

VIRGINIA CODE COMMISSION

*Monday, August 14, 2017 - 10 a.m.*

*State Capitol, House Room 2*

*Richmond, Virginia 23219*

**MEMBERS PRESENT:** John S. Edwards; James M. LeMunyon; Ryan T. McDougale; Gregory D. Habeeb; Robert L. Calhoun; Charles S. Sharp; Leslie L. Lilley; Chris Nolen; G. Timothy Oksman; Mark Vucci

**MEMBERS ABSENT:** E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Carlos L. Hopkins

**STAFF PRESENT:** David Cotter, Bill Crammé, Scott Meacham, Amigo Wade, Kristen Walsh, Brittany Olwine, Jane Chaffin, Karen Perrine, Anne Bloomsburg, Lilli Hausenfluck, Division of Legislative Services (DLS)

**OTHERS PRESENT:** Brian Kennedy, LexisNexis; Tracy Howard, Voter Registrars Association of Virginia

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

**Approval of minutes:** The minutes of the June 26, 2017, meeting of the Commission as printed and distributed to the members were approved without objection.

**Requested Attorney General opinion received:** Senator Edwards stated that he had received a response to the Commission's request to Attorney General Mark Herring for an official advisory opinion as to whether §§ 20-45.2 and 20-45.3 of the Code of Virginia are obsolete within the compass of § 30-151. In summarizing the opinion, Mr. Oksman stated that the Attorney General had concluded that (i) both statutes are obsolete within the meaning of § 30-151 because they have been held unconstitutional and therefore lack any legal force and (ii) a similar prohibition on same-sex marriage in Article I, § 15-A of the Constitution of Virginia violates the United States Constitution under holdings of the United States Court of Appeals for the Fourth Circuit and the United States Supreme Court. Mr. Oksman noted that the opinion states that it is within the Commission's discretion to determine whether to recommend to the General Assembly that the obsolete provisions be repealed.

Several members expressed concern that interested parties did not have notice that this matter would be on the agenda. Delegate Habeeb moved that this matter be placed on the agenda of the next meeting. The motion was duly seconded and passed.

**Review draft bill adding a generic provision concerning concurrent jurisdiction and repealing obsolete provisions in Titles 16.1 and 17.1:** Following up on the Commission's prior decisions from the April meeting, David Cotter presented a draft bill to (i) repeal several sections dealing with municipal courts that no longer exist, (ii) amend a section by removing references to a corporation court that no longer exists, (iii) modernize language, and (iv) repeal sections for individual localities and replace those sections with a generic provision addressing concurrent jurisdiction in any locality. Refer to lines 79–82 of the draft bill.

After brief discussion, Mr. Calhoun moved that the draft bill be presented to the 2018 Session of the General Assembly. Delegate Habeeb seconded the motion, and it passed.

**Briefing on the Virginia Code Commission Executive Committee process for codifying acts of assembly:** Bill Crammé explained his role of working with publishers of the statutory code to incorporate the acts of assembly into the Code of Virginia after each session of the General Assembly. He stated that an Executive Committee, comprised of two Commission members and himself, is responsible for the annual supplement process and that this process has been in place for many years.

Mr. Crammé described the function of the Commission's online publisher's forum, which originally had three publisher participants (Lexis, West, and Geronimo) but now has two (Lexis and West). The participating publishers, designated DLS staff, the Commission members of the Executive Committee, and the Director of the Division of Legislative Services have access to the forum. Toward the end of each session of the General Assembly, the publishers begin reviewing the acts of assembly from that session and pose questions on the forum based on their review. Many questions relate to multiple amendments to the same section. The publishers check repeals to see if any other provision of law is affected by repeal of sections in the acts. Staff reviews the publishers' questions and posts responses. Section 1 bills and enactment clauses are reviewed as part of this process to determine if they are of general application and should be codified and assigned a section number in the Code of Virginia. Mr. Crammé advised that between 1300 and 1500 individual questions were addressed between March 28 and May 8. Ms. Hausenfluck stated that after the 2017 Session of the General Assembly, only 12 bills were affected by the codification policy.

Delegate LeMunyon stated that the process should be transparent and its description should be available in a document accessible by the public. Mr. Calhoun stated that the document should specifically address § 1 bills and enactment clauses and be distributed to all members of the General Assembly and their staffs. Mr. Crammé agreed that a document explaining the Commission's process and policy, particularly the ramifications of a § 1 bill or an enactment clause versus codification, would be useful.

Mr. Crammé explained several more time-consuming items addressed by the Executive Committee: contingency clauses, budget bill items and whether to note an item in the section annotations, and annotations alerting the user that various amendments may only apply for a few years.

Delegate LeMunyon noted that a written document describing the process and explaining what actions the Commission may or may not take would be very helpful to educate members of the General Assembly and the public w how the process works. Mr. Vucci suggested that the document could be on a patron's status report, and that the publisher's forum could be opened to all members of the Commission. Delegate LeMunyon stated that the document must address what happens after the acts of assembly are enacted.

After discussion, the Commission directed DLS to prepare a document regarding this matter for the Commission's review in October.

**Recodification of Title 55, Property and Conveyances:** Prior to the presentation and discussion of the recodification of Title 55, Mr. Nolen stated that he personally represents an association of time share developments and that he was recusing himself from discussion of the item titled "Subtitle IV - Proposed Chapter 5, Virginia Real Estate Time Share Act."

Amigo Wade stated that in follow up to the Commission's June meeting, the question of whether the term "hand-delivery" should be defined in the new title was presented to the work group. Staff research revealed that the Code of Virginia uses "hand delivery," "delivered by hand," and "hand delivered," and these terms are not defined. The work group and staff recommended not defining this term.

Mr. Wade presented proposed Chapter 5, Virginia Real Estate Time Share Act for review by the Commission and advised that this was the final chapter of Subtitle IV (Common Interest Communities). Staff recommended using the same structure as the current chapter for the Real Estate Time Share Act.

Mr. Calhoun referred to subdivision D 5 of § 55-394.3, line 1961, suggesting that the text "guarantee sales or rentals in order to obtain money or property" be moved into a separate subdivision. Staff will review and report at the next meeting.

The Commission approved proposed Chapter 5, Virginia Real Estate Time Share Act. Mr. Nolen abstained from voting on the revisions to the Virginia Real Estate Time Share Act.

Mr. Wade presented the proposed structure of Subtitle I, Real Estate Conveyances as follows: Chapter 1, Creation and Limitation of Estates; Chapter 2, Form and Effect of Deeds and Leases; Chapter 3, Fraudulent and Voluntary Conveyances - Writing Necessary to be Recorded; and Chapter 4, Commutation and Valuation of Certain Estates.

Staff recommended relocating the following sections from existing Subtitle I of Title 55 to other titles: §§ 55-154, 55-154.2, and 55-155 of Chapter 8 (Clouds on Title) to Title 45.1 as Chapter 14.7-3 (Mineral Rights) and § 55-19.5 to Article 2 (General Provisions) of Chapter 1 of Title 64.2. When asked about the use of population brackets in § 55-154, Mr. Wade explained that after review of constitutionality, staff had determined the recodification did not need to address the use of population brackets. Mr. Calhoun referenced a Virginia Supreme Court case regarding population brackets at 229 Va 213. Senator Edwards requested that staff review this case and report back to the Commission.

Mr. Wade reviewed proposed Chapter 4, Commutation and Valuation of Certain Estates and Interest, of Subtitle I.

On motion of Mr. Nolen, (i) the organization of Subtitle I, Real Estate Conveyances; (ii) the relocation of §§ 55-154, 55-154.2, 55-155, and 55-19.5 into other titles; and (iii) proposed Chapter 4, Commutation and Valuation of Certain Estates and Interest, of Subtitle I were approved, subject to the question regarding population brackets. The motion was duly seconded and passed.

#### **Other business:**

Revisit earlier agenda item: Senator McDougle requested that the Commission revisit the draft bill presented by Mr. Cotter, which would add a generic provision concerning concurrent jurisdiction and repeal obsolete provisions from Titles 16.1 and 17.1. He suggested that the draft bill be split into two bills, one for the generic provision and one for the repeal of obsolete provisions because lines 28 and 34 could be considered substantive. After discussion, Senator Edwards asked if there was a motion to reconsider the item. No motion was made.

Uniform Electronic Legal Materials Act (UELMA): Mr. Nolen stated that he had attended the Uniform Law Commission meeting last month, and the Virginia Commissioners have requested that DLS review the appropriateness of adopting UELMA in Virginia. UELMA establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by print publication. UELMA requires that official electronic legal material be (i) authenticated by providing a method to determine that the electronic document is unaltered, (ii) preserved in either electronic or print form, and (iii) accessible for use by the public on a permanent basis. Seventeen states have adopted UELMA. Mr. Nolen noted that Virginia does not have an officially designated Code of Virginia. The Commission has considered UELMA on two separate occasions and has taken no action based on information presented that indicated Virginia was not prepared to designate the online versions of the Code of Virginia and Virginia Administrative Code as official. The Virginia Commissioners would like DLS to review the matter to see if those issues are still present and to determine to what extent UELMA might be appropriate for Virginia.

125 Mr. Vucci identified several issues with making the online Code of Virginia the official Code,  
126 including accuracy and integrity of the online data, a lack of editorial notations, and the many  
127 instances in which the budget bill supplements or overrides the Code. UELMA requires a certain level  
128 of accuracy as well as certification.

129 After a brief discussion, Senator Edwards requested that staff report at a later meeting how the  
130 seventeen states that have adopted UELMA use it.

131 Mr. Vucci explained the status of the request at the June meeting to consider provisions in Title 24.2,  
132 Elections, identified as obsolete. He explained that staff received two lists regarding possibly obsolete  
133 provisions on August 10. The lists contained changes that were both substantive and nonsubstantive.  
134 The staff's next step is to reduce the two lists to one containing obsolete provisions. Mr. Vucci stated  
135 that staff will reach out to all stakeholders before presenting the list to the Commission.

136 Follow up of possible repeal of § 60.2-114.1: Ms. Chaffin advised that Frank Munyan presented a  
137 report at the June meeting concerning the repeal of § 60.2-114.1 as obsolete. The Commission delayed  
138 a decision on this matter pending information from the Office of the Attorney General as to whether  
139 any concerns regarding repeal existed. Mr. Oksman indicated in an email to Senator Edwards that the  
140 Office of the Attorney General does not object to a possible repeal of § 60.2-114.1. Judge Lilley  
141 moved that the Commission recommend repeal of § 60.2-114.1. The motion was duly seconded and  
142 passed.

143 **Public comment, adjournment:** Senator Edwards opened the floor for public comment. As there  
144 was no public comment and no further business to discuss, the meeting was adjourned at 12 noon.