Members

Sen. Sue Landske, Chairperson
Sen. Connie Lawson
Sen. Timothy Lanane
Sen. James Arnold
Rep. Kathy Richardson
Rep. Robert Behning
Rep. John Bartlett
Rep. Shelli VanDenburgh

CENSUS DATA ADVISORY COMMITTEE

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Authority: IC 2-5-19

MEETING MINUTES[1]

Meeting Date:	**October 13, 2011**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 233**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**1**

Members Present: **Sen. Sue Landske, Chair; Sen. James Arnold; Rep. Kathy Richardson.**

Members Absent: **Sen. Connie Lawson; Sen. Timothy Lanane; Rep. Robert Behning; Rep. Shelli VanDenburgh; Rep. John Bartlett.**

(1) Call to Order. The Chair announced that there was not a quorum present to conduct business but that the Committee members present would hear presentations from staff and any remarks of those who wished to speak to the Committee. The meeting would be informational only.

(2) Introduction of Members. The members and staff present introduced themselves.

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1. These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative 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.

(3) Population Parameters in Statutes; Consideration of PD 3081. The Chair asked Committee Mr. Rudolph to discuss PD 3081[2] relating to descriptions of political subdivisions in the Indiana Code.

Mr. Rudolph explained that several hundred statutes in the Indiana Code are limited in application to certain political subdivisions or classes of political subdivisions. For reasons explained below, particular political subdivisions or classes of political subdivisions are described by "population parameters," which is a range of population numbers into which the populations of the relevant political subdivision or class of political subdivisions fall.

An example of such a statute is IC 36-4-1-1, which is a statute that classifies cities and towns based on the size of their populations.[3] Mr. Rudolph explained that there currently is an ambiguity in the number that serves as the boundary between the classification of second and first class cities due to two separate amendments made to IC 36-4-1-1 in 2004 that were never reconciled. Before 2004, the population boundary between first and second class cities was 250,000. In 2004, one act raised that number to 500,000[4] while another act raised it to 600,000.[5] Mr. Rudolph explained that the parameter was probably raised to prevent the City of Fort Wayne from becoming a first class city. As a result, by operation of law, the city would become a consolidated city and Allen County a county having a consolidated city.[6] Had IC 36-4-1-1 not been amended, the City of Fort Wayne would become a consolidated city on April 1, 2012 because the 2010 Decennial Census results show that the city's population is more than 250,000. Mr. Rudolph suggested that the Committee may want to address the conflict currently found in IC 36-4-1-1.

Mr. Rudolph stated that the reason for the use of population parameters in statutes is an attempt to avoid problems with Article 4, Sections 22 and 23 ("Sections 22 and 23") of the Indiana Constitution which limit the power of the General Assembly to enact "local or special legislation."[7] Mr. Rudolph explained that the application of statutes to certain political subdivisions by population parameters was upheld by Indiana courts many years

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2. The reader may view a copy of Preliminary Draft 3081 at the Committee's webpage: http://www.in.gov/legislative/interim/committee/cdac.html

3. IC 36-4-1-1 classifies cities into first, second, and third classes. Generally speaking, a third class city is any city with a population of fewer than 35,000 while a second class city is a city with a population of more than 35,000 but fewer than either 500,000 or 600,000. A first class city is any city with a population of more than either 500,000 or 600,000. See text for a discussion of the ambiguity in the boundary number between first and second class cities. There are also provisions in IC 36-4-1 for a second or third class city to maintain that classification even if the city decreases below or increases above (respectively) the 35,000 number that demarcates the two classes.

4. See P.L.81-2004, SECTION 46.

5. See P.L.64-2004, SECTION 34.

6. See IC 36-3-1.

7. Section 22 lists several specific examples of local or special legislation that the General Assembly is forbidden from enacting. Section 23 provides that in cases other than those described in Section 22, "and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.".

ago on the theory that such statutes were not "local or special" because political subdivisions could "grow into or out of" the classes created by the parameters. Mr. Rudolph discussed the case of ***Dortch v. Lugar***[8] which dismissed challenges to the "Unigov" statutes under Sections 22 and 23 based on this theory. Mr. Rudolph also discussed subsequent cases and the evolution of the law under these cases. In the discussion, Mr. Rudolph indicated he had come to the following conclusions based on his reading of the cases: (1) The rationale used by the courts to reject challenges under Sections 22 and 23 to statutes using population parameters is becoming increasingly untenable based on the legislative practice since ***Dortch*** was decided. (2) The use of population parameters does not immunize a statute against challenges under Sections 22 and 23. (3) Indiana courts will look behind the use of parameters to ascertain what a statute really intends; the Indiana Supreme Court has suggested that the General Assembly state in statutes which political subdivisions are really intended. (4) The Courts will look to see if there are indeed special circumstances that make application of a statute to certain political subdivisions permissible under Sections 22 and 23.

Mr. Rudolph informed the Committee that during the 2010 Interim, the Code Revision Commission recommended that the names of political subdivisions rather than population parameters be used when the application of the statute is intended to be limited to particular political subdivisions.[9] Mr. Rudolph told the Committee that there were at least two options open to the General Assembly to account for the effect population changes reported by the 2010 Decennial Census had on statutes using population parameters: (1) Continue past practice and update population parameters in statutes based on the 2010 census results. (2) Replace population parameters in the statutes with the names of the political subdivisions intended to be described in the statutes. Mr. Rudolph explained that making no changes in statutes would result in several statutes applicable to particular political subdivisions applying to different political subdivisions, effective on April 1, 2012.

Mr. Rudolph analyzed PD 3081 in three parts, as follows: (1) The draft converts all population parameters in statutes to the names of the political subdivisions that are intended to be described. (2) The draft converts all "consolidated city" references in the Indiana Code to "Indianapolis" and all references to a "county having a consolidated city" to "Marion County." Mr. Rudolph explained that while these "alias" names are not literally "population parameters," the aliases ultimately are based on the population parameter in IC 36-4-1-1 that defines a first class city as a city with a population in excess of a fixed number. (3) SECTIONS 1 and 398 of the draft would establish a two-year statute of limitations for bringing an action under Sections 22 and 23. In connection with this point, Mr. Rudolph discussed the Indiana Supreme Court case of ***SMDFund, v. Fort Wayne - Allen County Airport Authority.***[10] In discussion of the third part of the draft, Mr. Rudolph

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8. 266 N.E.2d 25 (Ind. 1971).

9. See minutes of the Code Revision Commission meeting of October 27, 2010 at page 5. These minutes can be found at http://www.in.gov/legislative/interim/committee/2010/committee/crsc.html

10. 831 N.E.2d 725 (Ind. 2005). In this case, plaintiffs challenged certain actions of the airport authority as unlawful, contending that the statute creating the authority, IC 8-22-3-1, violated Sections 22 and 23 as special and local legislation. The airport authority defended, asserting the following defenses: (1) The action was not timely brought in violation of an applicable statute of limitations. (2) The equitable doctrine of laches. The Indiana Supreme Court held the plaintiffs' suit was barred by laches. 831 N.E.2d at 732. The statute of limitations concept in PD 3081 is based on the idea asserted in the airport authority's first point of defense.

emphasized that a statute of limitations will not completely insulate statutes from special and local legislation challenges and that the two-year period in the draft is completely arbitrary: the General Assembly may determine that a different period of time is more appropriate.

In response to a question from Representative Richardson, Mr. Rudolph stated that a statute of limitations would not solve the problem of special and local legislation challenges, it would merely provide a mechanism to provide more certainty about the validity of statutes challenged under Sections 22 and 23. The only real solution is to amend the Indiana Constitution in a fashion suggested about ten years ago;[11] short of amending the constitution, this problem will always be with us.

In response to a question from Senator Arnold, Mr. Rudolph said that inaction by the General Assembly would result in several examples of statutes that apply to particular political subdivisions but would no longer do so after March 31, 2012 and conversely, after that date, other statutes that do not apply to some political subdivisions but would suddenly become applicable to those political subdivisions.

(4) Discussion of Issues relating to Election Law. The Chair said that various legislators and others have been working on some issues relating to election law to bring to the General Assembly, but there was nothing to present for today's meeting.

(5) Other Committee Business. The Chair recognized Maureen Bard and Mark Stratton to give an update on the work of the Office of Census Data ("OCD") and to discuss some technical corrections in relation to redistricting.

Ms. Bard gave an overview of census geography and the extensive process by which the Census Bureau, the OCD, and local officials exchange information that provides the basis for the geography that underlies the decennial census, redistricting, and other programs. Ms. Bard distributed a set of aerial photographs that illustrated a problem that arose during the information exchange that affected Elkhart County and the boundary between two House Districts.[12]

Ms. Bard explained the geography shown on the photographs. The Census Bureau mismapped the boundary between two townships in Elkhart County which is also a precinct boundary, and which will become the boundary between the two House Districts. Ms. Bard said that three individuals live in mismapped area. Current Indiana law would require the county to establish a "subprecinct" consisting of this mismapped area for legislative elections. Ms. Bard stated that the OCD is currently reviewing all precincts and working with county officials to determine if there are other similar problems.

Mr. Stratton discussed the General Assembly's recent experience with technical corrections made to redistricting statutes. Mr. Stratton said that ten years ago, there were on the order of a dozen technical corrections made to the redistricting statute, which was a pleasant surprise to members of the Legislative Council because the number of

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11. House Joint Resolution 5-2002.

12. A copy of the aerial photography is Exhibit 1 to these Minutes. The affected House Districts are House District 48 and House District 49. In the notes embedded in the photographs, "OCD" refers to the Office of Census Data.

corrections was so few as compared to previous years. After the last redistricting in Indiana, the new statutes gave the OCD ability to fix certain problems administratively. While the staff believes there is a reading of the current redistricting statute that would permit an administrative fix, Mr. Stratton said that the problem occurring in Elkhart County was different in kind than those that were administratively corrected ten years ago because the mismapped territory in Elkhart County has residents. The OCD was looking for guidance from legislators: should the problem be corrected administratively or is a legislative solution more appropriate?

The Chair suggested that the safest approach might be to do as was done ten years ago by correcting the problem statutorily.

In response to questions from Representative Richardson, Ms. Bard said that Elkhart County officials are aware of the problem. There was discussion of the difficulty that might arise if a statutory correction could not be made before the conclusion of the filing deadline for candidates for the upcoming primary and general elections. Mr. Stratton observed that the review of all precincts might not be completed before the bill filing deadline. Committee members expressed the opinion that a bill could be drafted to address the problem in Elkhart County; solutions to other problems that might be found while the General Assembly is in session could be added to the bill during the session.

The Chair recognized the Co-Executive Directors of the Election Division, Brad King and Trent Deckard, each of whom made brief remarks.

(6) Selection of Next Meeting Date. The Chair announced that the Committee's next meeting would be on November 17 at 2 p.m. in a location that would be determined later and announced in the meeting notice.

(7) Adjournment. The Chair declared the meeting adjourned at approximately at 11:45 a.m.

WASHINGTON 94
Census Data Advisory Committee
October 13, 2011
Exhibit #1
Pink represents the precinct boundary
(which is also the township boundary in the area)
as submitted by OCD on 2/16/2009 and
3/23/2010.
RD 42
RD 62
Dean R Mock Expy
Elcona Country Club
Middlebury St
County Road 14
Hoffman St
Greenleaf
Eastland Dr
Elm Dr
Stillwater Cir
Gunder Rd
Antler Ct

Green represents the precinct (which is also the township boundary in the area) as mapped in error by the US Census and received by OCD on 12/8/2010
County Road 14
Verdant Dr
Via Pompeii
Via Pisa
Dean R Mock Expy
US 20
20
20

Additional documentation provided by OCD prior to redistricting noting the error in the area.
Jefferson 1/18 full block assignment TWP boundary in error
Jefferson 1/18 full block assignment TWP boundary in error
Dean R Mock Expy
US 20
20
20
Via Pompeii
Via Pisa
Verdant Dr
County Road 187
County Road 187

Boundary becomes the House District boundary between Districts 48 and 49
State House District 48
State House District 49
County Road 14
County Road 19
Verdant Dr
Via Pompeii
Via Pisa
Dean R Mock Expy
US 20
20