

Members

Rep. John Bartlett
Rep. John Barnes
Rep. Robert Behning
Rep. Ralph Foley
Sen Travis Holdman
Sen. Michael Delph
Sen. James Arnold
Sen. Greg Taylor
Scott Chinn
Jon Laramore
Hon. John G. Baker
Mike McMahon
Jerry Bonnet
Richard Bramer
Anita Samuel



CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: October 27, 2010
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Robert Behning; Rep. Ralph Foley; Rep. John Bartlett; Sen. Travis Holdman; Sen. Michael Delph; Sen. James Arnold; Sen. Greg Taylor; Scott Chinn; Jon Laramore; Hon. John G. Baker; Mike McMahon; Jerry Bonnet; Richard Bramer; Anita Samuel.

Members Absent: Rep. John Barnes.

Staff Present: Mr. Jack Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Mr. George Angelone, Deputy Director, Office of Bill Drafting and Research; Mr. Bob Rudolph, Senior Staff Attorney, Office of Bill Drafting and Research; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. John Kline, Attorney, Office of Code Revision; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

¹ Exhibits and other materials referenced in these minutes can be obtained electronically by requesting copies at licrequests@iga.in.gov. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard 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 1:35 p.m. by Senator Travis Holdman.

II. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on September 29, 2010, and there were no questions or revisions. The Commission approved the minutes by consent.

III. INTRODUCTION

Mr. John Stieff, Director of the Office of Code Revision, made a few introductory remarks and explained continuing projects dealing with noncode issues, the technical corrections bill, and population parameters for discussion by the Commission. Mr. Stieff suggested that the Commission consider a third meeting for sometime in December.

IV. DISCUSSION OF NONCODE STATUTES PROJECT AND DRAFTS

Mr. Bob Rudolph, Senior Staff Attorney, Office of Bill Drafting and Research, explained the ongoing noncode statutes project and summarized the drafts presented to the members up to this point, including PD3401 related to tax provisions. Mr. Rudolph asked the Commission to consider a proposal by Mr. George Angelone, Deputy Director of the Office of Bill Drafting and Research, to significantly reduce the size of the PD3401. Discussion ensued regarding an issue from the previous Commission meeting related to university bonding. The Commission agreed that university bonding could be discussed again in the future with regard to placement in the Indiana Code.

Mr. Angelone discussed the approach taken in the drafting of PD3401 to include noncode tax provisions that are not specifically repealed or expired. Mr. Angelone noted that some of the provisions may not have prospective application, may be simply historical, or may be obsolete. He presented four examples of provisions included in PD3401 that Mr. Angelone believed could be deleted from PD3401 if the Commission could determine the provisions to be obsolete using an objective standard.

Mr. Angelone presented three potential standards for the Commission to determine if a noncode provision is obsolete:

- (1) If the provision has no further prospective authority, it can be repealed. He explained this is the same standard used for Indiana Code provisions.
- (2) If the provision can be addressed based upon the statute of limitations in effect for the provision, after a certain period of time the provision can be removed because there cannot be any additional assessments or litigation commenced.
- (3) If the provision has no prospective effect after a certain period of time determined by the Commission, the noncode provision can be repealed.

Mr. Angelone asked the Commission for questions and discussion regarding the proposal to remove some provisions from PD3401 and to determine a standard for the removal. Representative Ralph Foley expressed his concern that the Indiana Code should not be used to house obsolete provisions as a historical document and should be a living Code that focuses on present day situations and laws. Representative Foley thought that the statute of limitations standard may be best. Mr. Scott Chinn noted that some tax appeals date back to the 1980s and 1990s and suggested that the Commission may want to either limit all of the provisions or include all of the provisions in the Code. Mr. John Laramore commented that the noncode project is addressing the question of access to the law and how easy it is for a taxpayer or taxpayer's representative to obtain access to noncode tax

provisions. Judge John G. Baker noted the need to make the law more accessible to the public while balancing other considerations. Senator Michael Delph noted the need for transparency, and Senator Holdman mentioned that it may be good to err on the side of including more information in the Indiana Code.

Mr. Laramore asked if the proposed standards were limited to PD3401. Mr. Angelone confirmed that the standard would be used only for PD3401, but may help set a general policy for LSA to follow in the future. Mr. Laramore inquired if the staff could take the proposed standards and apply them to the list of noncode provisions, so that the Commission could review the provisions that would be covered more concretely. Some discussion ensued as to whether the staff would have enough time to analyze all of the tax provisions for each standard and prepare a document for the Commission based upon Mr. Laramore's request. Mr. John Stieff suggested, if it would meet the Commission's satisfaction, to categorize the provisions and then prepare a draft based on the guidance received from the individual Commission members at the final meeting, with the fallback plan to revert to the original version of PD3401 if insufficient time or disagreement in the standard to be used prevented the amended bill from being completed. After some additional discussion, the Commission members agreed to the course of action presented for PD3401.

Mr. Rudolph presented an outline of the work left to be done for this session's noncode project. He explained that he has been working on a list of all the noncode provisions involved in the project with a disposition for each noncode provision. Mr. Rudolph noted that the following items remained to be completed:

- (1) A draft of a bill to cover miscellaneous noncode provisions that didn't fit into the distinct areas of law covered in the previous noncode bills.
- (2) A second draft of the cleanup to the study committee provisions involving IC 2-5 and IC 2-5.5.
- (3) A general repealer to remove the noncode statutes from 1985-2009 that have not been specifically preserved in the noncode or codified (following the approach used in prior noncode statutes projects from 1971, 1976, and 1989).
- (4) A final draft, which would include all of the pieces of the noncode statutes project in one bill.

Mr. Stieff presented information regarding a meeting with representatives from the Department of Child Services (DCS) about noncode draft PD 3101. He commented that the staff and DCS had reached agreements on all the outstanding issues from the DCS concerns presented at the last Commission meeting, with three specific provisions to note to the Commission. Mr. Stieff noted the staff's agreement to move a cite contained in SECTION 14.

Mr. Stieff explained a noncode provision related to SECTION 15 of PD3101, which concerned a provision that had been found unconstitutional by the appeals court, and stated that the time for appeal from that decision had lapsed. Mr. Stieff asked the Commission if the preference would be to retain the provision in the Indiana Code or to repeal the provision. Some discussion ensued as to what typically would happen with this type of law and whether the law would typically be modified based upon the court's decision, repealed, or retained. Additional discussion concerned whether the issue should be addressed in a separate trailer bill to the noncode bill because of the issue's substantive nature. The Commission agreed that the noncode provision could be repealed in a trailer bill.

Mr. Stieff noted a concern with SECTION 20 of PD3101. He explained that DCS determined that five children continue to be affected by the noncode provision related to

SECTION 20 and that DCS has a preference to preserve the provision as a noncode provision. Mr. Stieff recommended to the Commission to preserve the provision and add an expiration date, so that the provision could be removed once it no longer had any effect. Mr. Jerry Bonnet inquired why the three provisions Mr. Stieff presented were not Code provisions instead of noncode provisions when they were drafted. Mr. Stieff noted that the first provision should have been codified, the second concerned legislative intent normally not included in the Code, and the third did not have general applicability. Some discussion ensued concerning legislative intent and whether an additional lawsuit might have an impact on the SECTION 20 provision. Mr. Stieff stated that he would consult further with DCS to reach a more concrete recommendation for the noncode provision in SECTION 20.

V. DISCUSSION OF TECHNICAL CORRECTIONS BILL

Craig Mortell, Deputy Director of the Office of Code Revision (OCR), addressed the Commission about PD 3444, the technical corrections (TC) draft that had been prepared for consideration by the Commission at the October 27 meeting.

Mr. Mortell first recalled that at the meeting of September 29, 2010, the Commission had approved a new way of dealing with Code sections and chapters that were "expired." (For the purposes of this discussion, a section or chapter is "expired" if: (1) it contains a statement declaring that the section or chapter expires as of a certain date; and (2) the stated date has passed.) Mr. Mortell said that for many years the annual TC bill has repealed expired sections and chapters simply to remove them from the Indiana Code, but under the new way of dealing with them the expired sections and chapters would simply be removed from the Code by the Legislative Services Agency (as publisher of the Indiana Code) without being repealed.

Mr. Mortell stated that PD 3444 incorporates the contents of PD 3080 and PD 3315, the two TC bill drafts considered at the Commission meeting of September 29, 2010, except that those contents have been modified in conformity with the new way of dealing with expired Code sections and chapters. Specifically, he said, PD 3444 differs from the contents of PD 3080 and PD 3315 in that:

- (1) PD 3444 does not repeal four chapters and one section (IC 2-5.5-4, IC 16-40-3, IC 16-40-5, IC 20-20-36.1, and IC 27-1-3-31) that are expired and would have been repealed by PD 3080; and
- (2) in its SECTION amending IC 34-30-15-1, a Code section that contains four references to IC 16-40-5 (an expired chapter), PD 3444 inserts "(expired)" after each reference, whereas PD 3080 had inserted "(repealed)".

Mr. Mortell drew the Commission's attention to the SECTION-by-SECTION outline of PD 3444, expressing the hope that the outline would be useful to Commission members and others as a guide to the contents of PD 3444. He also expressed his gratitude for the contributions of the individuals identified in the far right column of the outline, who had either brought problems addressed in PD 3444 to OCR's attention or had been consulted by OCR about the provisions of PD 3444.

The Commission, by a voice vote, adopted PD 3444 as the 2011 technical corrections bill. (Previously, at the meeting of September 29, the Commission had authorized the inclusion of the statement "(The introduced version of this bill was prepared by the Code Revision Commission.)" in the digest of PD 3444.) Senator Holdman offered to be the author of the 2011 TC bill and Senators Taylor and Delph agreed to be co-authors.

VI. DISCUSSION OF POPULATION PARAMETERS

Mr. Stieff recapped the information presented at the last meeting regarding population parameters in the Indiana Code. Mr. Stieff requested guidance from the Commission in continuing to use population parameters or instead using the name of the subdivisions for laws related to specific locations. Mr. Laramore presented some background information on case law with respect to population parameters and discussed the application of Article 4, Sections 22 and 23, of the Indiana Constitution to special laws. He expressed an interest in transparency in the law and recommended that future laws reflect the name of the specific geographic location instead of using population parameters. Mr. Scott Chinn agreed with Mr. Laramore and noted that future laws should be drafted to include findings concerning why a special law is appropriate for the situation the law addresses.

Mr. Stieff reiterated the staff's request for guidance from the Commission in continuing to use population parameters or instead using the name of the subdivisions for laws related to specific locations. Representative Robert Behning and Senator Holdman expressed their interest in having as much transparency in the law as possible, and Representative Behning noted that population parameters are a confusing way to identify places affected by the law.

A motion was made to recommend that the staff dispense with the use of population parameters in the Code and to instead name the political subdivisions to which the law pertains. The Commission approved the motion by consent.

VII. ADJOURNMENT

The meeting was adjourned by Senator Holdman at 3:15 p.m.