

Code Revision Commission

Sen. Joseph Zakas
Chairperson

Rep. Gregory Steuerwald
Vice-Chairperson



Authority: IC 2-5-1.1-10

MEETING MINUTES

Date: September 15, 2015
Time: 10: 00 AM
Place: State House, 200 W. Washington St., Room 431
City: Indianapolis, Indiana 46204
Meeting Number: 1

Members Present

Sen. James Arnold
Rep. Clyde Kersey
Sen. Greg Taylor
Sen. R Michael Young
Sen. Joseph Zakas
Jerry Bonnet
Kyle Gillaspie
Gretchen Gutman
David Johnson
Julie McDonald
Deputy Attorney General James Schmidt

Members Absent

Rep. Charles Moseley
Rep. Gregory Steuerwald
Rep. Thomas Washburne
Gary Miller

Members Excused

I. CALL TO ORDER

The meeting was called to order at 10:05 a.m. by Chairman Joseph Zakas.

II. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on October 2, 2014, 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 (OCR), made a few introductory remarks and explained continuing projects dealing with the technical corrections bill, substantive problems in the Indiana Code, trailer bills for tax matters and education, and revisions in IC 4 and IC 5. Mr. Stieff noted that representatives of the Office of the Inspector General and attorneys from the Office of Bill Drafting and Research would be available to discuss item 8 on the agenda (Revision of IC 4 and IC 5) at the next meeting of the Code Revision Commission, and the Chairman agreed to put that discussion off until the next meeting.

IV. PROPOSED 2016 TECHNICAL CORRECTIONS BILL

Stephanie Lawyer, attorney with the Office of Code Revision, presented the proposed Technical Corrections bill for the 2016 legislative session (TC bill). Ms. Lawyer noted that the TC bill generally corrects two categories of technical, nonsubstantive errors in the Indiana Code. The first category consists of conflicts between multiple versions of the same Indiana Code statutes. Ms. Lawyer described such a conflict as follows:

1. The same section of the Indiana Code was being amended differently by two (or more) acts.
2. Neither act was altered by a Joint Rule 20 motion or a conference committee report so that the SECTION amending the Code section recognized and incorporated the changes being made by the other act.
2. Both acts become law.

When such a conflict arises, the Indiana Code ends up containing multiple versions of a single section. To resolve a conflict in the TC bill, Ms. Lawyer noted and explained that the conflict must not be substantive. Ms. Lawyer stated that materials that were distributed through the Commission web page in advance of the meeting provide additional explanation for how the TC bill resolves technical corrections.

Ms. Lawyer explained that PD 3030, the first draft of the 2016 TC bill, resolves six technical conflicts. She noted that the drafting attorneys and the general assembly and its staff helped to greatly reduce the number of unresolved conflicts. She explained that the second category of problems resolved in the TC Bill draft is a variety of technical problems other than technical conflicts: incorrect internal references; reference to obsolete or repealed statutes; references to defunct entities and programs; verb tense problems; nonstandard tabulation; and missing conjunctions. Ms. Lawyer referenced the four-part test used by OCR over the years to determine whether it would be appropriate to resolve a particular problem in the bill. This test provides that an issue is not generally suitable for resolution in the TC bill 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.

Ms. Lawyer noted that if a particular problem does not fit all four prongs of this test, it is considered a substantive

error and its resolution is not included in the TC bill. Also, if a particular issue is controversial, or could be considered controversial, it is not included. Ms. Lawyer explained that several bills being drafted for consideration in the 2016 session provide for restructuring of statutes or clean-up of the Code necessitated by legislation that passed during the 2015 session. To avoid duplication of efforts and creation of additional conflict, certain technical and substantive errors and several substantive conflicts that would otherwise appear in the TC bill or the Substantive Problems bill, as appropriate, are located in the other bills. Title 20 corrections are in the trailer bill for SEA 500-2015. Several tax-related provisions and conflicts have been delegated to the trailer bills for SEA 441-2015 and HEA 1485-2015.

Ms. Lawyer brought attention to several of the problems addressed in the TC bill. She noted that these items might appear to be making substantive changes, but they are purely technical in nature.

The first issue concerned IC 8-15.5-1-2, on page 57 of the PD, SECTION 37. Ms. Lawyer explained the provision and noted that there is an obsolete internal reference in subsection (d) that is removed in the TC bill. Senator Young noted that the conflict being resolved in the internal reference in subsection (d) to subsection (c)(1) may be a substantive issue. Ms. Lawyer noted that the TC bill intends merely to update a new cross-reference. Some discussion ensued regarding the purpose and intent of the original amendment. Ms. Gutman provided some clarification regarding the provision and discussed the context of the TC bill change. Chairman Zakas and Senator Young decided to review the provision further and discuss the TC bill change in more detail at the next meeting.

The second issue referenced by Ms. Lawyer concerned IC 28-7-5-16, on page 83 of the PD, SECTION 76. Ms. Lawyer described the obsolete provision and noted that the same amendment is being made in two other SECTIONS of the TC bill: IC 28-8-4-41, located in SECTION 77 of the PD and in IC 28-8-5-19, located in SECTION 78 of the PD.

Ms. Lawyer brought to the attention of the Commission two amendments to undo amendments made during the 2015 legislative session in order to resolve conflicts with HEA 1270-2015, which concerned horse racing. She noted that HEA 1270 was vetoed by Governor Pence May 8, 2015. Ms. Lawyer also provided that the General Assembly has until the end of the 2016 legislative session to reconsider and pass HEA 1270 over the Governor's veto. If the veto override were to pass, those two statutes would require additional amendment to reverse the removal of HEA 1270's amendments.

Ms. Lawyer described two proposed amendments (PD 3031 and PD 3032) to the TC bill for the Commission to consider. She explained that the noncode provisions in these PDs would be helpful in dealing with conflict resolution where the TC bill is involved. She noted that both of these provisions were approved by the Commission for inclusion in last year's TC bill and were of great benefit to the OCR staff and the office and the drafting attorneys. She asked the Commission to consider adding these provisions to the current TC bill draft.

Ms. Lawyer explained PD 3031 and noted that it provides that the official name of the TC bill is the "Technical Corrections bill of the 2016 general assembly" and that this phrase can be referenced in the lead-in line of each SECTION in which a provision added or amended by the TC bill is also amended or repealed by another bill during the upcoming session.

Chairman Zakas noted that since the Commission has concerns about the IC 8-15.5-1-2 issue, the Commission would wait to consider the TC bill at the next meeting.

V. PROPOSED 2016 SUBSTANTIVE PROBLEMS IN THE INDIANA CODE BILL

Stephanie Lawyer explained the contents of PD 3046, the substantive problems in the Indiana Code bill. She noted that substantive problems represent errors that do not pass the four-part test for inclusion in the TC bill, but may be addressed with the two-prong test created last year in the Code Revision Commission as follows:

- (1) There is a clear way to resolve the problem.
- (2) The resolution is not controversial in nature.

Ms. Lawyer noted that PD 3046 does resolve one add/repeal conflict created during the 2015 legislative session. (SECTION 6 on page 6, IC 35-52-5-9.5.) Also included is a Noncode provision at SECTION 7 of the PD, page 6, providing for the continuance of IC 11-12-2-1(b) in the Indiana Code, despite the expiration provision it contained before amendment by SEA 464-2015 and HEA 1006-2015. She noted that subsection was amended to clarify the General Assembly's intent that the provision have ongoing applicability until it is otherwise amended, repealed, or set to expire by the General Assembly. Chairman Zakas inquired about the use of a retroactive effective date in the technical corrections

bills. Mr. Stieff noted that a retroactive effective date is occasionally used in the TC and substantive problems bills and that it makes sense to sometimes use a retroactive date to take care of the problem on the date when it arose.

The Chairman stated the Commission could consider the proposed TC and substantive problems bills at the next meeting of the Commission.

VI. SEA 441-2015 TRAILER BILL (TAX MATTERS)

Mr. Greg Mize, attorney with the Office of Bill Drafting and Research, presented the trailer bill for SEA 441-2015 concerning tax matters (PD 3067). Mr. Mize noted that the first two SECTIONS of the PD resolve a conflict in which the same Indiana Code cite provisions were added and amended in the same session, without referencing each other. He noted that three SECTIONS make changes to correct style.

Mr. Mize explained the last three SECTIONS of the bill regarding elimination of a state exemption for employer contributions to an MSA account. He noted that the changes clarify tax treatment of withdrawals to avoid double taxation on certain contributions funded with after-tax dollars. Chairman Zakas inquired as to whether Senator Hershman (the author of SEA 441-2015) was involved with the PD, and Senator Taylor suggested that the staff contact Senator Hershman regarding the changes before the Commission takes action. Chairman Zakas stated that the PD could be considered by the Commission at the next meeting.

VII. SEA 500-2015 TRAILER BILL (EDUCATION DEREGULATION)

Mr. Allen Morford, attorney with the Office of Bill Drafting and Research, presented the trailer bill for SEA 500-2015 concerning education deregulation (PD 3008). He noted that PD 3008 contains amendments to correct terms, grammar, tabulation, and cross-references and to resolve conflicts.

Mr. Morford explained to the Commission the amendment in SECTION 11 and noted that the change was a close call in conforming changes from two bills in conflict. Senator Young inquired about the two bills in conflict and there was some discussion regarding SEA 500-2015 and HEA 1001-2015. Mr. Stieff explained that courts would generally try to give effect to both provisions, and if that is not possible, that the last passed bill would prevail. He also noted that both versions were printed in the Indiana Code. Some discussion ensued as to whether the SECTION 11 amendment should be included in the substantive problems bill instead of PD 3008. Senator Taylor and Chairman Zakas discussed the language in conflict and which language should prevail. Ms. McDonald asked about conflict resolution SECTIONS, and Mr. Stieff explained how conflict resolutions are presented in the bills. Chairman Zakas noted that the issue could be resolved at the next meeting.

Mr. Morford presented one other SECTION for the Commission's consideration and explained that SECTION 23 moved a chapter to a more appropriate location in the Indiana Code while retaining all of the original language. The Commission decided to consider action on the PD at the next meeting.

VIII. IC 4 and IC 5 RECODIFICATION PROJECT

The Commission decided to consider this item at the next meeting.

IX. PROPOSAL TO LEAVE COMMITTEE REPORTS AND FLOOR MOTIONS OFF THE END OF PRINTED BILLS

Mr. John Stieff, Director of the Office of Code Revision, presented a request that the Code Revision Commission consider studying a change in the style used for printed bills to eliminate the appending of the text of each adopted Committee Report and Floor Motion to the end of each reprinting of a bill.

Mr. Stieff noted that the Legislative Services Agency has printed the official Printed Bills of the General Assembly since 1999 and that the form of the Printed Bills has not changed. He explained that after a Committee Report is adopted, employees in the Office of Code Revision's In-House Printing Office create a new version of the bill that incorporates the changes made in the Committee Report, the text of each Committee Report is appended and separately printed at the end of each version of the printed bill, and that a similar process is used for Floor Motions. Mr. Stieff explained that all adopted Committee Reports and Floor Motions are appended and reprinted each time a bill is printed, with a few exceptions. He described a proposal to replace the printing of that information at the end of a bill with the

printing of a Internet website location where the information could be found. Mr. Stieff noted that no changes are proposed for 2016.

Mr. Stieff described the potential for savings in printing and provided that appending Committee Reports and Floor Motions to the end of printed bills adds as many as 900,000 pages to the number of pages printed by the In-House Agency Print Shop during each session, and that the total cost associated with assembling, proofreading, and printing these additional pages is relatively small. He also noted that sometimes there is some additional delay in the delivery of printed bills to the House and Senate due to the additional work. Mr. Stieff suggested that the staff could prepare a report of the pros and cons of adopting a new process.

Mr. Bonnet noted that the website alternative may require some amount of manual typing of the website printed at the back of each bill. Mr. Stieff noted that the goal would be to make the link information as user friendly as possible. Senator Young inquired about putting only Senate committee information on bills for the Senate and the same for the House. Mr. Stieff explained that the suggested change would also require a change in process and may have some cost savings, although the savings would be less than would be realized under the proposal Mr. Stieff described. Chairman Zakas and Senator Young described their use of the printed text at the back of the bills and explained that the material is helpful as a quick reference as to what happened in committee and is easily accessible when needed on the floor of the Senate. Senator Taylor expressed some concern regarding access, privacy, and the use of personal computing equipment to obtain legislative material. Representative Kersey noted that some members may still want paper copies of the material even if the material could be accessed by computer.

Ms. McDonald inquired about the reasoning for the proposed change. Mr. Stieff responded that the proposal could speed up the creation of documents and provide some cost savings. Ms. Gutman expressed concern regarding the computer system for the general assembly, noted some electronic issues, including the website being inaccessible at times. She noted that she has not noticed a delay in the printing of the bills, and Mr. Stieff replied that the staff works hard to have the bills prepared for early the next day. Ms. Gutman expressed an appreciation for the staff looking for innovation, but suggested the Commission proceed with caution.

Chairman Zakas asked Mr. Stieff if the staff had consulted the Legislative Council regarding the proposal. Mr. Stieff responded that the staff had not consulted the Legislative Council and that the staff was only asking for the Commission's direction on whether to pursue the proposal further. Some discussion ensued regarding how the proposal may affect the printing of the budget bill, and the costs associated with a new computing process for the proposal.

X. PROPOSAL TO CHANGE THE FORMAT OF AMENDMENTS, MOTIONS, COMMITTEE REPORTS, AND CONFERENCE COMMITTEE REPORTS

Mr. Stieff presented a proposal that the Code Revision Commission consider studying changing the style used to prepare most amendments, committee reports, and floor motions from a page and line amendment style to an "amendment in-context" style.

Mr. Stieff explained that the page and line amendment style was developed before computers became common word processing and publication tools and that the approach was essential in giving the Indiana General Assembly's official printer specific instructions as to how to manipulate the text in a Bill to make the desired amendment to the Bill. He noted that with the advent of computers, the page and line amendment style is no longer the only way to instruct staff on how to incorporate proposed changes into the bill. Mr. Stieff noted some legislator interest in creating amendatory legislative documents through the so-called "amendment in context" process. Mr. Stieff explained how a new process could work and gave an example.

Mr. Stieff noted some advantages to a new process including being able to more easily envision how a bill would look after amendment, drafting might be easier and faster, editing might be easier and faster, and aiding in the printing process. Mr. Stieff described the down sides, as documents would be longer and conventions would need to be established for amendment changes. Chairman Zakas asked Mr. Stieff to further explain his example, and asked about various type face changes.

Mr. George Angelone explained the background of the drafting style and how the style and conventions were incorporated by previous Code Revision Commissions and Legislative Councils over time. Mr. Angelone noted discussions with legislators regarding the value of in-context amendments. He explained that Mr. Stieff's proposed example is one style, but the staff is not recommending a certain style at this time. Mr. Angelone noted that further study is needed to determine the extent of process, equipment, and computer programming changes that would be needed to implement an "amendment in context" style change, and that the staff is asking the Commission if there is

enough interest for the staff to explore the proposal.

Chairman Zakas discussed with Mr. Angelone what other states are doing in the subject area. Ms. Gutman expressed concern regarding the process for multiple amendments, access of electronic copies, and cost savings. She also noted that the current level of transparency for documents and process is good for the Indiana Code, and the Commission would want to maintain the high level. Some additional discussion ensued regarding the conventions that would need to be adopted to process amendments under a new style and the amount of time that would be necessary to incorporate a new style. Senator Young asked how long it would take for a new style to become a reality, and Mr. Angelone noted that the staff does not have a specific time frame, but the new style would not be a reality for 2016.

A motion was made by Senator Young and seconded for the Commission to allow the staff of the Legislative Services Agency to proceed and to start work on some proposals to the Commission. The Commission approved the motion by voice vote.

XI. OTHER BUSINESS

The Chairman noted that the Commission would hold the next meeting on October 6, 2015, and that a third meeting may be necessary.

XII. ADJOURNMENT

The Chairman thanked the members and staff for their work. The meeting was adjourned by the Chairman at 12:11 p.m.

Witness List:

No testimony.

Exhibit List:

Exhibit 13, Corresponding outline for PD3067, SEA 441-2015 (Taxation) Trailer Bill

Exhibit 8, Proposed PD3067, SEA 441-2015 (Taxation) Trailer Bill (Revised due to late addition to draft.)

Exhibit 12, PD 3032, proposed amendment to the Technical Corrections bill concerning amend/repeal conflict resolution with the TC bill--Revised

Exhibit 1, Memo concerning Technical Corrections and Substantive Problems PDs--Revised

Exhibit 11, PD 3031, proposed amendment to the Technical Corrections bill concerning conflict resolution and SECTION lead-in lines

Exhibit 10, Memo concerning study of a possible change in the style of amendments

Exhibit 9, Memo concerning study of a possible change in the style of printed bills

Exhibit 7, Corresponding outline for PD 3008, SEA 500-2015 (Education) Trailer Bill

Exhibit 6, Proposed PD 3008, SEA 500-2015 (Education) Trailer Bill

Exhibit 5, Corresponding outline for PD 3046, Substantive Problems

Exhibit 4, PD 3046, Substantive Problems in the Indiana Code

Exhibit 3, Corresponding outline for PD 3030, Technical Corrections

Exhibit 2, PD 3030, Technical Corrections