

VIRGINIA CODE COMMISSION

Monday, June 18, 2018 - 10 a.m.

Richmond, Virginia 23219

Approved August 6, 2018

Members Present: John S. Edwards; Ryan T. McDougle; Gregory D. Habeeb; James A. Leftwich, Jr.; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Chris Nolen; Samuel T. Towell; Mark Vucci

Members Absent: Robert L. Calhoun, Rita Davis, Leslie L. Lilley, Charles S. Sharp

Staff Present: Scott Meacham, Amigo Wade, Kristen Walsh, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Jeff Sharp, Division of Legislative Services (DLS)

Others Present: Tom Lisk, Chair, Administrative Law Advisory Committee; Brian Kennedy, LexisNexis

Call to order; welcome and introduction of new members: Senator Edwards, chair, called the meeting to order at 10:05 a.m.

Approval of minutes: On motion of Mr. Moncure, seconded by Mr. Vucci, the minutes of the November 20, 2017, meeting of the Commission, as printed and distributed to the members, were approved with a correction to show that Mr. Calhoun was absent.

Appoint new member of the Administrative Law Advisory Committee (ALAC): Tom Lisk requested that the Commission appoint Jeffrey S. Palmore to ALAC to replace Edward Mullen. Mr. Palmore is an attorney at Reed Smith and previously served as a senior legal and policy advisor for the Governor of Virginia. His practice focuses on representing clients before the Virginia General Assembly, executive branch agencies, and local governments. The Commission approved the appointment.

Mr. Lisk presented ALAC's work plan for 2018 as follows: update the Hearing Officer's Deskbook and continue to examine the executive branch review process for regulatory actions by state agencies. On motion of Mr. Nolen, seconded by Delegate Habeeb, the work plan was approved.

Law Portal Security: Preston Warren, Manager, Enterprise Infrastructure, Division of Legislative Automated Services (DLAS), reported on the security of the Law Portal, which is the website containing the Code of Virginia, Virginia Administrative Code, Virginia Constitution, Charters, Authorities, Compacts, and Uncodified Acts, including the annual budget bill.

Mr. Warren explained generally how the security system works, including the use of encryption; scanning, flagging, and blocking incoming traffic; and security of the database. He stated that approximately two years ago, DLAS acquired a next-generation firewall. Data is backed up once each night, and DLAS maintains two full copies of the data at two separate sites.

Upon a question from Mr. Vucci, Mr. Warren stated that DLAS will start requiring users with passwords to access the actual data to change their passwords periodically.

Upon a question from Delegate Leftwich, Mr. Warren stated that incoming traffic is tracked through a combination of the IP address and a digital thumbprint that is created.

Not Set Out - Title 15.2: Mr. Sharp stated that at the request of the Code Commission, he conducted a review of the codified provisions in Title 15.2 of the Code of Virginia that currently show as "not set out," for example, § 15.2-1128, and prepared a written report with staff recommendations. Mr. Moncure suggested that the discussion be deferred until Judge Lilley could be present, as Judge Lilley is a former president of the Local Government Attorneys Association. The Commission decided to proceed.

Mr. Sharp reviewed each "not set out" section and his recommendation. He explained that a number of the sections use population brackets. The Commission's policy since 2005 has been to convert to named localities when the population brackets clearly are intended to single out one or two specific localities. A locality can grow into a population bracket but cannot grow out of one. Delegate Habeeb stated that population brackets are poor drafting policy.

Mr. Sharp reviewed the following: §§ 15.2-1128, 15.2-1130, 15.2-1201.1, 15.2-1212, 15.2-1213, 15.2-1213.1, 15.2-1226, 15.2-1227, 15.2-1228, 15.2-1635.1, 15.2-2158, 15.2-2257, 15.2-2277, 15.2-3245, 15.2-5118, 15.2-5120, and 15.2-6201 and Chapters 46, 47, and 48 of Title 15.2. He noted that the following sections of the chapters are currently set out in the Code even if the rest of the sections are not: §§ 15.2-4617, 15.2-4715, and 15.2-4814. In addition, cross-references and styles will need to be updated in certain sections if set out.

The Commission requested additional information regarding § 15.2-2257.

The Commission also requested adding an editor's note to § 15.2-3245, which refers to all "proceedings heretofore taken," so the section will not be mistaken for a new section. Brian Kennedy stated that LexisNexis will work with Mr. Sharp to develop an editor's note.

Mr. Sharp noted that in Chapters 46, 47, and 48, the definition of terms such as "town," "county," and "locality" use population brackets. A drafting note for the 1997 recodification of Title 15.1 indicates that population brackets were retained and if the population figure was intended to refer to a census other than the 1990 census, the phrase "according to the 19__ (insert applicable year) census or any subsequent census," was added. The result of the change was that localities could grow into the population bracket as permitted by law. Mr. Sharp noted that for Chapter 48, Virginia Transportation Service District Act, approximately 12 localities have grown into the brackets.

Section 15.2-6201 is recommended for repeal because "findings of fact" are not typically codified in statute. Mr. Sharp will check with the appropriate member of the legislature for any concerns regarding repealing this section.

After discussion, the Commission deferred a decision until a meeting where Judge Lilley could be present. Mr. Vucci noted that a decision from the Speaker regarding reappointment has not been received.

Recodification of Title 55, Property and Conveyances: Amigo Wade reviewed the current status of the recodification project and the schedule for 2018. Staff will present the complete recodification report in October and the final draft bill in November.

Mr. Wade, assisted by Kristen Walsh, presented responses to seven items in Subtitle V that were questioned by the Commission. Specifically:

Chapter 1 - Escheats.

Item 1: Number of jurors required to concur in an inquest verdict (§ 55-175). Staff canvassed professionals in this area, and the vast majority agreed with the change to a simple majority. Senator McDougle moved that eight jurors be used as a majority. The motion was not seconded. Mr. Towell suggested using "at least seven." After discussion, the Commission determined to revise the first sentence to read "When the inquest is ~~ended~~ concluded and the verdict concurred in by at least seven of the jurors impaneled, ~~or at least seven of them, it~~ such verdict shall be signed by those so concurring and by the escheator."

Item 2: Bond of escheator (§ 55-169). The Commission approved staff's recommendation to specify that an escheator's bond is unsecured, which is consistent with the requirements for allowing a fiduciary to qualify for giving bond without surety under the Virginia Small Estate Act (see § 64.2-1411 of the Act).

Item 3: Replacement of the term "seised" (§§ 55-171, 55-182, and 55-195). The Commission approved staff's recommendation to replace "seised of" with "in possession of" for consistency with the updated language used in the Title 64.2 recodification.

Chapter 5: Trespasses; Fences

Item 1: How a governing body of a county may make local fence law (§ 55-310). The Commission approved staff's recommendation to add "by ordinance."

Item 2: Notice requirement for petition to fix boundaries of villages (§ 55-324). Staff provided two options on the basis of input from 16 counties. The Commission approved Option 1, which was to use notification through a newspaper as provided in § 15.2-1427.

Item 3: Description of a lawful fence; "creep" versus "pass" (§ 55-299). The Commission discussed the use of "creep" versus "pass." On motion of Mr. Miller, seconded by Senator McDougle, the Commission changed its prior decision and voted to retain "creep."

Item 4: Duty to issue a warrant when a trespassing animal is impounded (§ 55-309). The Commission approved staff's recommendation not to delete the three-day return date for the warrant for damages and not to specify that the warrant was a warrant in debt.

Mr. Wade presented the chapters that are being relocated to other titles as follows:

1. Chapter 17 (Virginia Coordinate System) to Title 1 as Chapter 6.
2. Chapter 12 (Waste) to Title 8.01 as Article 15.1 of Chapter 3. The Commission determined to retain the term "parcener."
3. Chapter 9 (Assignments for Benefit of Creditors) to Title 8.01 as Chapter 18.1.
4. Chapter 30 (Disposition of Assets by Nonprofit Health Care Entities) to Title 32.1 as Chapter 20.
5. Chapter 32 (First-Time Home Buyer Savings Plan Act) to Title 36 as Chapter 12.
6. Chapter 2 (Educational, Literary and Charitable Gifts, Devises, etc.) to Title 57 as Article 1 of Chapter 2, with only one section in Article 1 (§ 55-26.1).

At the conclusion of the presentation, on motion of Mr. Vucci, seconded by Mr. Nolen, the Commission approved all the determinations of the Commission that were made at this meeting.

Public comment, adjournment: Senator Edwards opened the floor for public comment. No member of the public asked to be heard.

Other business - Closed session:

On motion of Delegate Habeeb, duly seconded, the Commission went into a closed session pursuant to the personnel exemption in § 2.2-3711 A 1 of the Code of Virginia to discuss and consider the position of Registrar of Regulations. The Commission returned to open session and unanimously certified upon a roll call vote that only (i) public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) such public business matters as were identified in the motion for the closed session were heard, discussed, or considered

June 18, 2018

Page 3 of 4

in the closed meeting. The Commission approved the appointment of Karen W. Perrine as Registrar of Regulations pursuant to § 2.2-4102 of the Code of Virginia. Ms. Perrine thanked the Commission. As there was no further business to discuss, the meeting was adjourned.

The next meeting is Monday, August 6, 2018, at 10 a.m. in the Speaker's Conference Room, 6th Floor, Pocahontas Building.