up a study to evaluate the Code of Virginia in light of the 2015 U.S. Supreme Court ruling on same-sex marriage, numerous bills amending Virginia law governing discrimination referred to the Commission during the 2016 Session of the General Assembly, and a May 10, 2016, opinion of the Virginia Attorney General addressing Virginia's antidiscrimination statutes.

Mr. Cotter stated that he is proposing six work groups of relevant stakeholders with expertise in various areas to be utilized for the study. After identifying relevant Code provisions, the work groups will convene to review the laws and the issues, drawing on the expertise of the members of

the work groups. Mr. Cotter explained that the work groups will address both gender terms and discrimination provisions. The goal is to complete the work in time for the 2018 Session of the General Assembly. Delegate Habeeb, Delegate Simon, and Senator Ebbins will likely be members of some of the work groups. Mr. Hopkins also volunteered to participate.

Delegate Habeeb stated that, although the timeline seems lengthy, he is not aware of any current right or privilege that Virginians do or will not have in the interim because the Code of Virginia has a general definition of gender, and the ruling of the U.S. Supreme Court overrides any Virginia law to the contrary.

Mr. Miller suggested that the Commission communicate to leadership that the Commission is conducting this study. After brief discussion, Senator Edwards indicated that he would send a letter to Senator Norment and Speaker Howell regarding the work plan.

On motion of Mr. Miller, seconded by Mr. Hopkins, the Commission approved the work plan.

Recodification of Title 55, Property and Conveyances: Ms. Walsh advised members that the Title 55 recodification work group met on June 1 and developed an outline for proposed Title 55.1. The proposed organization for new Title 55.1 consists of Subtitle I - Real Estate Conveyances; Subtitle II - Real Estate Settlements and Recordation; Subtitle III - Rental Conveyances; Subtitle IV - Common Interest Communities; and Subtitle V - Miscellaneous. Ms. Walsh presented names of work group members and explained that, in addition to the overarching work group, other sub-work groups have been established to focus on (i) common interest communities, (ii) real estate conveyances, and (iii) rental conveyances.

Mr. Wade stated that the work group is starting with Subtitle III - Rental Conveyances and next plans to review Subtitle IV - Common Interest Communities. Staff projects that the recodification will be finalized by the end of 2017.

Delegate Habeeb commented that he expects some overlap with the gender-specific terms study, and Ms. Walsh advised members that the recodification work group will be communicating with Mr. Cotter about relevant findings of the gender-specific terms work group.

Mr. Hopkins moved that the Commission approve the work plan and organizational outline presented regarding the recodification of Title 55. The motion was seconded by Delegate LeMunyon and approved. Mr. Nolen voted in favor of the motion as it applies to all parts of Title 55 except for timeshares. Mr. Nolen explained that he was not voting on any matter relating to timeshares at this time, as he may have a potential conflict of interest.

Copyright: Mr. Vucci explained that under the Commission's contract with West to publish the Virginia Administrative Code (VAC), West applies to register a copyright with the United States Copyright Office on behalf of the Commonwealth. The Commonwealth owns the copyright and grants a license to West to publish and sell the print version of VAC. Mr. Vucci advised members that the Copyright Office declined to register the copyright filed for 2015 claiming that the material is not copyrightable because it lacks a sufficient amount of new copyrightable material or compilation authorship. West is appealing the decision.

The Commission discussed what implications, if any, this might have on the statutory code. The Chair called on Mr. Ganten, with LexisNexis, who stated that this is an evolving topic. The state of Georgia is in the midst of a lawsuit on the code-related material that it can claim is copyrightable. Oregon does all of its code work in-house and sold the data for \$10,000, but, when challenged, decided not to defend its copyright.

81 Staff will monitor and report on the outcome of the copyright appeal.

82 **Other business:** At its May 16, 2016, meeting, the Commission discussed restructuring § 58.1-322
83 of the Code of Virginia, which pertains to Virginia taxable income of residents, because the section
84 is quite lengthy and has become unwieldy. The section is frequently amended, and most
85 amendments are single paragraph additions to an isolated part of the section. The consensus of the
86 Commission was to move forward with drafting legislation to restructure the section, and the
87 Commission requested that Mr. Vucci contact the Department of Taxation for feedback before the
88 Commission makes a final decision.

89 Mr. Vucci stated that he contacted the Department of Taxation and the department fully supports
90 restructuring the section. The Commission agreed that staff should prepare a draft bill to split
91 § 58.1-322 into more manageable sections. Mr. Vucci stated that the bill draft will be presented to
92 the Commission in the fall.

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