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CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES¹

Meeting Date: December 07, 2006
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Sue Landske, Acting Chair; Rep. Robert Behning; Rep. Ralph Foley; Hon. James S. Kirsch; Mr. David Remondini, representing Chief Justice Randall Shepard; Mr. John Okeson, representing Governor Mitch Daniels; Mr. Jerry Bonnet, representing Secretary of State Todd Rokita; Mr. Jason Thompson, representing Attorney General Steve Carter.

Members Absent: Sen. Anita Bowser; Sen. John Broden; Sen. Luke Kenley; Rep. Robert Kuzman; Rep. Trent Van Haften; Professor William Harvey; Mr. John Feighner.

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

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 10:15 a.m. by Senator Sue Landske, Acting Chair.

II. INTRODUCTORY REMARKS

Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency, described four projects for the Code Revision Commission's discussion:

- (1) The recodification of the higher education provisions in Title 21 of the Indiana Code.
- (2) The annual technical corrections bill to correct errors in the Indiana Code.
- (3) The bill to change descriptors in the Indiana Code to reflect "people first" or respectful language when referring to individuals with disabilities.
- (4) A proposal to revise the LSA Drafting Manual.

Mr. Stieff said that he would like to ask the Commission to review the four projects and discuss approvals for the draft bills, assignment of authors to the bills, and inclusion of the language "prepared by the Code Revision Commission" in the digest for the three bills.

III. TECHNICAL CORRECTIONS BILL

Craig Mortell, Deputy Director of the Office of Code Revision (OCR), spoke to the Commission about PD 3458, the second draft proposed for inclusion in the 2007 technical corrections (TC) bill.¹ He drew the Commission's attention to the SECTION-by-SECTION outline of PD 3458, expressing the hope that the outline would adequately explain the purpose of each SECTION in PD 3458. He also stated that PD 3458 differed slightly from the earlier draft that was distributed to Commission members by mail in October in that: (1) PD 3458 contained SECTIONS amending IC 9-17-2-9, IC 13-15-4-2, IC 31-9-2-17.5, and IC 31-9-2-129.5, which were not contained in the earlier draft; and (2) the SECTION in the earlier draft amending IC 35-38-2-2.3 was not included in PD 3458.

Mr. Mortell explained that the SECTION amending IC 35-38-2-2.3 had been included in the earlier draft to address problems that arose in 2005 when subsections (e), (f), and (b)(9)(A) of IC 35-38-1-7.1, which defined "sex crimes" and "offenses related to controlled substances," were stricken from the Code but the numerous references in the Code to those subsections were not amended accordingly. He said that the SECTION in the earlier draft amending IC 35-38-2-2.3 would have been a "close call" -- that is, a correction possibly exceeding the proper scope of the TC bill -- concerning which OCR would have sought specific direction from the Commission if the SECTION had been included in PD 3458. However, he said recently the Sentencing Policy Study Committee considered and approved 2007 legislation to correct the problems arising from the striking of IC 35-38-1-7.1(e), (f), and (b)(9)(A), and because that Committee's corrective legislation is moving forward, OCR thought it would be best not to propose that the "close call" SECTION amending IC 35-38-2-2.3 be included in the 2007 TC bill.

Mr. Mortell informed the Commission that OCR was proposing one more addition to the 2007 TC bill. Referring to a short memo that had been distributed to the Commission, he offered the following explanation:

The 2002 recodification bill repealed IC 32-8-3-14, a statute relating to awards of attorney fees in cases involving mechanic's liens, and replaced it with IC 32-28-3-14. Greg Smith, an attorney in Muncie, contacted OCR recently and said that an award of

¹PD 3157, the first draft proposed for inclusion in the 2007 TC bill, was reviewed and approved by the Code Revision Commission at its meeting of September 26, 2006.

attorney's fees was mandatory under IC 32-8-3-14 but is permissive under the text of IC 32-28-3-14.

IC 32-8-3-14 read as follows at the time of its repeal in 2002 (emphasis added):

Sec. 14. In all suits brought for the enforcement of any lien under the provisions of this chapter, if the plaintiff or lienholder shall recover judgment in any sum, he shall also be entitled to recover reasonable attorney's fees, which shall be entered by the court trying the same, as a part of the judgment in said suit, however, attorney fees shall not be recovered as part of the judgment against the property owner in any suit in which it is shown that the contract consideration for such labor, material or machinery has been paid, in fact, by the property owner or party for whom the improvement has been constructed.

IC 32-28-3-14, as added by the 2002 recodification bill, reads in pertinent part as follows (emphasis added):

SECTION 1. IC 32-28-3-14 IS AMENDED TO READ AS FOLLOWS: Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, the plaintiff or lienholder may recover reasonable attorney's fees as a part of the judgment.

(b) A plaintiff may . . .

Having reviewed IC 32-8-3-14 and IC 32-28-3-14, OCR agrees with Mr. Smith that the 2002 recodification bill unintentionally altered the substance of IC 32-8-3-14 when the text of IC 32-8-3-14 was relocated to IC 32-28-3-14, changing what had been a provision mandating an award of attorney fees into a provision authorizing an award of attorney fees at the discretion of the court. Therefore, OCR proposes the inclusion in the 2007 technical corrections bill of a corrective SECTION reading in pertinent part as follows:

SECTION 1. IC 32-28-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, ~~the a~~ plaintiff or lienholder **who recovers a judgment in any sum may is entitled to** recover reasonable attorney's fees as a part of the judgment.

(b) A plaintiff . . .

Commission member Jason Thompson asked whether the corrective SECTION might not follow the original text of IC 32-8-3-14 more closely if it were changed slightly to read as follows:

SECTION 1. IC 32-28-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, ~~the a~~ plaintiff or lienholder **who recovers a judgment in any sum may is entitled to** recover reasonable attorney's fees. **The court shall enter the attorney's fees** as a part of the judgment.

(b) A plaintiff . . .

The representatives of OCR agreed that the change suggested by Mr. Thompson would bring the corrective SECTION into even closer conformity with the original text of IC 32-8-3-14, and they thanked Mr. Thompson for his suggestion.

IV. BILL TO CHANGE DESCRIPTORS FOR INDIVIDUALS WITH A DISABILITY

Mr. Stieff gave some introductory comments regarding the bill to change descriptors for individuals with a disability. He summarized that the bill relates to resolutions passed to use "people first" language in the Indiana Code. The changes are nonsubstantive in nature and put individuals first when individuals with disabilities are

described in the Indiana Code. Mr. Stieff gave the following examples of items in the Indiana Code that will not be changed under the bill:

- (1) Disabled American Veterans.
- (2) References that mirror the language described in federal law.

Mr. Stieff noted that the most current draft of the bill contained very few changes from the PD that was introduced to the Commission in the first meeting. Senator Landske asked what types of changes had been made. John Kline, attorney with the Office of Code Revision, confirmed that the changes were for minor grammatical and punctuation edits.

V. REVIEW OF MINUTES

The Commission reviewed the minutes of the Commission's last meeting on September 26, 2006, and there were no questions. The Commission approved the minutes by consent.

VI. DISCUSSION OF DRAFTING MANUAL REVISIONS

Mr. Stieff stated that he would like to propose some revisions to the LSA Drafting Manual that could take effect after the end of the current legislative session. He noted that the Drafting Manual had not been updated since 1999, and some changes were needed. Mr. Stieff presented a handout (Exhibit 1) to the Commission that was a general advisement for insertion at the beginning of the Manual for an approach to drafting. The handout detailed a list of nonstandard items that may be requested in legislation, but that Mr. Stieff believed should not be contained in the bills. (See Exhibit 1.)

Mr. Stieff noted that persuasive or argumentative language inserted into the digest of bills may have the effect of advertising or promoting the bill. Mr. Stieff stated that popular names or tag lines should not be used in the text to identify bills. He also noted that the use of legislative findings or preambles should be prohibited in the text of bills, which is a change from the current drafting manual that strongly dissuades the use of this type of language. Mr. Remondini stated that he believed some of the preamble language in provisions such as the open door laws were beneficial and wondered if these would be prevented if the Manual were changed. Mr. Stieff replied that he would distinguish this language as a purpose clause that would be printed as part of the text of the Indiana Code, while promotional preambles are not included in the printing of the Code. Representative Foley stated that he applauds the effort to improve and update the Drafting Manual.

VII. RECODIFICATION OF THE HIGHER EDUCATION PROVISIONS INTO TITLE 21

Mr. George Angelone, Deputy Director of the Office of Bill Drafting and Research, presented two handouts for the discussion of the recodification of the higher education provisions of the Indiana Code into 33 articles of Title 21. The first handout described comments that were received from interested parties concerning PD 3658. The second handout requested adoption of PD 3658 with changes to the digest and other changes outlined in an Appendix. Mr. Angelone outlined the process taken to complete PD 3658. He said that an outline, substantially similar to one created in 2002, was sent to the interested parties and then approved by the Commission in the September meeting. Sections were drafted based on the approved outline and then the individual sections were combined to form PD 3658. He stated that the document was sent out for review by the interested parties and that a citations table had been prepared.

Mr. Angelone discussed several items that were considered to be obsolete material. Then he referred to the handout of comments received from interested parties regarding the bill. He discussed three issues presented by Ivy Tech, which included a few sentences inadvertently deleted from the bill, a few technical and style issues, and an issue regarding the list of powers for the university. Mr. Angelone agreed to incorporate

the first two items and addressed the last item as one he believed should not be changed from the draft. A long list of powers is in one section of current Code, and the university wanted to keep this list intact for convenience in referencing. Mr. Angelone stated that the powers are some, but not all of the powers of the university, and that it is consistent to place these powers in other sections where they will be consistent for all the universities. He noted that a few other powers of Ivy Tech are spread throughout the Code currently.

Mr. Angelone discussed additional issues received by e-mail and telephone from the universities and interested parties. These issues were included in the first handout. Some of the issues included the Permanent Endowment Fund, the University Fund, choices of terminology, and powers and duties of universities. One university wanted to see the Commission for Higher Education powers and duties language to include the word "shall" instead of "may" as in the draft. Mr. Angelone noted that he continues to inquire about one section regarding Purdue University that may be obsolete. He stated that some items are being retained even though they may be obsolete to be conservative in the recodification approach. One item in this category was the Freedom of Choice Grant. Mr. Angelone discussed the use of the terminology "Institution of Higher Education" and "Institution of Higher Learning" and proposed to replace all references to these phrases with "postsecondary educational institution". An application clause is inserted for any references that specifically apply to less than all postsecondary educational institutions. Senator Landske asked for questions.

Representative Foley commended the staff and stated that it was a big task to deal with all of the institutions to recodify the law. He inquired about an issue that concerned the use of "shall" or "may" in the Indiana Code. Mr. Angelone and Mr. Stieff explained the use of these words in the Indiana Code and the different situations in which they apply. Representative Foley asked why Vincennes has a different provision for eminent domain than the other universities. Mr. Angelone stated that Ivy Tech and Vincennes are specifically excluded from the eminent domain law for the other universities and given their own sections for this law. Therefore, it appeared that there was an intention to keep these two universities separate, and that is why both sections of law were retained. Representative Foley inquired whether the Permanent Endowment Fund would still exist in the Indiana Code. Mr. Angelone replied that the provision has been kept and that universities are still receiving money from the fund. Senator Landske asked if there were individuals desiring to speak on the bill.

Jeff Weber, Commissioner of the Commission on Proprietary Education (COPE), thanked the staff for their work on the bill. He noted two issues, including the use of the terminology "Institution of Higher Education" and "Institution of Higher Learning" and provisions that existed before the creation of the Commission on Proprietary Education. Mr. Weber requested that the word "private" be used to distinguish between private and proprietary institutions to alleviate some confusion. He noted that it would be beneficial in several instances, including provisions that relate to the hiring of police officers by institutions. Mr. Weber then noted several provisions that apply exclusively to institutions not regulated by COPE, and recommended that these provisions be moved to a new Article.

Kevin Green, Director of State Relations at Purdue University, thanked the staff for working closely with the institutions in drafting the bill. He stated that his office would continue to review the bill, contribute suggestions, and work with the legislative staff to make the bill the best it could be.

VIII. ACTION TAKEN BY THE COMMISSION

Senator Landske asked the Commission to accept the minutes of the meeting September 26, 2006, and the Commission agreed by consent. Mr. Stieff made a request for the Commission to consider approval of the bills, consent to include language in the digest of the bills, and provide authors for the bills.

(1) Regarding the TC bill:

- (A) On motion, the Commission approved the inclusion in the TC bill of PD 3458, with the addition of a SECTION that amends IC 32-28-3-14 concerning mechanic's liens and contains the language proposed by Jason Thompson.
 - (B) The Commission agreed by consent that the TC bill digest contain the language "(The introduced version of this bill was prepared by the Code Revision Commission.)".
 - (C) The Commission agreed by consent that the authors for the TC bill would be Representatives Kuzman, Van Haaften, Behning, and Foley.
- (2) Regarding the Recodification bill:
- (A) On motion, the Commission approved the recodification bill PD 3658 including the amendments discussed as Appendix A.
 - (B) The Commission agreed by consent that the recodification bill digest contain the language "(The introduced version of this bill was prepared by the Code Revision Commission.)".
 - (C) The Commission agreed by consent that the authors for the TC bill would be Senators Landske, Kenley, Bowser, and Broden.
- (3) Regarding the "People First" bill:
- (A) On motion, the Commission approved the bill including PD 3186.
 - (B) The Commission agreed by consent that the bill digest contain the language "(The introduced version of this bill was prepared by the Code Revision Commission.)".
 - (C) The Commission agreed by consent that the authors for the bill would be Senators Landske, Kenley, Bowser, and Broden.

IX. ADJOURNMENT

The meeting was adjourned by Senator Landske at 11:45 a.m.