

Members

Sen. Sue Landske
Sen. Travis Holdman
Sen. James Arnold
Sen. John Broden
Rep. John Bartlett
Rep. Shelli VenDenburgh
Rep. Robert Behning
Rep. Ralph Foley
Hon. John G. Baker
Michael McMahon
Jerry Bonnet
Susan W. Gard
Anita Samuel
Cynthia A. Baker
Jon Laramore



CODE REVISION COMMISSION

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LSA Staff:

John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: November 20, 2008
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., 233
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Sue Landske; Sen. Travis Holdman; Sen. James Arnold; Rep. John Bartlett; Rep. Shelli VenDenburgh; Rep. Robert Behning; Rep. Ralph Foley; Hon. Margret Robb representing Hon. John G. Baker; Michael McMahon, designee of Chief Justice Randall T. Shepard; Chris Naylor, representing Jerry Bonnet; Susan W. Gard; Anita Samuel; Cynthia A. Baker; Jon Laramore.

Members Absent: Sen. John Broden.

Staff Present: Jack Ross, Executive Director, Legislative Services Agency; John Stieff, Director, Office of Code Revision, Legislative Services Agency; Craig Mortell, Deputy Director, Office of Code Revision; Becky Mortell, Deputy Director, Office of Code Revision; Dick Sheets, Editorial Assistant, Office of Code Revision; John Kline, Attorney, Office of Code Revision; Judy Stull, Data Processing Manager, Office of Code Revision; Steve Barnes, Administrative Code.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

I. CALL TO ORDER

The meeting was called to order at 1:30 p.m. by Senator Sue Landske.

II. ELECTION OF CHAIR

A motion was made and seconded to nominate Senator Sue Landske as the new Chairman of the Code Revision Commission. Senator Landske was elected Chairman by consent.

III. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on December 12, 2007, and there were no questions. The Commission approved the minutes by consent.

IV. INTRODUCTORY REMARKS

Mr. John Stieff, Director of the Office of Code Revision, Legislative Services Agency, presented items for discussion by the Commission, which included the preliminary draft of the 2009 technical corrections bill, issues related to noncode provisions, and the date for the next meeting.

V. SCHEDULING OF NEXT MEETING

The timing for the next Commission meeting was discussed. The Commission scheduled the next meeting by consent for December 9, 2008, at 1:30 p.m.

VI. DISCUSSION OF TECHNICAL CORRECTIONS BILL

Craig Mortell, Deputy Director of the Office of Code Revision, addressed the Commission about the preparation of the 2009 technical corrections (TC) bill. He first drew the Commission members' attention to PD 3106 (the main TC draft), PD 3275 (the supplemental TC draft), and the SECTION-by-SECTION outlines that accompanied PD 3106 and PD 3275. Together, he said, PD 3106 and PD 3275 represented the proposed contents of the 2009 TC bill.

Mr. Mortell explained that this year's draft of the Technical Corrections Bill, like the drafts of past years, is made up of SECTIONS falling within two broad categories:

- [1] SECTIONS resolving "conflicts" in the Indiana Code. [35 SECTIONS in PD 3106]
- [2] SECTIONS resolving various other types of technical problems that arose somewhere in the acts of the previous session or were noticed in the Code and brought to the attention of the Office of Code Revision. [the other 125 SECTIONS in PD 3106 and 18 more SECTIONS in PD 3275]

Mr. Mortell discussed briefly what types of SECTIONS fit into the two broad categories and mentioned various resources that contribute to the content of the technical corrections bill, including the attorneys in the Office of Bill Drafting and Research.

Mr. Mortell described the guidelines used in determining whether a problem is truly technical in nature and therefore suitable for resolution in the TC Bill. Generally, an item is not addressed in the TC bill draft unless:

- (1) it's clear that there is a mistake or problem of some sort;
- (2) there's only one way in which the mistake or problem can be corrected;
- (3) the one way of correcting the mistake or problem is apparent on the face of the Code section itself (i.e., the Code Revision Commission shouldn't be asked to rely on a drafter's or legislator's word as to what was intended); and
- (4) the proposed correction will not make a substantive change in the law.

Mr. Mortell described SECTION 36, the SECTION resolving the conflict affecting IC 6-1.1-12-43, in PD 3106 as sort of a "close call". He stated that OCR is unable to come to a firm conclusion as to whether there is a substantive conflict between the two versions of IC 6-1.1-12-43,

and would like to request the guidance of the Commission as to whether the conflict can be resolved in the TC Bill.

Mr. Mortell said that he would be happy to answer any questions that might arise about the contents of the TC bill drafts, either at the meeting or later if questions should arise after the meeting.

Representative Ralph Foley commented on SECTION 149 of PD 3106. This SECTION amends IC 35-42-4-12 to eliminate language differentiating between offenses committed "before July 1, 2007" and offenses committed "after June 30, 2007" because IC 35-42-4-12, which was added to the Indiana Code in 2008, applies only to crimes committed after June 30, 2008, and could not possibly apply to an offense committed before July 1, 2008. While not questioning the change being made in IC 35-42-4-12, Representative Foley warned that legislators reviewing the 2009 TC bill might be wary of the SECTION amending IC 35-42-4-12 because of the high-profile nature of the crime addressed in IC 35-42-4-12 (the use of a social networking web site or an instant messaging or chat room program by a sex offender).

Representative Foley also advocated resolving the conflict affecting IC 6-1.1-12-43 (which Mr. Mortell had described as "a close call" in regard to its suitability for inclusion in the TC bill) not in the TC bill itself but in a separate bill prepared for the Commission, to ensure that the TC bill was free of any SECTION that might be viewed as making a substantive change in the law. Representative Foley's motion was adopted by the Commission by consent.

The following Commission members offered to author the TC bill and the separate bill resolving the IC 6-1.1-12-43 conflict: Representative Shelli VanDenburgh, Representative Robert Behning, and Representative Ralph Foley. At Mr. Stieff's request, the Commission authorized the inclusion in the digest of each bill the following statement: "The introduced version of this bill was prepared by the Code Revision Commission."

VII. DISCUSSION OF NONCODE RELATED ISSUES

Mr. Stieff provided some background information regarding Indiana noncode provisions. Mr. Stieff discussed three points in time (1971, 1976, and 1989) when noncode provisions had been analyzed and either put into the Indiana Code, repealed, or preserved in the noncode law. He stated that the 1971 version of the Indiana Code was a reenactment and rearrangement of most, but not all, of Indiana's pre-1971 session laws. A few provisions determined as temporary, transitional, or self-terminating are not included in the Indiana Code and now often are referred to as "noncode" law. Mr. Stieff explained that in 1976, the legislature recodified the entire Indiana Code and repealed the code in existence before 1976, but again certain noncode provisions were preserved. He stated that in 1989, legislation approved by the Code Revision Commission repealed most of the noncode statutes that were enacted after the 1975 Regular Session and before the 1985 Regular Session of the General Assembly, and legislation again preserved several noncode statutes. Mr. Stieff said that there has been no review of the noncode law since 1989, and that LSA has undertaken a comprehensive review of all the noncode statutes enacted from 1985 to the present.

Mr. Stieff explained the process for reviewing the current noncode law. He said that the staff looked first at noncode laws that could be repealed because they expired by their own terms or because their purpose has been fulfilled. He stated that additional analysis was conducted on the remaining noncode law by weighing several factors including:

- A. Is the provision substantively different from what is in the Code?
- B. Will a large number of people use the provision?
- C. Do substantive rights and obligations flow from the enactment of the provision?
- D. Can an expiration date be placed in the provision?
- E. Is the provision transitional or self-terminating?

F. How long is the provision going to be in effect?

Regarding the length of time a noncode provision will be in effect, Mr. Stieff stated that the LSA drafting manual provides, as a general rule, a provision is temporary and does not belong in the Indiana Code if the provision is to be in effect for five years or less. He said that while an article in *Res Gestae* has criticized this threshold as an expansion of the number of provisions put into noncode, a four year threshold was in place in the 1976 LSA drafting manual and the five year threshold has been in place since 1988. Mr. Stieff concluded by stating that the length of time a law is in effect is but one factor in many that are used in determining whether a provision is placed in the noncode law.

Mr. Stieff requested the Code Revision Commission's approval to prepare legislation based on this analysis of the noncode statutes enacted since 1985, and to bring the legislation to the next meeting of the Commission for review and approval.

Mr. Stieff requested an opportunity to respond to some other criticisms made in *Res Gestae* articles. He stated that he disagreed with suggestions that the Legislative Services Agency does not keep the Indiana Code current, that there are numerous errors in the Indiana Code, and that the public does not have access to the Indiana Code and other legislative materials on the Internet after the legislative session ends.

Mr. Stieff gave numerous examples of timely information and resources provided by LSA that are available to the public on the Internet. Mr. Stieff stated that the criticism in the articles focuses on the period between the adjournment of the legislative session and the publication of the updated Indiana Code. Mr. Stieff responded to this issue by explaining that every enrolled act is online within a week of adjournment and that the Table of Citations Affected is online reflecting the passage of every enrolled act within 48 hours after adjournment, allowing the public to easily access what laws were added, amended, and repealed in the General Assembly.

Mr. Stieff explained that Indiana is one of a very few states that publish their official statutes in-house and, when compared to other states and the costs of outside vendors, LSA publishes legislative documents faster and far less expensively than most states.

Mr. Stieff responded to an article criticism that LSA documents are full of inaccuracies. He stated that the criticism is unfounded and that, in fact, from 1993 to the current date there are only nine errors in the Indiana Code and four were made by the West Publishing Company in 1993. He further explained the cost savings by having LSA print the official bills of the General Assembly since 1999.

Mr. Stieff noted that in an effort to help educate attorneys, law students, and the public about researching Indiana's statutory law, LSA is adding a foreword and explanatory materials to the online version of the Indiana Code. He stated that after the 2009 legislative session, LSA will add an explanatory note at the top of the online version of the Indiana Code that will explain how to get access to the 2009 Table of Citations Affected and the 2009 Acts of Indiana. This addition should make it easier for users to get access to the current laws during the period of time after adjournment of the General Assembly and before the publication of the updated Indiana Code.

Senator Landske thanked Mr. Stieff for his comments and commended LSA on their work. She stated that it appeared the noncode law was due for a review. Representative Foley commented that LSA does a good job keeping up with the bills during session and working on the TC bill, and that it is appropriate to address the noncode issues. He stated that it is important not to lead anyone astray or misrepresent the law in the ways the law is presented, so an analysis of the current noncode law is a good idea. A motion was made for LSA to prepare a draft of legislation for the

noncode laws, and the motion was adopted by consent.

Mr. John Laramore, attorney, stated that he agreed with Representative Foley and that he had an experience in his law practice involving a noncode provision that was difficult to find, and that he believed should have been in the Indiana Code. Mr. Laramore said that practicing attorneys bring a different perspective to how the law is accessed and what should be in the Indiana Code. He stated that the law should be easily found on the Internet without having to research the bills in which laws passed.

Representative John Bartlett noted his appreciation for the LSA staff. Judge Margret Robb, Indiana Court of Appeals, noted that fire and building codes are examples of law that are difficult to obtain and that there is a significant cost associated with getting these codes because of copyrights. Ms. Cynthia Baker, professor - Indiana School of Law Indianapolis, asked if noncode reviews should be done after every session. Mr. Stieff responded that the LSA staff anticipated doing a review about every five years. Ms. Baker thought that maybe the staff should consider doing the review more frequently.

Senator Landske asked if there were any witnesses who wished to address the Commission. John Moriarty, Chair of the Environmental Law Section of the Indiana State Bar Association, stated that he agreed with Representative Foley and encouraged the legislators to publish as much of the law as possible in the Indiana Code. Mr. Moriarty said that the first place attorneys look for the law is in the Indiana Code. He relayed an example of noncode law concerning environmental restrictive covenants that he thought would be difficult for attorneys to find unless they knew that the bill containing the noncode provision existed. Mr. Moriarty commented that LSA has some good ideas and is moving in the right direction.

Ms. Marcia Oddi, publisher of the Indiana Law Blog, stated that she had looked at the last two sessions of the General Assembly and thought that the noncode law had been expanded to put in more provisions with expiration dates of five years or more. Ms. Oddi said that she would like to look at the criteria used by LSA to determine what provisions are included in the noncode law, and she believes most people do not know that the Indiana Code does not contain all the law. She noted that the Indiana Register is not presented in a paged format. Ms. Oddi stated that there is no real legislative forum to take these concerns. Senator Landske responded that the public may take any concerns to the legislators for discussion. Mr. Laramore asked if it made sense to have a five year expiration threshold for noncode law since in 1988 LSA was printing books and now the law is put on the internet. Mr. Laramore stated that LSA should try to put more in the Indiana Code because that is relied upon by attorneys. Ms. Oddi agreed and commented that LSA's proposal to insert explanatory materials for researching the law would help everyone with finding the law.

Ms. Paje Felts, Legislative Counsel of the Indiana State Bar Association, stated that LSA has been good to work with on these legislative issues and that the Bar Association would continue as part of the legal community to help with issues and be a resource to LSA. Ms. Felts noted a concern with regard to the Indiana Register. She stated that authenticating pieces of the Indiana Register could be a problem at the trial level, and she would like to see LSA bring the Indiana Register back to publication in some form.

Mr. Jack Ross, Executive Director - Legislative Services Agency, noted his appreciation for numerous positive comments made concerning the work of LSA. Mr. Ross commented that the staff of LSA work for the legislators, and that decisions with regard to the Indiana Code and noncode are made ultimately by the legislators. He stated that if members of the public and lobbyists have concerns regarding noncode provisions in particular bills, the time to participate is when the bills are going through the legislative process.

Senator Landske thanked the members, staff, and participants present.

VIII. ADJOURNMENT

The meeting was adjourned by Senator Landske at 2:40 p.m.