

## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Thursday, December 20, 2012**

The Arkansas Code Revision Commission met Thursday, December 20, 2012, at 10:30 a.m. in Room 272 of the State Capitol Building in Little Rock, Arkansas.

Senator David Johnson, Chair, called the meeting to order. Members present were Senator Sue Madison, Representative John Vines, Representative Darrin Williams, Commissioner Don Schnipper, Commissioner David Matthews, Commissioner Bettina Brownstein, Commissioner Paula Casey, Commissioner Warren Readnour, Commissioner Matthew Miller, and Senator Johnson. Also present were Vincent C. Henderson II, Arkansas Code Revisor, and David Wagoner with LexisNexis.

Senator Johnson asked for corrections or additions to the September 22, 2011, minutes. There were none, and the minutes were approved as presented.

Senator Johnson called attention to Agenda Item C, Correction Bills, and asked Mr. Henderson to explain each bill, section by section. Mr. Henderson explained that these were proposed technical correction bills that contain language that needs to be corrected or is obsolete. During Mr. Henderson's explanations, the following concerns were voiced by the Commission members:

1. Exhibit B-4: Title 5, § 8 – Reverse the order of (A) and (B), and reorder accordingly.
2. Exhibit B-5: Title 6, § 23 – Since this language is being repealed, remove the underlining from this section.
3. Exhibit B-6: Title 7 – Since there was concern about the “nolo contendere” language, remove the sections concerning this language from the bill.
4. Exhibit B-10: Title 12 – Since there was concern about the “knowingly” language, remove the sections concerning this language from the bill.
5. Exhibit B-15: Title 20, §§ 29 and 30 – Since there was a concern about the correct agency name, the name will be verified and the correct name inserted into the bill.
6. Exhibit B-15: Title 20, §§ 33 and 34 – Since there was a concern about the word “Interim”, the name will be verified and corrected, if necessary, in the bill.

Following Mr. Henderson's explanations, Commissioner Matthews moved and Commissioner Schnipper seconded that after the above changes are made to the reviewed bills that we authorize the appropriate Senate and House sponsors who represent the General Assembly to introduce these bills as technical corrections recommended by the Arkansas Code Revision Commission. The motion carried.

Senator Johnson recognized a special guest from LexisNexis, David Wagoner.

Senator Johnson then asked Mr. Henderson to explain Agenda Item D, Contract obligation for providing DVD's to the Commission. Mr. Henderson explained that according to the contract, the publisher is required to furnish to the Commission at no cost two copies of the Code or compilation of any other state published by the Contractor and keep those up to date. He explained that the Commission had agreed to have these sent to the Supreme Court Library, and the Library has now decided that they don't have the ability to utilize the copies. Since the contract requires that these laws be supplied but they are no longer being utilized as proposed, Mr. Henderson asked what the Commission wanted to do about this obligation. Senator Madison moved and Commissioner Brownstein seconded that the obligation be suspended. The motion carried.

Senator Johnson asked for Mr. Henderson to give a report as Code Revisor. Mr. Henderson reported that we now have an Index of Uncodified Historical Legislation. He reported that the staff of the Commission has completed ten replacement volumes and two of three Advance Code Service pamphlets. He also informed the Commission that the staff has increased to seven attorneys, five editors, two administrative assistants, and shortly will include six temporary proofreaders.

Senator Madison asked about Brett Rogers' family. Mr. Henderson explained that Brett was an attorney with the Statutory Review Section who was killed in an unfortunate auto accident in October 2011. Senator Johnson mentioned that the Commission sent flowers, and he attended the service.

Senator Johnson and Representative Vines then recognized Senator Madison and presented her with House and Senate citations for her years of service to the Arkansas Code Revision Commission. Senator Madison thanked everyone for their support and stated it was a pleasure to serve on the Commission.

There being no further business, the meeting adjourned.

## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Monday, March 11, 2013**

The Arkansas Code Revision Commission met Monday, March 11, 2013, at 9:00 a.m. via telephone conference call.

Senator David Johnson, Chair, called the meeting to order. Members present via phone were Senator David Burnett, Representative John Vines, Representative Darrin Williams, Commissioner Don Schnipper, Commissioner David Matthews, Commissioner Bettina Brownstein, Commissioner Paula Casey, Commissioner Warren Readnour, Commissioner Stacy Leeds, and Senator Johnson. Also present were Dan Parker, Administrator Legal Research and Drafting Section; Vincent C. Henderson II, Arkansas Code Revisor; and David Wagoner with LexisNexis.

Senator Johnson thanked everyone for their participation via phone and welcomed Senator David Burnett as a newly appointed commissioner. Senator Johnson asked for corrections or additions to the December 20, 2012, minutes. There were none, and the minutes were approved as presented.

Senator Johnson called attention to Agenda Item C, Obsolete Laws, and asked Representative Williams to explain the bills. Representative Williams explained that house bills 1715 through 1736 are proposed bills to remove outdated statutes, laws covered in other sections of the Code, or obsolete language from the Code. Dan Parker pointed to the introductory language of each section to explain why that language is being repealed. During Representative Williams' explanations, the commissioners asked that House Bill 1727 be approved contingent upon following up with the State Librarian, and that House Bill 1719 be approved contingent upon following up with the State Land Commissioner.

Following Representative Williams' explanations, Senator Johnson moved that the Commission endorse house bills 1715 through 1736 with the contingent approval of House Bill 1727 and House Bill 1719. The motion carried. Representative Williams pointed out that these bills will remove approximately 176 pages from the Code.

Senator Johnson asked Mr. Henderson to give his report. Mr. Henderson stated that the staff has finished reviewing Advance Code Service Pamphlet No. 3 and that it should be shipped within the next week.

There being no further business, the meeting adjourned.

## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Tuesday, October 8, 2013**

The Arkansas Code Revision Commission met Tuesday, October 8, 2013, at 1:30 p.m. in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order. Members present were Representative John Vines, Commissioner Don Schnipper, Commissioner David Matthews, Commissioner Bettina Brownstein, Commissioner Paula Casey, Commissioner Warren Readnour, Commissioner Matthew Miller, and Senator Johnson. Participating via telephone were Representative Darrin Williams and Commissioner Stacy Leeds. Also present were Senator Jason Rapert, Representative Andy Mayberry, Vincent C. Henderson II, Arkansas Code Revisor, and Anders Ganten with LexisNexis.

Senator Johnson called the meeting to order and asked for corrections or additions to the March 11, 2013, minutes. There were none, and the minutes were approved as presented.

Senator Johnson called attention to Agenda Item C, Consideration of codification of Act 171 of 2013, Twenty Week Abortion Bill, and Act 301 of 2013, Twelve Week Abortion Bill. The issues to be decided are whether the Commission has the authority not to codify one of those acts, and, if so, is there a conflict between one of those two acts, and, if so, how does the Commission address it.

Senator Johnson asked Mr. Henderson to explain the staff's position concerning the conflicts in these two acts. Mr. Henderson explained that the staff takes the acts from the General Assembly, conforms them to Code style, and sends the acts to the publisher to be incorporated into the pocket parts of the Arkansas Code of 1987 Annotated. Mr. Henderson went on to say that with respect to the two acts the staff felt there was a conflict and based on § 1-2-207 chose to codify Act 301 and noted Act 171.

Senator Johnson asked if the Commission even has the authority not to codify one of these acts. Mr. Henderson explained that § 1-2-303 are provisions giving the Commission authority for creating the Code and performing ongoing codification work. Section 1-2-207 was not to give direction to the courts but to the staff of the Commission. Commissioner Matthews felt that section (d)(1) of § 1-2-303 is what governs the exercise of the authority of the Commission, and he did not see any reference to the resolution if there is a conflict. Mr. Henderson explained again that § 1-2-303 was intended to give the Commission the authority to create the Code and continue ongoing codification work session by session.

Mr. Henderson went on to explain that the problem with these two acts is that they both created the same subchapter. According to law, the latter act is the one that rules, and the previous act is repealed by the latter act. Commissioner Readnour said that the court will look at the Acts of Arkansas, and the Acts govern over the Code. Mr. Henderson stated that there are two separate conflicts with these two acts. One is a technical conflict in that they are both creating the same subchapter and when read together it is evident that Act 301 is more comprehensive. The second conflict is between definitions and



penalties. Therefore, there is a substantive problem as well as a technical problem. If the Commission decides they no longer have the authority to codify on an ongoing basis, there will no longer be a Code but again revert to a compilation. Based on § 1-2-113, Commissioner Matthews said that the Code is a continuing document.

Following additional discussion, the consensus was that the Commission has the authority. Senator Johnson said the issue is whether or not to codify both acts. Commissioner Matthews moved and Commissioner Schnipper seconded that Act 171 of 2013 and Act 301 of 2013 be codified in the Arkansas Code of 1987 Annotated. The motion carried.

Senator Johnson moved to Item D, Consideration of drafting error in Act 506 of 2013. Mr. Henderson explained that Commissioner Brownstein had pointed out a drafting error in § 5-2-305(i). It should read “fitness to proceed” examination rather than “criminal responsibility” examination. It was codified as enacted. Commissioner Brownstein stated that “fitness to proceed” examination is the correct wording that should have been in the act and asked that the wording be corrected. Mr. Henderson said this type of error would be included in a technical correction bill. After further discussion, Commissioner Brownstein moved that “criminal responsibility” examination be struck and “fitness to proceed” be inserted in § 5-2-305(i). There being no second, the motion failed.

Senator Johnson asked Anders Ganten to explain Item E, Replacement Volume recommendations. Mr. Henderson recommended that the replacement volumes be accepted. Following discussion, Commissioner Matthews moved that the replacement volumes as suggested by LexisNexis with the inclusion of Volume 3A be approved. The motion carried.

Mr. Ganten called attention to the price increase as requested by LexisNexis in 2015. Mr. Henderson recommended the price increase be approved. Commissioner Matthews moved that the price increase be authorized, and the motion carried.

Senator Johnson asked for information on Exhibit F concerning the copyright issue. Mr. Ganten said that an organization in California called PublicResource.org bought a set of the Arkansas Code of 1987 Annotated and scanned the entire set and made it available on the open web. Mr. Ganten reiterated that LexisNexis is the publisher by contract, but the State of Arkansas maintains the copyright for the Arkansas Code of 1987 Annotated. If the copyright cannot be protected, then the Code will not be of any value to a publisher to publish an annotated version. Mr. Ganten said that the states of Mississippi and Georgia have also been targeted and are considering pursuing legal action.

Mr. Henderson said that the organization scanning and posting the Code online is using Lexis’ work. Mr. Ganten stated that the law itself cannot be copyrighted, but Mr. Henderson said that the annotated version is copyrighted.

Senator Johnson suggested that a letter be written to the Attorney General asking them to take a look at this matter and perhaps take it on. Mr. Schnipper moved that the Commission ask the Attorney General to investigate first, and if he determines there has

been a violation of Arkansas or federal copyright law that he take appropriate legal action. The motion carried.

Senator Johnson asked Mr. Henderson to give the Code Revisor Report. Mr. Henderson stated that 19 of Representative Williams obsolete law bills passed and 22 correction bills passed. Representative Vines stated that one correction bill concerning mineral rights was pulled and will be addressed at a later time. Mr. Henderson mentioned that the publisher was late in getting the supplements published and reduced the cost to \$105.00.

There being no further business, the meeting adjourned.



## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Thursday, February 27, 2014**

The Arkansas Code Revision Commission met Thursday, February 27, 2014, at 2:30 p.m. in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order and welcomed new Commissioners Amy Ford, Senior Assistant Attorney General, and Michael Schwartz, Dean of the UALR William H. Bowen School of Law. Other members present were Senator David Burnett, Representative John Vines, Commissioner Don Schnipper, Commissioner David Matthews, Commissioner Bettina Brownstein, and Ex Officio member Matthew Miller. Participating via telephone was Ex Officio member Stacy Leeds. Also present were Karen Hutchins, Arkansas Bar Association; Jim Simpson, Friday Law Firm; Vincent C. Henderson II, Arkansas Code Revisor; Marty Garrity, Director, Bureau of Legislative Research; and Anders Ganten with LexisNexis.

Senator Johnson called the meeting to order and asked for corrections or additions to the minutes of October 8, 2013. There were none, and the minutes were approved as presented.

Senator Johnson called for discussion of Agenda Item C, Copyright Issue, and explained this issue involves the contract with LexisNexis, the publisher of the Arkansas Code of 1987 Annotated. He asked Mr. Simpson to explain the problem that the Arkansas Bar Association has encountered with the online version of the Arkansas Code.

Mr. Simpson said that one of the most beneficial tools that a member of the Arkansas Bar Association has is to be able to use Fast Case as their legal source. The problem was brought to the attention of the Bar that it is Lexis' right to the annotated code. He said that on page 13 of the contract it reads that the Commission reserves the right to market the code in an unannotated form, and even though this wouldn't be the ideal form, that it would satisfy the bar's needs. He explained that now when a member logs on to the bar's website to view the code online, they are asked to agree to LexisNexis' terms of use. He stated that members won't agree to the terms of use because they contain the conditions that it can't be copied or used for commercial purposes. He said that these are basically the things that lawyers want to do with it in the course of their practices.

Mr. Simpson said that in preparation for today's meeting, the Bar tried to negotiate a deal between Fast Case and LexisNexis, and LexisNexis agreed to license a copy of the Code to the Bar for \$10,000 for two or three years. He said that is not in the Bar's budget at the present time. He further stated that they would prefer to pay the state for a copy rather than LexisNexis. The Bar is asking the Commission's help in settling this issue.

Commissioner Matthews asked if the Bar would make the Code available to their members on their website and wouldn't that cost them something to maintain. Karen Hutchins pointed out that the Bar doesn't currently have the ability to put the Code on their website, and it would take some money to create something that would be searchable and acceptable to most attorneys. So, the only way the Bar has of getting it



out to their members is through their current research engine, Fast Case. Commissioner Matthews asked that if the Bar was seeking a license from the State, would they in turn sublicense it to Fast Case if that was permitted by law. Ms. Hutchins agreed this would be the process since that is the only way available at the present time. Commissioner Matthews also suggested that Fast Case could come to the Commission and ask for the license.

Commissioner Brownstein asked if there was a contract between Fast Case and the Bar. Ms. Hutchins said there was and that it provided a free benefit to the Bar members as part of their membership.

Senator Johnson said that it appears that something happened last year that caused Fast Case to link to the legislature's website that leads to the terms and conditions and links to LexisNexis website. Ms. Hutchins said that is not technically correct since Fast Case will not agree to the terms and conditions that LexisNexis now requires, so Fast Case is not providing access to the 2013 laws.

Senator Johnson asked Anders Ganten to explain LexisNexis' position on this issue. Mr. Ganten explained that LexisNexis currently provides free access to the Arkansas Code on the open web and has done so for about four years and maintains the site at no cost to the State. He stated that he understands the terms and conditions create some problems, and he said LexisNexis would be happy to take a look at them and revise. He stated that the whole reason LexisNexis is in business is to provide service to attorneys, so it was never their intention to restrict the use of the data.

Senator Johnson asked if the same terms and conditions were used throughout the website that all subscribers have to agree to, and Mr. Ganten stated that was correct and that it was a global terms and conditions. Mr. Ganten explained that when the link to the Code website was created, LexisNexis simply linked to their global terms and conditions page rather than recreating from scratch and perhaps that was not the best decision. He stated that LexisNexis has no intention or ability in policing how people use the data in their day-to-day work. He stated again that if there were certain issues that needed to be looked at that, LexisNexis would be happy to do so and revise as necessary.

Commissioner Matthews asked Mr. Ganten to help him understand what happened after the Commission's October meeting when they handled the issue with the guy in California and why Fast Case now is having an issue. Mr. Ganten said that as far as he knew, LexisNexis had made no major changes to the link nor the terms and conditions and they had no communication with Fast Case. Mr. Ganten stated that if Fast Case wants to link to the site that LexisNexis has no problem with them doing so. Senator Johnson stated that it appears after 2012 something scared off Fast Case from linking to the website, and it needs to be found out what happened.

Mr. Anders discussed all the work involved in getting the acts codified and pointed out that LexisNexis doesn't get paid anything for their codification work except when books are sold.

Commission Matthews explained that he was confused as to how LexisNexis would provide free access to an unannotated version but that it would cost the Bar \$10,000 to link to it. Mr. Anders explained that the \$10,000 would be for an unannotated version that LexisNexis would supply in an .xml version on a disk and would keep updated.

Senator Johnson asked Mr. Henderson to explain this issue further. Mr. Henderson explained that he got a call from Fast Case asking him to provide a free copy of the Code to them, and he said that he couldn't do that but that they would need to check with LexisNexis. He said that was the last he heard until last fall when this issue first arose. He stated he doesn't know what happened to cause the issue. He explained that this is not just an Arkansas Bar Association issue but that Fast Case is providing other state's laws to all their subscribers and they are a competitor of LexisNexis and WestLaw. Mr. Henderson also stated that he didn't know what had happened to trigger this issue because the link to the terms and conditions had been up on the Bureau's website for some time. Mr. Miller stated that he thought the link had been up since 2010. Mr. Henderson said that one of the suggestions was to ask LexisNexis to change the terms and conditions, and Mr. Ganten has previously stated that LexisNexis would be willing to take a look at any suggestions.

Mr. Henderson explained that a former commissioner wanted people to have access online to an unannotated version of the Code and LexisNexis agreed to host it on their website. He further said that according to § 1-2-203 that the Commission can license an electronic version, but it would have to be put out for competitive bid. Furthermore, the only official Code is the one published by LexisNexis.

Commission Matthews asked if the Attorney General was asked to follow up on whether or not there were copyright violations, and Ms. Ford said at the present time the Attorney General was not prepared to say whether or not there was a violation and they have no specific recommendation at this time.

Senator Johnson asked if there was a current contract between the Arkansas Bar and Fast Case for Fast Case to provide a current copy of the Code to the Bar members and perhaps Fast Case should be the one paying the \$10,000. Ms. Hutchins said there was a contract but Fast Case believes that with the current terms and conditions, they would be violating the copyright if they proceeded with the 2013 update. She stated there is an option in the contract that they would just link off if that is the case and that is what they have chosen to do. This is the point they are at, and the Bar feels it is going to affect their membership and that is why they have brought this matter to the Commission to help resolve.

Senator Johnson asked Mr. Ganten hypothetically if LexisNexis would be willing to contract with Fast Case for \$10,000, and Mr. Ganten replied hypothetically they would because they are sympathetic to the issue. He stated that if this had originally been done with a competitor, LexisNexis would have asked a much higher price tag. He stated that in the discussion, he was aware that the Bar would be giving the Code to Fast Case and that Fast Case would benefit from that arrangement.

Commissioner Matthews asked whether or not the Commission has a product that we can provide to the Bar Association that they can work with Fast Case to utilize. Mr.

Henderson stated the one we have available is unannotated and is by and through LexisNexis. He said the Code staff works with LexisNexis to provide the Arkansas Code of 1987 Annotated and provides them with several hundred files or conformed acts. Mr. Henderson pointed out we could send the files to the Bar but they would be of no value to them because they would need editors on their side to incorporate the acts into the database. Commissioner Matthews asked if there is a way to fix the Bar Association's problem today.

Mr. Henderson stated that for a fast fix that LexisNexis could be asked to rework their terms and conditions. He said the problem with our sending the conformed acts to the Bar Association is that this contract will be rebid in 2018 and who will be willing to bid if they know they can go through the Bar Association and get the Code for free. He stated that when the contract was first put out for bid in 1984, the State didn't pay anything to the publisher for their work, but the publisher got paid by selling books

Commissioner Brownstein asked the purpose of the copyright, and Mr. Henderson explained the reason was so the State would have some control over the publication. He said the previous Arkansas Statutes were a compilation, but the Code is actually the law.

Commissioner Matthews said he didn't think the Commission had enough information available to make an informed decision, and after receipt of that information, the Commission can hold another meeting. Commissioner Brownstein suggested inviting someone from Fast Case to attend the next meeting, and Senator Johnson asked Mr. Henderson to invite a representative from Fast Case to attend that meeting.

Commissioner Matthews moved that the Commission request Mr. Ganten to provide within ten (10) days a written explanation of anything that changed in their terms of use or in the manner in which they present their free version of the Code. He also requested the Chair to write Fast Case and/or the Arkansas Bar Association and ask them to reply within ten (10) days and specifically address the change that caused them to go from making the free version available to their subscribers to not making it available. Senator Burnett seconded. Senator Johnson asked for a vote on the motion, and the motion carried.

There being no further business, the meeting adjourned.

## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Thursday, April 3, 2014**

The Arkansas Code Revision Commission met Thursday, April 3, 2014, at 1:30 p.m. via telephone conference call in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order. Other Commission members attending via phone were Senator David Burnett, Commissioner Don Schnipper, Commissioner David Matthews, and Ex Officio member Stacy Leeds. Also participating via phone were Attorney General Dustin McDaniel; Brad Phelps, Chief Deputy Attorney General; David Curran, Deputy Attorney General; and Erica Gee, Deputy Attorney General. Attending in person were Vincent C. Henderson II, Arkansas Code Revisor; Matthew Miller, Assistant Director Legal Services; Marty Garrity, Director of the Bureau of Legislative Research; Carolyn Magrans, Editor Supervisor, Statutory Review Section of Legal Services; and members of the media.

Senator Johnson asked Attorney General Dustin McDaniel to give some background on the Ortho-McNeil-Janssen Pharmaceuticals, Inc., f/k/a Janssen Pharmaceutica, Inc., and/or Janssen, LP; and Johnson & Johnson v. State of Arkansas, 2014 Ark. 124.

Attorney General McDaniel explained that in the appeal for Medicaid fraud a number of issues were raised but that no one ever mentioned the Code Revision Commission and that the act as codified did not reflect what was passed by the General Assembly. The Supreme Court has held that no new issues can be raised at oral arguments. However, Justice Hart asked what the difference was between the act as passed and the act as codified. This became the dominant issue, and in the opinion of the Supreme Court, the Commission exceeded its authority and thwarted legislative intent in the codification of this act 21 years ago. The Attorney General's office believes the act was codified correctly and it was inappropriate that the court would raise that issue for the first time in oral arguments when neither party had referred to this issue.

Attorney General McDaniel stated that he planned on filing a Petition for Reconsideration. While the Attorney General was working on this petition, Vincent Henderson contacted the Attorney General's office to find out how the Code Revision Commission had become involved in the case. In that conversation, he had mentioned that one of the staff with a Ph.D. in English from the University of Memphis who does syntax and grammar analysis in codifying the acts of the General Assembly had prepared a sentence diagram that indicated the act was correctly codified. Attorney General McDaniel recognized that the Commission is entirely nonpartisan and highly administrative in its purpose, and they would never be asked to take any position on what a law should be or what a law should not be or how a law should be written. He said that he recognizes and appreciates the completely independent nature of the Commission. He asked that the staff member be allowed to share her analysis of the act and the Code. He also asked for permission to attach the diagram to the Petition for Reconsideration without commentary as to how it should be or should not be interpreted.



Senator Johnson then asked Carolyn Magrans to explain the diagramming of the sentence as passed and interpreted by the Supreme Court. She explained there was no difference in the way it was enacted, codified, and printed in the Arkansas Code Annotated. She pointed out that except for the subdivision designation of (A) and (B) and a few changes in punctuation there is no difference.

Senator Johnson noted the next order of business was consideration of any action on this item. Senator Burnett moved that the Bureau and Mrs. Magrans be authorized to assist the Attorney General's office as needed on the Petition for Reconsideration, and Commissioner Schnipper seconded the motion. The motion carried.

Mr. Henderson stated that Lexis and Fast Case have worked out an agreement with respect to the unannotated version of the Code. Senator Johnson asked that the Commission be sent a fax or email covering the details of the agreement.

There being no further business, the meeting adjourned.

## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Thursday, December 18, 2014**

The Arkansas Code Revision Commission met Thursday, December 18, 2014, at 1:30 p.m. in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order. Other Commission members attending were Representative John Vines; Commissioner Don Schnipper; Commissioner David Matthews; and Ex Officio members Stacy Leeds, Dean, University of Arkansas at Fayetteville, School of Law; Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research; Michael Schwartz, Dean, University of Little Rock William H. Bowen School of Law; and Amy Ford, Senior Assistant Attorney General. Also attending was Vincent C. Henderson II, Arkansas Code Revisor.

Senator Johnson called for corrections or additions to the minutes of February 27, 2014, and April 3, 2014. The minutes were approved as presented.

Senator Johnson then asked Mr. Henderson to explain the correction bills, Exhibit C1 – Exhibit C-22. While explaining the correction bills, the following questions arose:

Title 5 – Dean Schwartz asked if this included Shorter College, and Mr. Henderson said that it did not.

Title 12 – Dean Leeds suggested that “circuit” be inserted, and Senator Johnson said he would contact J.D. Gingerich, Director of the Administrative Office of the Courts, to see about inserting “circuit”, and Mr. Henderson said he would also check on this matter.

Title 16, § 7 – Mr. Henderson was instructed to check on the reference to “interest” being deleted on line 33.

Title 17, § 13 – Mr. Henderson explained that this is a work in progress, and it may need to be redrafted. The attorney working on this is meeting with the State Nursing Board to clarify the language.

Mr. Matthews asked how often the correction bills are done, and Mr. Henderson explained they are compiled every two years. Commissioner Matthews moved that the correction bills be approved as submitted and with the modifications as suggested be presented to the General Assembly. Commissioner Schnipper seconded. The motion passed.

Senator Johnson then asked Mr. Henderson to explain Exhibit D, Review of Agreement for electronic version of Code on behalf of members of the General Assembly. Mr. Henderson explained that previously the Senators and Representatives would receive a CD/DVD of the Arkansas Code of 1987 Annotated with updates to be placed on their Bureau issued laptops. Now, one copy will be given to the Bureau’s IT Department, and the IT staff will use this copy to place the Code on the laptops of the Senators and

Representatives who have signed an agreement that they understand this is for government purposes only.

Senator Johnson then asked Mr. Henderson to explain Exhibit E, complimentary state codes received pursuant to contract. Mr. Henderson explained that pursuant to paragraph 10 and paragraph 18 of the contract Lexis agreed to provide us two copies of all statutes of all the other states that they publish, and these were given to the Supreme Court Library. The Supreme Court Library does not need them any longer since this information is now online. Since the contract requires the publisher to provide these, Mr. Henderson explained he wanted the Commission to have an opportunity to address this matter. He asked if the Commission had some other place they would like for these to go and suggested perhaps the law schools could use them.

Senator Johnson then mentioned for Exhibit F, other business, the matter concerning the Arkansas Bar Association, Lexis, and FastCase. The terms of use that Lexis placed on the site caused concerns. Senator Johnson informed them that a bill may be proposed to do away with this issue during the upcoming session.

Mr. Henderson pointed out that the issue is not copyright. It is use of the database. What is copyrighted is the Arkansas Code of 1987 Annotated in the name of the state. FastCase wants to get a clean copy of the law to sell and compete against Lexis and West without having to do the work that these publishers do. Mr. Henderson explained that in the future it would be difficult to see why a publisher would bid to produce the Code if it is given away for free to competitors. The way Lexis makes money is by selling the annotated version of the Code.

Senator Johnson stated that he made this issue clear to the Bar Association, and he would like to see Lexis do a better job of providing a more user friendly version of the terms and use.

Senator Johnson then asked for Item G, Report of Code Revisor. Mr. Henderson said that the staff has completed 13 replacement volumes, two of three ACS pamphlets, and is working on the correction bills.

Mr. Henderson told the Commission that the Supreme Court erred in the decision *Ortho-McNeil-Janssen Pharmaceuticals, Inc., f/k/a Janssen Pharmaceutica, Inc., and/or Janssen, LP; and Johnson & Johnson v. State of Arkansas*, 2014 Ark. 124. He pointed out that Arkansas copied the federal law in drafting this legislation, and it was drafted to provide for any federal and state law.

Commissioner Matthews suggested that perhaps the Commission should offer a session on the analysis of the Code to new members of the Supreme Court during the judicial orientation seminars presented to new judges and justices.

There being no further business, the meeting adjourned.

## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Tuesday, June 16, 2015**

The Arkansas Code Revision Commission met Tuesday, June 16, 2015, at 1:30 p.m. in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order. Other Commission members attending were Representative John Vines; Representative Matthew Shepherd; Commissioner Don Schnipper; and Ex Officio members Cory Cox, Attorney General's Legislative Director; and Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research. Also attending was Vincent C. Henderson II, Arkansas Code Revisor; Debbie Jones, Assistant Commissioner of the Department of Education, Division of Learning Services; Cory Biggs, Coordinator of Special Projects, Arkansas Department of Education; Mary Casteel, Staff Attorney, Arkansas Alcoholic Beverage Control; and Robert Coon, lobbyist with Impact Management Group.

Senator Johnson called for corrections or additions to the minutes of December 18, 2014. The minutes were approved as presented.

Senator Johnson asked Mr. Henderson to explain Exhibit C concerning the conflicting acts from the 2015 Regular Session.

Mr. Henderson first went over information concerning § 1-2-207 of the Arkansas Code of 1987 Annotated, that says the last act controls, and then he covered § 1-2-303 concerning the powers of the Arkansas Code Revision Commission and staff.

Mr. Henderson made the following explanations:

Acts 989 and 1216 – The staff requested the publisher to use Act 1216 to codify § 6-15-441(a) and (b) and place Act 989 in a note because the two acts are not reconcilable. After much discussion and explanations by the representatives of the Arkansas Department of Education, Senator Johnson moved and Representative Shepherd seconded that Act 1216 be published. After further discussion, the motion carried.

Acts 1105 and 1250 – The amendments by Act 1250 to § 6-85-212(e)(1)(A) are effective July 22, 2015, and the amendment by Act 1105 to (e)(1) is not effective until July 1, 2016. Mr. Henderson further explained that Act 1250 is the last act and supersedes Act 1150 to the extent of the conflicts. The publisher will be instructed to use Sections 1, 2, 4, 5, 6, and 7 of Act 1105 and Sections 1, 2, and 3 of Act 1250 to codify and place Sections 3, 8 and 9 of Act 1105 and Section 4 of Act 1250 in a note. After discussion, Senator Johnson stated this decision stands.

Acts 857 and 1237 – Mr. Henderson said these two were more complicated because Act 857 deals with beer and malt products and Act 1237 includes hard cider. He also pointed out that Act 1237 supersedes directly conflicting provisions in Act 857 and supersedes the amendments to those provisions amended in Act 857 that are dependent upon the provisions in direct conflict.



After much discussion and input from the Alcoholic Beverage Commission, Senator Johnson moved and Representative Shepherd seconded that both acts be merged and that certain sections of the Alcoholic Control laws not expressly amended by either act be changed to reflect the changes made by the later act, Act 1237, and published. The motion carried.

Act 1110 and Act 1120 – These conflict, but we would use Act 1120 to codify and place Act 1110 in a note since the policy effect was no different. After discussion, Senator Johnson moved to keep sections 2 and 3 of Act 1120 and disregard section 3 of Act 1110 and Representative Shepherd seconded. After more discussion, Senator Johnson moved to publish Act 1120 as is and put Act 1110 in a note. Representative Shepherd seconded, and the motion carried.

There being no further business, the meeting adjourned.

## MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

**Wednesday, September 23, 2015**

The Arkansas Code Revision Commission met Wednesday, September 23, 2015, at 1:30 p.m. in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order. Other Commission members attending were Senator Jason Rapert; Representative John Vines; Representative Matthew Shepherd; Commissioner Bettina Brownstein; Ex Officio members Cory Cox, Legislative Director, office of the Attorney General; Michael Schwartz, Dean, University of Arkansas at Little Rock, William H. Bowen School of Law; and Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research. Commissioner David Matthews and Ex Officio member Stacy Leeds, Dean, University of Arkansas at Fayetteville School of Law participated by telephone. Also attending were Vincent C. Henderson II, Arkansas Code Revisor; and Anders Ganten, Senior Director Government Content Acquisition, LexisNexis.

Senator Johnson recognized the newest member of the commission, Senator Jason Rapert.

Senator Johnson called for corrections or additions to the minutes of June 16, 2015, and hearing none, he declared the minutes approved as presented.

Senator Johnson explained that the Commission has two standard meetings. One is several months after the session to consider the organization of the Code, and the other is to consider the correction bills. He then asked Mr. Henderson to explain Exhibit C concerning the suggested replacement volumes for the Arkansas Code of 1987 Annotated.

Mr. Henderson called the commissioners' attention to Exhibit C, the listing of the proposed replacement volumes by the publisher, LexisNexis. He said that the publisher makes these recommendations when the supplement exceeds fifty percent (50%) of the page count in the bound volume.

Mr. Henderson made the following recommendations:

Volume 2A, Title 4, Business and Commercial Law, includes the Uniform Commercial Code, and was last replaced in 2001.

Volume 2B, Business and Commercial Law, also replaced in 2001, was not on the list. Mr. Henderson recommends this volume also be replaced so the volumes can be split to balance them out.

Volume 3B, Title 5, Criminal Offenses.

Volume 6, Title 7, Elections. Mr. Henderson stated this volume includes election laws and environmental laws. The publisher is suggesting that this volume be replaced, but Mr. Henderson recommends this volume not be replaced until after the next session because legislation passed the last session changes the presidential primary law. Mr. Henderson would prefer that these laws not be placed in the bound volume since these

laws are set to expire at the end of 2016 and there is talk of additional changes being proposed.

Volume 6B, Title 9, Family Law.

Volume 8A, Title 12, Law Enforcement, Emergency Management, and Military Affairs, and Volume 8B, Title 12 continued and Title 13, Libraries, Archives, and Cultural Resources.

Volume 13A, Title 15, Natural Resources and Economic Development.

Volume 16, Title 16, Practice, Procedure, and Courts.

Volume 17B, Title 17, Professions, Occupations, and Businesses.

Volume 18, Title 18, Property.

Volume 19A and 19B, Title 19, Public Finance.

Volume 21, Title 21, Public Officers and Employees, and Title 22, Public Property.

Volume 22, Title 23, Public Utilities and Regulated Industries.

Commissioner Brownstein asked for clarification as to when the volumes are recommended to be replaced. Mr. Henderson stated that under the contract when the supplement reaches 200 pages, the publisher has to inform the commission, and it is up to the commission to decide whether to replace the volume being supplemented.

Senator Johnson then asked Mr. Henderson to discuss Item D, suggested price increases for the Arkansas Code of 1987 Annotated. Mr. Henderson called the commissioners attention to Exhibit D-1 that shows the requested price increases based on the producer price index for the publishing trades showing a rate of inflation of ten percent (10%). He said that the price of the supplements would not increase until 2017, but the other increases would take effect at the next publication. He also pointed out Exhibit D that shows the price increases during the duration of the contract.

Senator Johnson recognized Mr. Ganten for additional comment. Mr. Ganten pointed out that even though the index shows a rate of inflation of ten percent (10%) that LexisNexis was only requesting increases of four percent (4%) for replacement volumes and three percent (3%) for the index and supplements in order to keep the prices reasonable for the ones that purchase the Code.

Following further discussion, Representative Shepherd moved that Mr. Henderson's recommendation of the volumes to be replaced and the price increases requested by LexisNexis be approved. The motion was seconded and carried.

Senator Johnson asked if there was any other business, and none was presented.

Senator Johnson then asked Mr. Henderson for the Report of the Code Revisor. Mr. Henderson stated that he periodically receives mail from prisoners. One prisoner has requested that the commission look at the law concerning inmates' getting information from the crime lab and prosecuting attorney's office by an FOI request. Mr. Henderson told the prisoner he would present his request to the commission for them to do whatever they would like. Senator Johnson stated that since this was a substantive law issue that it would be referred to the interim Joint Committee on Judiciary, and he asked Representative Shepherd to handle this matter.

Mr. Henderson then reported that the supplements will be shipped from Lexis this Friday, September 25. Shortly thereafter, the databases will be updated, and the new DVD will be available to be placed on the BLR computers of the legislators who have signed the agreement.

Mr. Henderson then stated that about a year and half ago, Marty Garrity, Director of the Bureau of Legislative Research, and Senator Johnson, Chair of the Commission, received a letter from a businessman who runs publicresource.org. He had scanned a hard copy of the Arkansas Code of 1987 Annotated along with other states' statutes and put them online for public access. In essence, he violated copyright law, and the Georgia Attorney General has filed suit. Mr. Henderson pointed out that the Arkansas Attorney General and other states are also looking at this issue, and he wanted to bring this to the attention of the commission. He stated that the commission's responsibility is to help the General Assembly fulfill its responsibility under the Arkansas Constitution, and this involves keeping the laws as accurate as possible for people to use.

Following additional discussion, Senator Johnson said that no action was needed today, but he asked Mr. Henderson to keep the commission updated on the issue. Representative Vines stated he feels it is important to see if Georgia wants others to join them or just go it alone.

There being no further business, the meeting adjourned.





## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Thursday, November 17, 2016**

The Arkansas Code Revision Commission met Thursday, November 17, 2016, at 1:30 p.m. in Room 272 of the State Capitol Building.

Senator David Johnson, Chair, called the meeting to order. Other Commission members attending were Representative John Vines; Commissioner Haley Burks; Commissioner Candice Settle; Ex Officio members Cory Cox, Legislative Director, office of the Attorney General; and Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research. Ex Officio member Stacy Leeds, Dean, University of Arkansas at Fayetteville School of Law, participated by telephone. Also attending were Vincent C. Henderson II, Arkansas Code Revisor; Marty Garrity, Director, Bureau of Legislative Research; Representative Mary Broadaway; and Dan Kemp, Chief Justice Elect of the Arkansas Supreme Court.

Senator Johnson recognized the newest members of the commission, Candice Settle and Haley Burks; Representative Mary Broadaway; and Chief Justice Dan Kemp.

Senator Johnson called for corrections or additions to the minutes of September 23, 2015, and hearing none, he declared the minutes approved as presented.

Senator Johnson asked that Item E, Consideration of codification of Building Better Futures Program acts, be the first item discussed. He asked Mr. Henderson to summarize the codification of Acts 2015, Nos. 410 and 931.

Mr. Henderson explained that the two acts were deemed to be in conflict and could not be merged. Therefore, based on § 1-2-207 of the Arkansas Code of 1987 Annotated, the last act passed, Act 931, was codified and Act 410 was placed in a note.

Senator Johnson then asked Representative Broadaway, the sponsor of both bills, to explain her intent. She stated that the acts were to establish a program for intellectually disabled individuals and feels the first should have been codified because the second bill was dependent on the implementation of the first.

Senator Johnson asked Marty Garrity or Matthew Miller if they thought this could be done. Ms. Garrity said the intent of the member should be taken into consideration. Senator Johnson asked if they could be merged into one, and Ms. Garrity stated that could be a yes.

Mr. Henderson explained that the staff looked at that possibility but that the first act required the student to be a citizen, and the second act did not have that requirement. A general class regardless of citizenship would have to be created.

Representative Broadaway explained there is interest in these programs on a national level, and she would appreciate it if both of them could be codified. She explained she was not aware of the citizenship issue and would get that corrected.

After further discussion, Representative Vines moved that the staff be instructed to codify both acts, and the motion carried.

Senator Johnson stated that in the future if the staff feels conflicting acts cannot be merged that this issue should come before the entire Commission before codification. Representative Vines made this motion, and the motion carried.

Senator Johnson explained that the Commission has two standard meetings. One is several months after the session to consider the organization of the Code, and the other is to consider the correction bills before the upcoming session. The purpose of these meetings are to resolve issues following the session, consider replacement volumes, and technical correction bills. He wants to be able to tell the Senators and Representatives when the correction bills are introduced that there are only technical changes and no substantive changes included.

Senator Johnson then asked Mr. Henderson to explain the suggested correction bills, and Mr. Henderson called the commissioners' attention to Exhibit C:

Exhibit C1 – Title 2 concerning agriculture law.

Exhibit C2 – Title 3 concerning alcoholic beverages.

Exhibit C3 – Title 4 concerning business and commercial law.

Exhibit C4 – Title 5 concerning criminal offenses and the criminal law. After discussion, it was decided to strike Sections 2, 3, 4, 8, 10, 11, and 12 from the bill.

Exhibit C5 – Title 6 concerning education. After discussion, it was decided to strike Section 6.

Exhibit C6 – Title 7 concerning elections.

Exhibit C7 – Title 8 concerning environmental law. After discussion, it was decided to strike Section 1.

Exhibit C8 – Title 9 concerning family law.

Exhibit C9 – Title 11 concerning labor and industrial relations. After discussion, it was decided to leave “possess powers to” on line 20, page 6.

Exhibit C10 – Title 12 concerning law enforcement, emergency management, and military affairs. After discussion, it was decided to strike Section 3; leave “willfully” on line 9, page 3; not to strike lines 30 and 31, page 3; leave language as is on line 13, page 4; strike Sections 8, 9, and 10; remove “child” on line 26, page 11; and strike Section 30.

Due to the lateness of the hour, Senator Johnson called the meeting adjourned and continued further discussion to December 7, 2016, at 1:30 p.m. in Room B – MAC Building. Discussion will begin with Exhibit C-11.

There being no further business, the meeting adjourned.





## **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Wednesday, December 7, 2016**

The Arkansas Code Revision Commission met Wednesday, December 7, 2016, at 1:30 p.m. in Room B – MAC Building.

Senator David Johnson, Chair, called the meeting to order. Other Commission members attending were Senator Jason Rapert; Representative John Vines; Representative Matthew Shepherd; Commissioner Bettina Brownstein; Commissioner Haley Burks; Commissioner Candice Settle; Ex Officio members Stacy Leeds, Dean, University of Arkansas at Fayetteville School of Law; Michael Schwartz, Dean, UALR William H. Bowen School of Law; and Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research. Also attending were Vincent C. Henderson II, Arkansas Code Revisor; and Marty Garrity, Director, Bureau of Legislative Research.

Senator Johnson called the meeting to order and asked for corrections or additions to the minutes of November 17, 2016, and hearing none, he declared the minutes approved as presented.

Senator Johnson explained that the commission is merely trying to make technical corrections and not substantive corrections to the law. He then asked Mr. Henderson to explain the suggested correction bills, and Mr. Henderson called the commissioners' attention to Exhibit C:

Exhibit C11 – Title 13 concerning museums. After explanation, there were no changes.

Exhibit C12 – Title 14 concerning local government. After explanation, there were no changes.

President Pro Tempore Senator Dismang asked for a point of personal privilege to recognize Senator Johnson and thank him for his service to the commission and the State of Arkansas.

Exhibit C13 – Title 15 concerning economic development.

Exhibit C13, Section 8 - After discussion, it was decided that the addition of subsection (9) in Section 8 is a technical correction and not substantive.

Exhibit C13, Section 14 - After discussion, it was suggested that Section 14 be clarified during the session.

Mr. Henderson asked that § 1-2-303 be pulled up on the monitors. He pointed out that the Commission has three responsibilities:

1. Create what is now the Arkansas Code of 1987 Annotated.
2. Based on § 1-2-303(d), (e), (f), and (g), in particular, are those things that the Commission can correct after legislative enactment.

3. Based on § 1-2-303(c), the Commission can recommend legislative corrections to the General Assembly.

He explained that the staff in compiling these technical corrections were attempting to keep the Code consistent throughout and conform the various provisions to the entire Code based on legislative intent.

Exhibit C13, Section 21 – After discussion, it was decided that the staff should talk to the agency before submitting this bill to make sure they are in agreement with the change.

Exhibit C13, Section 28 – After discussion, Senator Johnson recommended that if the word “misdemeanor” is not used that the word “misdemeanor” not be inserted. It was agreed that this applied to all the correction bills not just the bills in Title 15.

Exhibit C13, Section 16 – After discussion, it was decided to leave this section as is.

Exhibit C13, Section 35 – After discussion, Representative Vines recommended that it be left as corrected rather than the Commission guess and let the General Assembly handle the section legislatively. After further discussion, it was decided that Section 35 be removed prior to submitting.

Exhibit C14 – Title 16 concerning practice, procedure, and the courts. After discussion, it was decided that Section 2 be removed prior to submitting.

Exhibit C15 – Title 17 concerning professions, occupations, and businesses. After explanation, there were no changes but asked the staff to talk to the board.

Exhibit C16 – Title 19 concerning public finance. After explanation, there were no changes.

Exhibit C17 – Title 20 concerning public health and welfare. After explanation, there were no changes.

Exhibit C18 – Title 21 concerning public officers and employees. After explanation, there were no changes.

Exhibit C19 – Title 22 concerning public property. After discussion, it was decided that the language be placed in Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code of 1987 Annotated as notes.

Exhibit C20 – Title 23 concerning public utilities and regulated industries. After explanation, there were no changes.

Exhibit C21 – Title 24 concerning retirement and pensions. After explanation, there were no changes. However, Senator Johnson mentioned that the bill needs to be filed before the deadline for filing of retirement bills.

Exhibit C22 – Title 26 concerning taxation. After explanation, there were no changes.

Exhibit C23 – Title 27 concerning motor vehicles. Mr. Henderson explained that this bill had been seen and approved by the Department of Finance and Administration and the Arkansas Highway Department.

Exhibit C23, Sections 1, 2, 3, and 5 – 38. After explanation, there were no changes to these sections.

Exhibit C23, Section 4 - §§ 27-14-402. After explanation, there were no changes.

Exhibit C23, Section 4 - § 27-14-403, page 10, line 15 – insert “may” instead of “shall”.  
Page 10, line 16 – delete “regulations” and “may be”.

Exhibit C23, Section 4 - § 27-14-404. After explanation, there were no changes.

Exhibit C23, Section 4 - §§ 27-14-405, 27-14-406, and 27-14-407. After discussion, it was decided to remove these sections from the bill and refer them to the Attorney General to include in their upcoming legislation.

Exhibit C23, Sections 5 – 42. After explanation, there were no changes.

Exhibit C23, Sections 43-57. After discussion, it was decided to remove Sections 43 – 57 and refer these sections to the Highway Department to handle.

Exhibit C23, Section 58. After explanation, there were no changes.

Exhibit C23, Section 59. After discussion, it was decided to remove this section and refer it to the Attorney General to include in their upcoming legislation.

After further discussion, Mr. Henderson was instructed to confer with the Arkansas Highway Department again to confirm they were in agreement that all outdated statutes in Exhibit C23 – Title 27 could be removed.

Senator Johnson then asked that Item G, Election of New Chair, be considered. Representative Vines moved that Representative Matthew Shepherd be confirmed the Chair at the conclusion of this meeting. The motion passed.

Item D – Consideration of replacement of Commentaries’ Volumes. Senator Johnson explained that Lexis is the publisher of the Code and that the commentaries date to 1995. Lexis is proposing that the commentaries be incorporated in the various titles rather than publishing separate Commentaries’ Volumes. Senator Johnson indicated there was no decision needed today but that he just wanted the commission to be informed.

Mr. Henderson explained that this would be a monumental undertaking, and that the current staff is not large enough to handle this procedure although they do want to be involved. He suggested that perhaps law school students could be utilized. He also asked the commission to think about if they want the Commentaries integrated into the Code or just update the books separately.

Mr. Henderson also mentioned that the contract for the printing of the Arkansas Code of 1987 Annotated will be coming up for review in 2017 and the commission can extend the current contract for another ten years or rebid the contract.

Senator Johnson recognized Marty Garrity, Director of the Bureau of Legislative Research, for her comment on the Commentaries matter. Mrs. Garrity stated that she and Matthew Miller had a conversation with Anders Ganten of Lexis. She suggested that a survey be sent to the Arkansas attorneys to determine see how they would like to see the Commentaries handled. She suggested that the Arkansas Bar Association could also help.

Senator Johnson asked Mr. Henderson for the Code Revisor Report. Mr. Henderson stated he had covered everything except recognition for Reta Dean, his Administrative Assistant and secretary for the commission, who would be retiring at the end of the year. Ms. Dean acknowledged her thanks and received a round of applause from the members.

There being no further business, the meeting adjourned.

## MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

**Tuesday, July 11, 2017**

The Arkansas Code Revision Commission met Tuesday, July 11, 2017, at 1:30 p.m. in Room 149 of the State Capitol Building.

Representative Matthew Shepherd, Chairman, called the meeting to order. Other Commission members attending were Representative Clarke Tucker; Senator Jason Rapert; Senator Will Bond; Commissioner Bettina Brownstein; Cory Cox, Legislative Director, Office of the Attorney General, *ex officio*; Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research, *ex officio*; and John DiPippa, Interim Dean, University of Arkansas at Little Rock William H. Bowen School of Law, *ex officio*. Also attending were Vincent C. Henderson II, Arkansas Code Revisor; Marty Garrity, Director, Bureau of Legislative Research; Representative Karilyn Brown; Representative Fredrick Love; Representative Mark Lowery; Representative Meeks; Courtney Solace for Deputy General Counsel for the Department of Education; Cheryl Reinhart, Director of Licensure, Department of Education; Ms. Mischa Martin, Director of the Division of Children and Family Services; Mr. John Peace; and Grant Wallace, Chief Deputy Treasurer for Programs & Services, Office of the Treasurer of State.

The Commission approved the minutes of the meeting of December 7, 2016, as presented, without objection.

The Commission took up the list of conflicts set out in Exhibit C.

Act 716, §§ 1-4, and Act 1011, §§ 68-71, both amend Arkansas Code §§ 2-40-808, 2-40-819(a)(1), 2-40-820, and 2-40-821(b). Mr. Henderson recommended merging the two acts by taking the new language from Act 716 and inserting it in the appropriate places in 2-4-808, 2-4-819(a)(1), 2-40-820, and 2-40-821(b). The Commission approved the codification as recommended.

Act 418, § 4, and Act 660, § 1, both amend Arkansas Code § 5-14-126. Mr. Henderson recommended merging the two acts by incorporating the new language from Act 418 into § 5-14-126 as otherwise amended by Act 660. The Commission approved the codification as recommended.

Act 130, § 1, and Act 472, § 21, both amend Arkansas Code § 5-71-209. Mr. Henderson recommended incorporating the changes made by Act 472 into § 5-71-209(e) instead of the changes made by Act 130 pursuant to § 1-2-207. The Commission approved the codification as recommended.



Act 562, § 1, Act 859, § 2, and Act 1087, § 1, were discussed. Each act amends Arkansas Code § 5-73-122. Senator Bond was recognized and asked Mr. Henderson about the merged language in Act 859 and Act 1087 that were in conflict. Chairman Shepherd thought there were too many conflicts and stated maybe a technical corrections bill would be needed. Mr. Henderson stated there were limits to what the Commission was able to do with these. Mr. Henderson explained that Act 859 took Act 562 expressly into account and that Act 1087 added additional internal references to § 16-21-147 and § 5-73-122, which were incorporated into § 5-73-122(a)(1). Section 5-73-122(b) was not amended by Act 859, but was simply restated. Therefore, Mr. Henderson recommended the merger of the amended version of § 5-73-122(b) from Act 1087 into § 5-73-122. The Commission approved the codification as recommended.

Mr. Henderson stated that Act 565, § 2, amended Arkansas Code § 6-11-119(c)(2), while Act 745, § 7, repealed Arkansas Code § 6-11-119. He recommended that, pursuant to § 1-2-207, the entire section be treated as repealed. The Commission approved the codification as recommended.

Act 910, § 6, and Act 1104, § 1, both amend Arkansas Code § 6-14-121(a)(3). Mr. Henderson stated that he had instructed the publisher to codify both acts. However, because the amendment made by Act 1104 is effective until January 1, 2018, and the amendment by Act 910 is effective on and after January 1, 2018, based on the effective date language in act 910, he recommended that both acts be codified, with the Act 1104 version effective until January 1, 2018, and the earlier act, Act 910, codified to be effective on and after January 1, 2018, giving effect to both of them. Mr. Henderson asked the Commission to look at § 8 of Act 910 and stated that while technically Act 910 is the earlier adopted act, the act is still not legally effective until January 1, 2018, so the way to resolve the conflict is to take the later act and codify it effective until January 1, 2018, and then codify the earlier act effective January 1, 2018.

Representative Lowery was recognized for a question and asked hypothetically, if Act 910 did not have the effective date section would you just go with Act 1104? Mr. Henderson says we would probably be forced to go with 1104, pursuant to § 1-2-207. Mr. Miller added that just going with Act 1104 is kind of problematic because the elections are no longer in September anymore under Act 910. Representative Lowery stated that he wanted to point out that the January 1, 2018, date is unusual, but it was a request by school districts to give them the option of either a May or November election. Without the January 1 effective date, then the districts would be forced into only having one choice, which would have been November which was a choice that they did not want. He said that the resolution that the Commission has come up with works well, and it clarifies the runoff election. The reference, as Mr. Miller said, to the September runoff would no longer be relevant because the September elections will be done away with as of January 1, 2018. The Commission approved the codification as recommended.

Act 869, § 3, and Act 936, §33, both amend Arkansas Code § 6-15-2006(b) and (c). Mr. Henderson stated that each of these acts have fairly similar provisions but not exactly the same; therefore, they are in irreconcilable conflict and there is no good way of merging them to give

effect to both, so he directed the publisher pursuant to § 1-2-207 to codify the Act 936 provisions, the later act.

Courtney Solace for Deputy General Counsel for the Department of Education was recognized for comments. She said that when she worked with Senator English on Act 936, they wanted to incorporate Act 869 so as not to adversely affect Representative Douglas's Act 869. What caused the reconciliation problem was that Act 869 refers to Code sections that were repealed by Act 930. If Act 936 were put in place it would encompass all of Senator English's intent, it would correct terminology changes from Act 930, as well as Code sections citations from Act 930. Chairman Shepherd asked whether she could confirm that what Mr. Henderson had proposed is consistent with what the Department of Education thinks needs to happen? Courtney Solace responded, yes. The Commission approved the codification as recommended.

The Commission then took up consideration of Act 294, §§ 3 and 4, and Act 416, §§ 1 and 2. Mr. Henderson stated that each of these acts amends Arkansas Code § 6-17-402 and Arkansas Code § 6-17-409. He recommended that these acts be merged by codifying Act 416's version of § 6-17-402, as otherwise they are in irreconcilable conflict, but codify the Act 294 version of § 6-17-409 to give effect to the law changes made by Act 294. Mr. Henderson explained that the conflicts in these two acts were the most difficult ones because of having to take a piece from the earlier act and piece from the later act and putting them together rather than simply applying § 1-2-207. The reason that the only change Act 416 makes is it adds a subdivision (C) to § 6-17-409(e)(2) which section has been rewritten by Act 294 in such a way as to repeal the subdivision (e)(2), thus there is no place to put the subdivision (C) from the Act 416 amendment in § 6-17-409. This treatment is the only way to reconcile the two acts and give effect to as much of both acts as possible.

Cheryl Reinhart, Director of Licensure, Department of Education, was recognized for comment. She asked that with respect to the subdivision (C) in § 6-17-409(e)(2) could it not be added somewhere into § 6-17-402? She said that she thought it should apply to both Code sections. She requested that the two be codified together, be pieced together, because Act 416 is adding new provisions for the most part, while Act 294 made some substantial changes and without those substantial changes in the law, the Department of Education will not be able to implement a tiered licensure system for the purpose of attracting teachers to the profession for helping to alleviate their teacher shortages. She said she did not really see any conflict between the two acts. Act 416 was adding a test to the licensure process, so she believed that it could be added into and incorporated into § 6-17-402. Commissioner Brownstein made a comment that she would like to see how Ms. Reinhart was able to piece the two together and make it work.

Because of the difficulty in understanding the issues involved until the projecting system could be properly operating so as to see § 6-17-409(e)(2) in its current form along with the two acts, the Commission passed over these acts at this time.

Act 540, §§ 6 and 7, amended Arkansas Code § 6-64-302(b) and (c), and Arkansas Code § 6-64-304(c), while Act 1006 repealed § 6-64-302(b) and (c), and § 6-64-304. Mr. Henderson stated that he applied Arkansas Code § 1-2-207, thus determining that all the provisions amended by

Act 540 conflicting with the Act 1006 provisions were repealed. The Commission approved the codification as recommended.

Act 275, § 7, amended Arkansas Code § 6-82-1103(b), while Act 1008 repealed the entire code section. Mr. Henderson stated that this was a similar application of Arkansas Code § 1-2-207. Thus the later act repealed the whole section. The Commission approved the codification as recommended.

Act 155, § 7, Act 481, § 1, Act 883, § 1, and Act 884, § 13, all amend Arkansas Code § 6-84-111. Mr. Miller explained that Representative Love had asked that this conflict be held until the end of the meeting so he could attend. The commission passed over this conflict for now.

Both Act 987, § 1, and Act 1037, § 1, amend Arkansas Code § 8-4-203(b)(1). Mr. Henderson said the two acts could be merged by incorporating the new language from Act 1037 in § 8-4-203, which was otherwise amended by Act 987. The Commission approved the codification as recommended.

Act 374, § 4, the technical correction bill, amended Arkansas Code § 15-4-1026(a)(3)(b), while Act 426, § 4, repealed Arkansas Code § 15-4-1026, along with the rest of subchapter 10. Pursuant to the last section of Act 374, Act 426 controlled. The Commission approved the codification as recommended.

Arkansas Code § 17-14-201(b) was amended by both Act 535, § 2, and Act 817, § 1. Mr. Henderson stated the two acts are irreconcilable. The Act 817 version also incorporated some of the new language inserted into subsection (b) by Act 535, it appears the General Assembly intended to make further changes to subsection (b) by the enactment of Act 817, so either for that reason or Arkansas Code § 1-2-207, Act 817 being the later act, the publisher was instructed to codify the Act 817 version of subsection (b). The Commission approved the codification as recommended.

Arkansas Code § 17-19-402 was amended by both Act 565, § 22, and Act 917, § 1. Mr. Henderson stated that the change by Act 565 to § 17-19-402(a)(1) inserted the Department of Higher Education as the entity approving education provider applicants for bail bond education, instead of the State Board of Private Career Education. Act 917 changed the approval process to put the bail bondsmen's board in charge of the approval of the education provider applicants. Pursuant to Arkansas Code § 1-2-207, he directed the publisher to codify the version of the later Act 917.

A question was asked whether there had been any discussion with the bill sponsors as the bail bondsmen board "has been a very contentious matter." Mr. Henderson responded that he understood that Mr. Miller had contacted the sponsors of all the acts under consideration today to let them know that this was going to be discussed today. Mr. Miller stated that he had let the sponsor know it would be discussed, but didn't get into the details of what each one was. He told them the sections of the bills that the commission was going to look at and where the conflicts were. The Commission approved the codification as recommended.



Act 565, § 23, and Act 890, § 1, both amend Arkansas Code § 17-42-103(5). Mr. Henderson states while this concerned a different board than that in the previously discussed conflict, the result is the same. Act 565, § 23, took out the State Board of Private Career Education and inserted the Department of Higher Education, and the later act, Act 890, § 1, took out the State Board of Private Career Education and substituted the Arkansas Real Estate Commission. Mr. Henderson directed the publisher to codified the later act.

Commissioner Brownstein questioned as to how these conflicts had not been caught during the session. Mr. Miller explained that these conflicts have often occurred during a legislative session, but that the Bureau of Legislative Research had developed a bill conflict program for finding potential conflicts. The Commission approved the codification as recommended.

Act 299, § 2 and § 3, and Act 757, § 6 and § 7, both amended Arkansas Code § 18-45-101(b) and § 18-45-205. Mr. Henderson explained that the change made by Act 757 in 18-45-101(b), with respect to mechanics' and artisans' liens, was to retain the reference to "circuit judge". Mr. Henderson recommended merging them and use the term "circuit court" where it says just "court" in § 18-45-205 under act 757, thus merging the two acts.

Chairman Shepherd asked about the proposed treatment of § 18-45-101(b). Mr. Henderson said it would read as "lienholders shall give a bond in the sum to be fixed by a circuit court with proper jurisdiction before they shall proceed to sell, by proceeding in accordance with the requirements of this section". He proposed codifying Act 299, the earlier act, because they both replace Justice of the Peace which is what both acts were addressing, looking at the title of the two acts dealing with duties and responsibilities of the Justice of the Peace. The resulting language in § 18-45-205(a)(1) would read in part, "The lienholder shall file with a circuit court having jurisdiction. . ." The Commission approved the codification as recommended.

Act 707, § 49, Act 1083, § 2, and Act 1127, § 2, all amend Arkansas Code § 19-5-302(9)(C). Mr. Henderson explained that Acts 1083 and 1127 are identical acts, and may be treated as one for codification purposes. The real conflict was between those two acts and Act 707. Act 707 amended § 19-5-302(9)(C) to change the name of the State Highway and Transportation Department to the Department of Transportation. He proposed merging them, which technically would mean treating some language in Act 707, § 49, as repealed. The Commission approved the codification as recommended.

Act 707, § 68, and Act 182, § 5, involved Arkansas Code § 21-4-217. Mr. Henderson stated that while Act 182 repealed § 21-4-217, Act 707 amended a subdivision in that section. Because Act 182 repealed the entire section, and the purpose of the amendment by Act 707 was merely to correct or change the name of the State Highway and Transportation Department to the Department of Transportation there was nothing left for Act 707 to amend. He recommended treating the entire § 21-4-217 as repealed. The Commission approved the codification as recommended.

Act 707, § 87 and § 88, and Act 1068, § 1, concern Arkansas Code §§ 22-9-303(b) and 22-9-308(a). Mr. Henderson stated that Act 707 amended the two subsections to change the name of the State Highway and Transportation Department to the Department of Transportation. Act

1068 repealed the entire subchapter, including the two sections amended by Act 707. He directed the publisher to treat the sections as repealed. The Commission approved the codification as recommended.

The issue raised by Act 707, § 402, and Act 1036, § 1, involved an amendment by both to Arkansas Code § 27-67-321(d). As the only purpose of Act 707 was to change the name of the State Highway and Transportation Department to the Department of Transportation, Mr. Henderson recommended that the two acts be merged incorporating the name change and otherwise codifying the Act 1036 version. The Commission approved the codification as recommended.

Act 309, § 2, and Act 1102, § 3, amended Arkansas Code § 23-3-405(c)(1)(A)(ii)(b). Mr. Henderson explained that each act amended § 23-3-405(c)(1)(A)(ii)(b) in such a way that they are in irreconcilable conflict. Pursuant to § 1-2-207, he directed the publisher to codify the later Act 1102 version. Because it appears that Act 1102 included similar language to that found in Act 309, he suspected that the amendment by Act 309 was taken into account by the later act. The Commission approved the codification as recommended.

Act 896, §§ 3 and 4, and Act 897, §§ 16-20, involved Arkansas Code §§ 20-78-902(b), 20-78-903, 20-78-905(a), 20-78-907, and 25-10-142. Mr. Miller stated Representative Meeks was going to attend the commission meeting, but sent an email saying he was not going to make it but the commission could try and teleconference him in, if needed. Mr. Henderson stated that Act 896 repealed §§ 20-78-901-- 20-78-908 and § 25-10-142, whereas, Act 897 amended 20-78-902(b), 20-78-903, 20-78-905(a), 20-78-907, and 25-10- 142. The only way he could resolve the conflict was to treat Act 896 as legally effective repealing the sections amended by Act 897, otherwise the commission would have to leave only pieces of law remaining. For example, while § 20-78-902(a) would be deleted, subsection (b), as amended, would remain. The only way to make sense out of the two acts would be to codify the repeal by Act 896 and let Act 897 go. Mr. Miller tried to reach Representative Meeks for questions. Chairman Shepherd asked for clarification by Mr. Henderson that because the earlier act repealed the whole statutory scheme and the later act amended portions of the repealed statutory scheme, if the commission went with the later act there would be only portions of a statutory scheme remaining that would really have nothing to relate back to. Mr. Henderson responded affirmatively. He restated that he would treat the earlier act as repealing the entire statutory scheme.

Representative Meeks joined the meeting by telephone to discuss Acts 896 and 897, both of which he was the House sponsor on. Chairman Shepherd explained to Representative Meeks that one act eliminated the Child Abuse and Neglect Prevention Board, while the other act made certain changes to that board, and the issue the Commission was having to wrestle with was that the earlier act actually repealed all of the Code sections referred to in the later act when the later act only changed some of them. Therefore, if the Commission were to go with the later act there would be Code sections that do not relate to anything else and would be just left out there standing alone. What the Code Revisor, Mr. Henderson, was proposing in order to bring some consistency was that the Commission should go with the earlier act which is one number earlier, the one which eliminated all of the statutes, and not give effect to the changes made by the later act.



Representative Meeks responded, "The first one, the Child Abuse and Neglect Prevention Board act, did away with the board and the other later act dealt with the home visitation program that was supposed to be overseen by the board, and the home visitation was supposed to be in conjunction with the Department of Health. So, what happened was the first bill got filed kind of late, close to the bill filing deadline, and when we were trying to run it there were still some kinks that we needed to work out and then we were told 'oh, there's this home visitation program over here that supposed to be run by the board that would no longer be needed if the board was abolished and there wouldn't be a need because the Department of Health and the Department of Human Services have their own visitation program that they actually run,' so that's why the other bill was run."

Chairman Shepherd asked Representative Meeks if he had any issue if the commission were to go with the outright elimination of that entire statutory section.

Representative Meeks said, "The original intent was to move it over to Department of Health."

Chairman Shepherd explained that if Act 896 eliminated the board and if Act 897 were to maintain the home visiting program and get rid of the rest, then it seems like there should be a way to maintain the program without the board.

Representative Tucker asked what would happen to home visitation if Act 897 were not codified. He asked about the Division of Children and Family Services.

Chairman Shepherd asked if Ms. Mischa Martin, Director of the Division of Children and Family Services, could be contacted on the phone.

Mr. Henderson stated that all of the subchapter, § 20-78-901, et seq., was repealed, and § 25-10-142 was repealed by Act 896. However, the Act 897 version of § 25-10-142 did change the board to the Department of Health. He presented three possible options: (1) strike subchapter 9 per the earlier act and do not make the changes made in the later act; (2) strike subchapter 9 per the earlier act and make the changes made in the later act; or (3) codify the changes made by the later act as well as otherwise treating the unaffected language in the subchapter as repealed per the earlier act.

Chairman Shepherd asked what would be the effect of the second alternative mentioned by Mr. Henderson. Mr. Henderson explained that as far as the sections in Act 897, §§ 16-20, were concerned, we would have to take § 20-78-902 and change subsection (b) by dropping the subsection designation. The Department of Health and the Department of Human Services would have to accept responsibility for the accountability of home visitation.

Chairman Shepherd asked Director Martin if she knew whether the Division of Children and Family Services program and the Department of Health program are governed by this subchapter 9 or governed by other code sections. She responded that they would be governed by other Code sections. The Child Abuse Prevention Board which oversees the Children's Trust Fund is requiring them to have a home visitation program.

Representative Tucker moved to adopt the changes the Code Revisor proposed. Ms. Brownstein seconded the motion, which was approved.

The Commission then further considered Act 294, §§ 3 and 4, and Act 416, §§ 1 and 2. Mr. Henderson stated that each of these acts amend Arkansas Code § 6-17-402 and Arkansas Code § 6-17-409 and reminded the commission that these were passed over earlier. Chairman Shepherd asked if Representative Tucker had a specific question or comment for these acts.

Representative Tucker said that he was looking at Act 416, § 2. Ms. Cheryl Reinhart, Director of Licensure, Department of Education, stated that the section had to do with nontraditional licensure in § 6-17-409, and what Senator Clark had done in § 6-17-402 was to add a test, so by putting this phrase in § 6-17-409, Senator Clark was including nontraditionally prepared teachers also; in other words, all of those would be included and he put it in this section.

Representative Tucker said that it was his understanding earlier in the meeting that Ms. Reinhart wanted the amendment made in § 6-17-409 by Act 416 to be included in § 6-17-409. She said that it could be included either in § 6-17-409 or in § 6-17-402, since § 6-17-402 is the section on licensure generally. She believed that the language could be added in either of those two places. She stated that it is just another requirement for nontraditional teachers, and that while the statute was amended heavily, she thought that a place could be found for the Act 416 language. Ms. Reinhart suggested a location for the language in Act 294, page 8, line 16, because it addressed passing scores as set by the state board on state required assessments basically.

Chairman Shepherd asked if she was suggesting that the language would be a new subdivision (3). Ms. Reinhart explained that the old language was subdivision (4). Looking at line 16 on page 8 of Act 294, there is basically a subdivision (1) and (2), and there is a subdivision (3) already. She suggested it as a subdivision under subdivision (e)(1)(A).

Mr. Miller asked whether there would need to be an "or" or an "and". Ms. Reinhart suggested "and". It was suggested that these changes should go into a technical corrections bill as the Act 416 section refers to § 6-17-402, which has been amended as well. Chairman Shepherd stated that he was not sure the commission has the authority to move language around as suggested and plugging it in without a better idea of what the actual intent was with these two acts.

Mr. Henderson restated his recommendation that the publisher be instructed to merge the two acts by codifying the Act 416 version of § 6-17-402, and codify the Act 294 version of § 6-17-409 to give effect to those changes made in the law.

Mr. Henderson said this one is a difficult conflict. The Commission approved the codification as recommended. Chairman Shepherd asked Mr. Henderson to include the language in a note under the repealed section.

Representatives Love and Brown were present for the commission's consideration of the conflicts in Act 155, Act 481, Act 883, and Act 884. Mr. Miller stated that Representative

Lundstrum was not able to attend the meeting but sent a text that she sponsored Act 883 and she would like to preserve the act.

Act 155, § 7, Act 481, § 1, Act 883, § 1, and Act 884, § 13, all amend Arkansas Code § 6-84-111. Mr. Henderson explained that he had instructed the publisher to merge Acts 155, 481, and 884. Act 155 had changed the effective date from 2015 to 2017. Act 481 amended § 6-84-111(b)(2) by adding a new subdivision (B). Acts 883 and 884 go in two different directions and cannot be reconciled.

Act 883 amended § 6-84-111(b)(1) and (2), and Act 884 amended all of § 6-84-111, which included language that cannot be reconciled with changes made by Act 883. Mr. Henderson applied § 1-2-207 and directed the publisher to codify § 6-84-111 as amended by Act 155, Act 481, and Act 884.

Mr. Miller reiterated that Representative Lundstrum would like to leave her Act 883 intact. Mr. Henderson stated Act 481 did not seem to conflict with Act 883 or Act 884. Grant Wallace with the Office of the Treasurer of State was recognized for comments for Representative Lundstrum, and stated that the two acts were two different tax deduction ideas. Representative Lundstrum was working with individuals who are Arkansas citizens who have out-of-state Section 529 college savings accounts, and wanted to give them some sort of state tax deduction, and that was where the \$3,000 figure came from. If a person were to roll an out-of-state Section 529 plan into an Arkansas Section 529 plan, the taxpayer would get a first-year bonus tax deduction as an incentive to do that. Act 884, sponsored by Representative Brown, was setting up an employer match. If the employer were to match an employee's Section 529 plan, the employer would get a five-hundred-dollar-per-employee tax deduction. These were two different things, not necessarily in conflict with one another. They were just trying to accomplish two different goals, according to Mr. Wallace.

Representative Brown was recognized for a comment. Representative Brown stated that all three of the bills were to incentivize people to save for their children's college education, and Representative Lundstrum's bill was also to incentivize people to roll their funds into Arkansas Section 529 plans thereby giving the state a larger pool of money to invest, which would be good for the program all the way around. So if there was a way to preserve her bill in all this, she would like to see that done. She said Representative Lundstrum's act is dealing with Section 529 plans from out of state and she was not clear on how that conflicted with her bill.

Grant Wallace said the reason they were signed one after the other was because they were moved through together, and later in the session.

Mr. Henderson was asked to explain the conflict. Mr. Henderson responded that both acts amended the same section and they amended that section in two very different ways; so, when looking at trying to figure how to merge them, he took a conservative perspective that when two acts are in irreconcilable conflict, as these are, he cannot merge them from a technical standpoint. Therefore, he applied § 1-2-207.



Representative Brown asked if Mr. Henderson could be more specific about what the conflict is. Mr. Henderson said Act 883 amends (b)(1) and (2), while Act 884 amends the entire code section; so, the (b)(1) version of Act 883 talks about the tax year being on or after January 1, 2017, when Act 884 talks about the tax year beginning on or after January 1, 2005, and adds the employer contributions to savings plans possibility. Mr. Henderson explained other differences in the two acts, such as, defined terms between employer and employee in subsection (a) of the Act 884 version, but those terms are only for that section. Those terms were not used in the Act 883 version.

Mr. Miller asked Mr. Henderson where he was going to work in Act 481. Mr. Henderson explained about duplicating the subsections and rewriting the Code sections and how it would end up with a (b)(1) and (2) and maybe a (3) or (4), but he was not sure how much rewriting he would have to do to fit them all into the Code section. Chairman Shepherd asked whether it would be possible to insert in Act 883 in subsection (b) what is currently the language in subsection (b) from Act 884, or make that a subsection (c), or would they be in conflict with each other.

Chairman Shepherd asked if the suggestion was for the commission to take this action combining the three acts and affirm it later with a technical corrections bill or to do nothing and just have the technical corrections bill later. Mr. Henderson responded that he could rewrite the section under the authority of the commission to merge, if the commission is clear that the intent was for both of these to be law and one was not intended to conflict with or repeal the other. He said that his situation was that he was very sympathetic to legislators and what they are saying, but he had to rely on the language of the law in the text. He said that perhaps he can merge these, but so that no one can raise questions about it later, he said he would feel more comfortable if this were adopted in a technical corrections bill in that form.

Mr. John Peace was recognized for comments. Mr. Peace said that he was an attorney and he represented the Arkansas 529 Plan. He commented that he believed that the commission could reconcile the differences if the definition for "taxpayer employee" were taken out of Act 884 or if definitions for "taxpayer" or "taxpayer employee" were added in to be consistent with Act 883.

Chairman Shepherd announced that, without objection or any more debate, the Commission asked the Code Revisor to try to reconcile and merge the three acts together and circulate a proposed draft to the Commission electronically.

Mr. Henderson then gave the report of the Code Revisor. Mr. Henderson stated that staff had sent the conformed acts on to the publisher about two weeks or so previously and that the deadline for publishing the supplements was now running. That was why the Commission had to move the matters discussed in this meeting along a little bit because the publisher has only ninety days from the day he sent the last act to the publisher for the publisher to get the supplements out. The schedule for proofreading the page proofs of the pocket parts supplements had been set, and all of the technical corrections acts of the Commission passed.

He mentioned the need for another meeting in September or October to go over and approve replacement volumes. He explained that the publisher will come in with a list of volumes that

they would like to see replaced, and the commission will need to go through the list and decide which ones the commission wants replaced.

The next big item for consideration by the commission will be the publishing contract which expires at the end of 2018. Mr. Henderson explained that by §§ 1-2-301--1-2-303, the commission can issue a request for bids for a new publishing contract, extend the current contract for another ten years, or consider splitting the contract to have one contract for publishing hard copy and another contract for an electronic version.

Finally, Mr. Henderson introduced Latosha Scott, the new secretary to the commission.

The meeting was adjourned.





## MINUTES

### ARKANSAS CODE REVISION COMMISSION

Thursday, October 19, 2017

10:00A.M.

Room 149, State Capitol

Little Rock, Arkansas

**Commission members present:** Representatives Matthew Shepherd, Chair; Clarke Tucker; Senator Jason Rapert; Bettina Brownstein; Haley Burks; Cory Cox, Legislative Director, Office of the Attorney General, *ex officio*; Stacey Leeds, Dean, University of Arkansas at Fayetteville, School of Law, *ex officio* (*conference call*); and Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research, *ex officio*. Also attending were Terri Beiner, Associate Dean, University of Arkansas at Little Rock, William H. Bowen School of Law; Vincent C. Henderson II, Arkansas Code Revisor; Anders Ganten, Senior Director Government Content Acquisition, LexisNexis; Marty Garrity, Director, Bureau of Legislative Research; Jill Thayer, Legal Counsel for the Director, Bureau of Legislative Research; Representative Vaught; Cheryl Reinhart, Director of Licensure, Department of Education; Terri Beiner, Associate Dean, University of Arkansas at Little Rock, William H. Bowen School of Law.

Representative Shepherd called the meeting to order.

#### **Minutes of the July 11, 2017, Meeting (Exhibit B)**

Without objection, the Minutes were approved as presented.

#### **Consideration of Replacement Volumes and Price Adjustments (Exhibits C1, C2)**

Representative Shepherd turned it over to Mr. Henderson for his comments. Mr. Henderson gave a brief presentation of the volumes suggested by Lexis, the official publisher of the Arkansas Code of 1987 to be replaced and gave his recommendations for replacements: Volume 1 (recommended splitting into two volumes, Volumes 1A and 1B), Volumes 4A and 4B (recommended both be replaced), Volumes 6 and 6A (recommended replacing Volumes 6 and renumbering it 6A, replacing present Volume 6A and renumbering it as Volume 6B, and adding a sticker to the outside spine of present Volume 6B to renumber it as Volume 6C), despite Lexis' suggestion to replace, leave Volumes 10, 11A and 11B alone, Volumes 17A, B, and C (recommended replacing volumes to redistribute material more evenly), Volumes 20A and B (recommended splitting Volumes 20 A and B and redistributing material to add a new Volume 20C), Constitutions (recommended replacing it), and Tables Volume B (recommended splitting Tables Volume B into Volumes B and C).

A motion to accept Mr. Henderson's recommendations was made and approved.

Mr. Henderson then explained the price increases requested by Lexis. Lexis requested price increases in the price of the pocket part supplements from \$97 to \$100, a 3% increase and would go into effect in 2019; the index from \$34 to \$35, a 3 % increase; and replacement volumes from \$25 to \$26.50 a 6 % increase. He recommended approval of the price increase requests for the first two matters, but asked that Mr. Anders Ganten be allowed to address the price increase in the last item as its increase was beyond the rate of inflation for the past two-year period.

Mr. Ganten explained that replacing volumes is a less expensive matter overall than republishing the entire Code.

A motion was made to accept the price increases as proposed by Lexis, and the motion passed.

**Discussion of expiration of the ten-year extension of the Contract with Lexis Law Publishing in 2018 and options for the Commission's consideration – (Exhibit D)**

Representative Shepherd explained that the current contract with Lexis will end at the end of December 2018. He further explained that while it is some time away, he wanted to provide the Commissioners some information so they could begin considering how it would be handled moving forward and any other options that they may have before the expiration of this contract. Representative Shepherd asked Ms. Marty Garrity, Director, Bureau of Legislative Research, for an overview of where the Commission stands.

She stated that the Code as it stands now allows the Commission to determine how to move forward:

- (1) Extending contract as it stands;
- (2) Extend the current contract with Lexis, but renegotiate some of the terms and it does not have to be a ten year extension;
- (3) Issue a request for proposals or an invitation to bid.

She further explained that the initial contract was approved twenty years ago, for ten years, and then renewed for another ten years. Staff in Statutory Review section includes Mr. Henderson, five attorneys, four editors, and an administrative assistant to handle the initial codification of the acts and review the work done by Lexis.

Senator Rapert asked about other publishers that were out there to choose from other than Lexis and Thompson Reuters. Ms. Garrity stated that there are probably only two as it stands right now.

He asked about the amount of money Lexis makes with the present contract? What value that this contract means to Lexis? Mr. Ganten replied that he estimated the value at about \$200,000 a year net.

Mr. Henderson was asked about what other states have been doing. He responded that he had begun researching other states and had been receiving contracts from those states to compare them to each other and to Arkansas's present publishing contract to identify any changes or improvements that might be valuable. He hoped to provide further details in the next Commission meeting.

Representative Shepherd stated that he would like to have another meeting in November and asked if Mr. Henderson and the Bureau could gather information to help the Commission to be better informed about what to expect going forward in order to make the best decision for the State of Arkansas.

Ms. Jill Thayer explained the Contract bid process timeline she created. She stated that there could be some provisions more beneficial to the Bureau and they would like them to be included in the new contract.

Representative Tucker asked about the possibility of pushing back the timeline before the Legislative Council meets.

Anders Ganten stated Lexis was open to working with the Commission, Statutory Review, and the Bureau on the contract.

Representative Shepherd determined that the Commission should review all of the information provided for the next Commission meeting in November.

**Reconsideration of the Commission's codification decision concerning Acts 2017, No.**

**294, §§ 3 and 4, and Acts 2017, No. 416, §§ 1 and 2, Arkansas Code § 6-17-402 and Arkansas Code § 6-17-409 – Exhibits E1 – E3**

Representative Shepherd recognized Representative Vaught who had written a letter to him as Chair of the Commission to revisit this issue. Representative Vaught turned it over to Ms. Cheryl Reinhart with the Department of Education. Ms. Reinhart spoke about both of the bills Acts 294 and 416 which both amended § 6-17-402 and that is what is at issue today. Ms. Reinhart spoke about the last decision of the Commission. Act 294 with respect to § 6-17-402 would not be codified, so as a result of that the Department of Education, would have to publish that act on our website, so people would know the contents of the act, because the code won't reflect those changes which have to do with the licensure changes for teachers and leaders; and these are fairly extensive changes that we wanted to incorporate, so Rep. Vaught has graciously requested for the Commission to hear about this once more because we believe that the two acts can be codified harmoniously. Representative Shepherd ask Mr. Henderson to outline what the concern is for the benefit of the Commission from the July 11<sup>th</sup> meeting.

Mr. Henderson explained both acts amends the same code section § 6-17-402 in very different ways. While Act 294 tried to set up a tiered licensing system, Act 416 set up different requirements for licensure. The conflict to resolve was trying to figure how one act that authorizes the Department of Education to set up a tiered licensing system vs. the later act which set up a licensing system in effect at the time of enactment made additional changes to that system. Due to the irreconcilable conflict, he applied Arkansas Code § 1-2-207, which states in part that when there is an irreconcilable conflict between two act adopted in the same legislative session, the later act passed.

Ms. Reinhart stated Act 294 sets up a licensure system and Act 416 only adds a test as a licensure requirement and does not further address the licensure system. Act 416 being the later act should be just plugged into where it and Act 294 do not conflict, then you have a statute that covers the licensure system and the new test.

Haley Burks asked asks if it applied to all of the licensures or only non-traditional licensures. Ms. Reinhart explained that it only applies to all K-6 elementary teachers and special education teachers who are K-12, those are the two groups of teachers and it doesn't matter if they're non-traditional or traditional. Ms. Reinhart considered the confusion to citizens of Arkansas when someone looks at the Code asking does the State Board have the authority to do this within Department of Education's rules and being placed in a position to have to explain why the act didn't get codified by the decision of the Commission, but it is still law.

Mr. Henderson stated that Act 416 repealed Act 294, so Act 294 is no longer the law. Ms. Lori Freno Legal Counsel, Department of Education, said both acts are law as they are what reflect the intention of the General Assembly and the fact that they can be read harmoniously means that they are both law. Mr. Henderson explained he was only talking about the conflicting provisions of the two acts, to the extent that they conflict, the later act is the law.

Rep. Tucker asked about the legislative intent and reconciling the two different laws and if the Department of Education would submit a two or three sentence summary to the Commission of what their proposed draft would be and asked the Bureau to help identify the problems outlined to hopefully make a final decision in the next meeting.

Representative Shepherd said with no further objections this would stay on the agenda for our next meeting and if the department would provide Mr. Henderson with a proposal of how they would go about organizing



it and if there is further information that the department or Representative Vaught would like the Commission to consider, please provide that to Mr. Henderson and he'll pass it on to the Commission. Also, if the Commission stands on the previous decision how would that effect the department and teachers and if there was some other way for the department to handle this whether by rulemaking or otherwise in the interim, he would like to know that as well or if this is an all or nothing proposition.

Representative Shepherd relinquished the chair to Representative Tucker.

**Other Business:**

Mr. Matt Miller addressed the problem of statutory acts that amend the Constitution and the problem with conforming the language correctly. Historically, a constitutional amendment that the General Assembly was authorized to amend by legislation, we had only one section of the Constitution that could be amended by law, amendment 51, concerning voter registration which was not amended often. In the past couple of elections there have been added more amendments that the General Assembly can amend through the legislative process: the ethics laws which can be amended by the General Assembly, and the recently approved medical marijuana amendment.

During the legislative sessions of 2017, The General Assembly passed amendments to the ethics amendment and the medical marijuana amendment which the Code Revision Commission staff could not edit as necessary because it does not have the authority to make changes and corrections to the Constitution. He would like for the Commission to discuss this matter and consider possible solutions.

With no further business, Representative Tucker adjourned the meeting.



# MINUTES

## ARKANSAS CODE REVISION COMMISSION

Thursday, November 16, 2017

The Arkansas Code Revision Commission met Thursday, November 16, 2017, at 10:00 a.m. in Room 149 of the State Capitol Building.

### Attendance

Legislative commission members present were Representative Matthew Shepherd, Chair; and Senator Will Bond.

Other commission members present were Bettina Brownstein; Haley Burks; Stacey Leeds, Dean, University of Arkansas at Fayetteville, School of Law (*conference call*); Candice Settle; and Matthew Miller, Assistant Director for Legal Services of the Bureau of Legislative Research, ex officio. Also attending were Vincent C. Henderson II, Arkansas Code Revisor; Anders Ganten, LexisNexis; Jill Thayer, Legal Counsel for the Director, Bureau of Legislative Research; Representative DeAnn Vaught; Cheryl Reinhart, Director of Licensure, Department of Education; Lori Freno, Department of Education; and Ivy Pfeffer, Department of Education.

Representative Shepherd called the meeting to order.

### Minutes of the meeting of October 19, 2017 (Exhibit B)

Without objection, the minutes of October 19, 2017, were approved as presented.

### Reconsideration of the commission's codification decision concerning Acts 2017, No. 294, §§ 3 and 4, Acts 2017, No. 416, §§ 1 and 2, and Arkansas Code §§ 6-17-402 and 6-17-409 (Exhibit C)

Representative Shepherd recognized Representative Vaught to present her codification memo for Acts 2017, No. 294, before the commission for another review. Representative Vaught introduced Cheryl Reinhart and Ivy Pfeffer of the Department of Education to explain why Acts 2017, No. 294, § 3, should be codified. Ms. Reinhart stated that Acts 2017, No. 416, concerns one test, and Acts 2017, No. 294, concerns teacher licensure, and the acts do not conflict with each other. She stated that the two acts can be read harmoniously, and if they can be read harmoniously in such a way that the legislative intent is carried out, then that is the way the acts need to be read.

### Contributors to the discussion

Representative DeAnn Vaught; Cheryl Reinhart, Director of Licensure, Department of Education; Lori Freno, Department of Education; and Ivy Pfeffer, Department of Education.

### Issues included in the discussion

- Representative Vaught presented the memo and proposed codification of Acts 2017, No. 294, § 3;
- Representative Shepherd asked if Senator Clark, the sponsor of Acts 2017, No. 416, is in agreement with the reconciliation of the acts. Ms. Burks also made a statement about Senator Clark's not being present and asked how the commission will know if the reconciliation of the acts was the intent of the sponsor of the bill. Representative Vaught stated that Senator Clark has seen Acts 2017, No. 294, that Senator Clark thinks that the acts can work together, and the senator does not think that the commission would be manipulating him or his law in any certain way. The Department of Education also worked with Senator

Clark on Acts 2017, No. 416, as it was being implemented. Senator Clark does not see a conflict between the two and is willing to do whatever he can to help.

- Senator Bond asked if the commission had already made a decision regarding the codification of Acts 2017, Nos. 294 and 416. Representative Shepherd stated that Representative Vaught requested that the commission revisit the issue, and Representative Shepherd allowed Representative Vaught, along with the Department of Education, to propose a memo for the commissioners requesting another review. Senator Bond also asked if the proposed reconciliation of Acts 2017, Nos. 294 and 416, could be introduced in the fiscal session as special language, to which Ms. Reinhart stated that it would be up to the General Assembly, but that she remembers the fiscal session being limited to fiscal issues and that special language needs to be related to a fiscal session issue.
- Mr. Henderson spoke about dual codification, legislative intent, and the purpose of Arkansas Code § 1-2-207. The general rule has been that the last act passed is the law in case of a conflict. It was said by the Supreme Court that that rule was a mechanical rule, a rule of construction, and not a rule of law, and the only rule of law is what the legislative intent is.
- Ms. Freno stated the act is the law and the codification is not the law: if someone challenges the codification the Supreme Court will refer back to the acts. Mr. Henderson stated that is incorrect and that Arkansas Code of 1987, which was enacted as Act 267 of 1987, is the law.
- Representative Shepherd asked Mr. Henderson to state the purpose of noting an act and not codifying it: Mr. Henderson stated that it is because we recognize that someone may disagree with the commission's decision, so he or she will have access to that language in the note, if he or she wants to take it further to the courts and let the courts make that decision.
- Ms. Settle asked for an explanation of "conflict" vs. "no conflict". Ms. Reinhart stated the reason there is no conflict is that the language in Acts 2017, No. 416, adds a reading test for licensure, and Acts 2017, No. 294, addresses teacher licensure, the entire licensure system, and Senator Clark's test fits right into the system.
- Mr. Miller made the suggestion that the language of Acts 2017, Nos. 294 and 416, be included in the technical corrections bill for Title 6 at the next regular session in the version that is proposed here, so as to eliminate any confusion. Representative Shepherd agreed.
- Mr. Henderson recommended that a provision be included to make the language retroactive to the effective date of the 2017 legislation.

#### **Other questions or comments**

Ms. Burks asked if there is any rule for overturning or reversing a prior decision of the commission like a different majority vote. Representative Shepherd stated that there is not, and the commission is just bringing the matter back up for consideration.

Senator Bond motioned to reconcile the two acts based upon the submission by the Department of Education, and Ms. Burks seconded the motion. The motion passed.

### **Discussion of expiration of the ten-year extension of the contract with Lexis Law Publishing in 2018 and options for the commission's consideration (Exhibit D)**

Representative Shepherd recognized Jill Thayer, Legal Counsel for the Director, to discuss her proposed request for proposals (RFP) for a new publishing contract for the Code Revision Commission.

#### **Contributors to the discussion**

Jill Thayer, Legal Counsel for the Director, Bureau of Legislative Research; and Anders Ganten, LexisNexis.

### **Issues included in the discussion**

- o Ms. Thayer went over the provisions of her draft RFP with the commission and stated Mr. Henderson may have issues in the document that he will discuss later. She indicated that this draft RFP is in the form that the Bureau of Legislative Research uses for its standard procurements of consultant services, has been adapted for publishing services, and would be issued by the bureau.
- o Ms. Thayer went over the introduction and schedule of events, along with important dates for the commission to consider. The schedule for the release of the RFP was made based on this commission meeting and the Arkansas Legislative Council meeting in January.
- o If the commission approves the RFP, the bureau would release the RFP on November 20, 2017, by posting it on the website of the Office of State Procurement and also by sending it directly to vendors that the bureau knows would be capable of handling this contract. The vendors would then have three weeks to ask any questions about the document and the process, and those questions would be emailed to Ms. Thayer, and she would answer the questions as she received them and post them so that the other potential contractors could see them, probably also through the website of the Office of State Procurement.
- o The closing date for proposals submitted to the bureau is December 15, 2017.
- o By December 22, 2017, Ms. Thayer would create summaries of the proposals for the commission to review.
- o Two items to be announced by the commission are “election of vendors to make oral presentations” and “oral presentations/intent to award”, which could be handled by two meetings or, perhaps, one meeting.
- o Senator Bond asked why the contract is with the bureau and what the commission has to do with the contract. He asked if the commission controls the Code. Ms. Thayer responded that the bureau is now a party to this contract because the Code Revision staff is now merged with the bureau and the bureau is the staff to the commission. The Legislative Council has to approve of the contract because the bureau is an entity of the Legislative Council, so the Legislative Council gives us our contracting authority.
- o The schedule is based on the January 2018 Legislative Council meeting, which is based on the last meeting they have prior to the fiscal session. The next Legislative Council meeting would be after the fiscal session in April 2018. Senator Bond asked how that negatively impacts what has to happen before the end of the year. Ms. Thayer stated that if the commission were to switch vendors then that would matter more so than if the commission stays with LexisNexis. Mr. Miller said the transition could be a challenge if we start in April, but that we will get there regardless.
- o Senator Bond stated he would like to push the deadline to complete the RFP process pushed back to April. Ms. Brownstein and Ms. Settle also would like the deadline pushed back. Mr. Henderson reminded the commission that they can reject all bids, pick a publisher, and negotiate under the law that the commission operates under now.
- o Mr. Ganten made the following comments:
  - o 1) He reminded the commission that the current contract with LexisNexis does provide for an extension, and LexisNexis would certainly urge the commission to consider that as an option. He said that LexisNexis has a fantastic record and competitive pricing, but there is room to negotiate the contract, and he has the authority to bind the company in any respect.
  - o 2) He is glad for the schedule to be pushed back because the proposed schedule was an ambitious timeline, but added that LexisNexis would have met it. He also stated that, yes, their only competitor is Thompson Reuters.
  - o 3) Mr. Ganten pointed to page 11 of the RFP that the publisher is required to provide access to the Arkansas Code free of charge, and further stated that the listing is not needed in the price sheet if the access is free of charge. He strongly recommended not to require that an annotated version be available free of charge. The annotated version of the Code includes case notes, studies, and other such things, and providing an annotated version of the Code free of charge would de-monetize the value; if put out there as “everything for free”, it would fundamentally change the nature of the publishing relationship.
  - o 4) Referring to page 12 of the RFP, Mr. Ganten suggested getting rid of the page count for supplements



and picking a price for them. He said that Arkansas is the only state that continues to set the price for the publication of supplements by page. He advised setting a price for the cumulative supplements and be done. Also, he further indicated that no one uses CD-ROMs, so he has a slight preference for the CD/DVD.

- o 5). Lastly, Mr. Ganten continued, with regard to disclosure to lost clients, LexisNexis is a big company and loses and gains customers every day with varying contracts, so the wording “clients” is too broad. He thanked the commission for its time.
- o Representative Shepherd stated that he agreed it would be a good idea to push the deadline to complete the RFP back until April 2018. Because the commission had lost its quorum, he recommended holding off on taking action on this issue as he encouraged each commissioner to take a close look at the RFP, noting that the commission will come back and have a follow-up meeting where the invitation for bid, RFP, and extending the contract with LexisNexis can be further discussed. He also stated that if anyone had questions or comments to please email them to Mr. Henderson, who would share them with Ms. Thayer and get them sorted out.

### Other business

Mr. Henderson gave an update on the 2017 replacement volumes. He explained that Statutory Review Section had finished up the first batch of replacement volumes and that they are back at LexisNexis, with LexisNexis still asking questions about them. He stated that Statutory Review Section has completed four volumes and has ten to twelve left for the next year.

With no objections, the meeting was adjourned.

# **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Wednesday, January 17, 2018**

The Arkansas Code Revision Commission met Wednesday, January 17, 2018, at 1:30 p.m. in Room 149 of the State Capitol Building, Little Rock, Arkansas.

Members of the Arkansas Code Revision Commission present were:

- Representative Matthew Shepherd, Chair
- Representative Clarke Tucker
- Senator Jason Rapert
- Honorable Candice Settle (via conference call)
- Honorable John DiPippa, Dean, University of Arkansas at Little Rock William H. Bowen School of Law (via conference call)
- Honorable Matthew B. Miller, Assistant Director for Legal Services of the Bureau of Legislative Research, ex officio
- Honorable Brian Bowen, Deputy Attorney General for State Agencies Department, ex officio

Also attending were:

- Vincent C. Henderson II, Arkansas Code Revisor
- Jill Thayer, Legal Counsel for the Director of the Bureau of Legislative Research
- Marty Garrity, Director of the Bureau of Legislative Research
- Anders Ganten, Senior Director, Government Content Acquisition, LexisNexis

Representative Shepherd called the meeting to order.

## **AGENDA ITEM B**

### **Approval of Minutes of Meeting of November 16, 2017 (Exhibit B)**

Without objection, the minutes were approved as presented.

## **AGENDA ITEM C**

### **2018 Expiration of Ten-year Extension of Contract with Lexis Law Publishing (Exhibit C)**

Representative Shepherd stated that the purpose of the meeting was for the discussion of the ten-year extension of the present contract with LexisNexis and to discuss the options, and also to look at the possibility of putting out an RFP that was discussed in the meeting of November 16, 2017.

Representative Shepherd recognized Jill Thayer to make a presentation. Ms. Thayer presented the revised version of the RFP, went over the different changes made since the commission last met, and invited questions.

Discussion issues included:

- The differences between the original RFP and the revised RFP, as follows:
  - Page 3 of the revised RFP adds changes to the language that push back the timeline, with a release date to be February 15, 2018, and submission of proposals to be March 15, 2018. The proposals would be released to the commission on March 29, 2018. Thereafter, the commission would have the option to hold one (1) or two (2) follow-up meetings, depending on the number of proposals received. The first meeting would consider the



summaries of the proposals and review them, have a discussion, and then decide whether, and how many, if any, oral presentations to hear from the vendors that submit proposals. The second meeting would be for the purpose of hearing the oral presentations and perhaps deciding which vendor with whom to contract. The contract would then be submitted to the Legislative Council during their first meeting in April 2018, with final approval of any contract on April 20, 2018.

- Page 7 of the revised RFP outlines the terms of the contract which were previously left blank. After Ms. Thayer met with the chair, Representative Shepherd, it was determined that the RFP would be for a term contract with an initial term of seven (7) years and an unlimited number of renewals of seven (7) years each; each renewal would afford the option to renegotiate the contract.
- Page 9 of the revised RFP, Section 1.28, has had deleted from the original language regarding termination of the contract the phrase “for cause”. Deletion of the phrase gives the commission and the Bureau of Legislative Research the power to terminate the contract at any time and for any reason.
- Page 11 of the revised RFP incorporates changes to the Scope of Work. Under the original version of the RFP, the Scope of Work required that an annotated version of the Arkansas Code of 1987 be placed online; however, upon discussion with Mr. Henderson and Representative Shepherd, the RFP was revised so that an unannotated version of the Arkansas Code, which is what is currently available, would continue to be available through the Bureau of Legislative Research website.
- Page 13 of the revised RFP, under the last paragraph in Section 4.0, the language states that the vendor will provide the bureau with up to fifty (50) sets [of the Arkansas Code volumes], supplements, and any updates to the Arkansas Code at no cost to the bureau. Under the pricing section there is a provision to include a cost to the bureau for any Code volume sets above the fifty (50) provided at no cost. The bureau will be able to determine how many sets are actually needed, but the maximum at no cost is fifty (50) sets.

Senator Rapert pointed out that in the last legislative session Acts 2017, No. 710, was passed that prohibits the contracting of any state entity with a company that boycotts Israel. Ms. Thayer has contacted the Office of State Procurement to get the language that the office is now including in their RFPs, so that language will be included once she receives it.

Ms. Thayer stated that the differences as presented are the only differences between the original RFP presented in November 2017 and the revised RFP.

Representative Tucker was recognized and asked how long the commission has been under the present contract [with Lexis] and its renewals. Ms. Thayer responded that the contract has been in place for the last twenty (20) years, and renewals every ten (10) years. Mr. Henderson stated also that the first contract issued was in 1997 and that the 2007 extension was authorized by the commission.

Ms. Settle was recognized and asked whether the unlimited renewals take away from the commission’s responsibility to provide competitive bidding. Ms. Thayer responded that the commission is not subject to the state procurement laws, so the obligation to conduct competitive bidding is at the discretion of the commission. Mr. Henderson further stated that the seven-year extension is within the authority of the commission because this contract is not under the state procurement laws and the commission operates under a different set of statutes as far as the contract is concerned. Mr. Henderson also noted that the present contract has ten-year renewals, so the matter of unlimited renewals is not a change except for shortening the length of time between renewals, which is more in line with other state contracts.

Representative Tucker suggested consideration of allowing only two (2) renewals of the seven-year extension over a period of twenty-one (21) years, since that is the term the commission has been operating under for the current contract. Ms. Settles seconded Representative Tucker’s suggestion.

Representative Shepherd recommended that only two (2) renewals of the seven-year extension be permitted as a maximum over the period of twenty-one (21) years, and requested another motion to release the RFP, subject to the two (2) provisions discussed and Representative Tucker's request for permitting only two (2) renewals of the seven-year extension so that the maximum renewal period would be twenty-one (21) years.

**Representative Tucker motioned for these changes, and Ms. Settle seconded the motion. The motion carried by voice vote.**

Representative Shepherd stated that the Bureau will finalize the RFP and will release it pursuant to the outline that is scheduled on page 3 of the revised RFP. He also asked Mr. Henderson to look into meeting dates and times at the start of April in order to finalize some dates for as many commissioners as possible. He referred the members to page 3 of the revised RFP for the schedule of events moving forward.

## **AGENDA ITEM D**

### **Other Business**

Mr. Henderson stated that in light of what was done today there is no need for a meeting on February 1, 2018, and the commission will await the receipt of the proposals. The bureau will review those and refer them to the commission, and the commission will meet April 1, 2018, to determine which vendors, if any, the commission invites to make oral presentations to the commission. The follow-up meeting will be for oral presentations. Chair Shepherd also pointed out, for the record, that the bureau drafted the RFP with comments from Mr. Henderson and the commission, and that he was aware that LexisNexis had submitted suggestions for the RFP, but that the commission and the bureau chose not to look at those suggestions in fairness, and so that any vendor is able to respond to the RFP.

## **AGENDA ITEM E**

### **Report of Code Revisor**

None.

## **AGENDA ITEM F**

### **Adjournment**

Without objection, the meeting adjourned.



# **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Thursday, April 19, 2018**

**1:00P.M.**

**Room 149, State Capitol  
Little Rock, Arkansas**

Commission members and other members present: Representative Matthew Shepherd, Chair; Representative Clarke Tucker; Senator Jason Rapert; Commissioner Bettina Brownstein; Commissioner Candice Settle (via conference call); Ex Officio members Stacy Leeds, Dean, University of Arkansas at Fayetteville, School of Law (via conference call); John DiPippa, Dean, University of Arkansas at Little Rock; Vincent Henderson II, Arkansas Code Revisor. Also attending were; Marty Garrity, Director, Bureau of Legislative Research; Jill Thayer, Legal Counsel for Director, Bureau of Legislative Research; Anders Ganten, LexisNexis; Tony Hilliard, President, Arkansas Bar Association; Suzanne Clark, President-elect, Arkansas Bar Association

Representative Shepherd called the meeting to order.

## **Minutes of the January 17, 2018, Meeting (Exhibit B)**

Without objection, the Minutes were approved as presented.

## **Discussion of the Proposal by LexisNexis in response to RFP #180001 issued February 15, 2018 (Exhibit C)**

Representative Shepherd recognized Jill Thayer, Bureau of Legislative Research to discuss the proposal by LexisNexis. Ms. Thayer individually went over the proposed changes to the current proposal suggested by LexisNexis in response to the RFP #180001. Ms. Thayer requested that the bureau have 5 business days for the conformed acts; proof review instead of the staggered 5 days in the proposal.

Contributors to the Discussion:

Jill Thayer, Anders Ganten, Marty Garrity, Tony Hilliard, Suzanne Clark

### **Points of discussion include:**

- o Add a Special Supplement in even-numbered year to include any legislation adopted during the fiscal session, court rules changes and other changes that may have occurred since the regular session supplements
- o Commentaries volumes: LexisNexis would like to retire the existing Commentaries volumes and place commentaries with their relevant code sections across the code
- o Discontinuing ALR, AmJur, CJS references that are required under the contract.
- o Discontinuing the so-called Cited notes which merely list a string of cases where a particular code section was cited
- o Change the binding method for bound volumes from Smyth-sewn to burst bound.
- o Other Electronic Formats: LexisNexis request the commission's approval to discontinue the CD/DVD format
- o Statement of liability
- o Right of Sale: LexisNexis request that the commission's power to grant competing licenses as far as possible is limited to non-commercial use

**Other questions or comments:**

**Special Supplement**

- o Representative Tucker asked were there any extra costs with the option of adding the special supplement, would the ultimate decision be decided by the commission to add the special supplement, and who would make the decision on a case by case basis?

Mr. Ganten said yes and Lexis would price it. The extra cost could be around twenty dollars. The ultimate decision would be by the commission if a special supplement is needed. What Lexis is proposing is to add this concept to the contract to give the commission some authority to do that on a case by case basis.

- o Bettina Brownstein asked how would Lexis know when new legislation passed and do they monitor that somehow?

Mr. Ganten said yes absolutely that is the core of what Lexis does is monitor what gets signed by the Governor and make sure they put it up for the online user.

- o Representative Shepherd proposed a 30-day notice before anything is done by Lexis to make sure the commission is still in the decision-making loop if a Special Supplement is needed.

Mr. Ganten said they could do something like a 10-day notice after adjournment of what they believe would need to be added in a special supplement to give the commission the time to approve or deny.

**Relevant Actions:**

**Without objection the commission will continue negotiations of a special supplement and will re-review at the next meeting for the draft contract consistent with what the commission discussed today.**

**Commentaries volumes, discontinuing ALR, AmJur, and CJS references, and discontinuing cited notes**

- o Representative Shepherd asked what is the basis of this proposal, and what is the net effect going to be to the commission, the state, and those who are utilizing the Code? Representative Shepherd also asked since the ACRC is charged with having the Annotated Code published would it still be the Arkansas Code Annotated if they were to strike parts out and what is the cost to the consumer? Representative Tucker stated he was hesitant to limit or get rid of what is in print vs online.
- o Tony Hilliard, President, Arkansas Bar Association, commented that smaller firms and attorneys in smaller towns depend on the law library for the printed version for the relevance and importance of the Code. He also stated some of the smaller areas do not have complete access to the internet or legislative website. Senator Rapert commented he is sensitive to the ABA, and for the smaller firms that may not be able to access the online version, but rather rely on the print version.
- o Marty Garrity also asked for more clarification in the Bureau's role in the commentaries volumes and the scope of the Bureau's staff's expertise in such research.

Mr. Ganten proposed only having the relevant information included to make the product better and that having a long list of Code sections and cited notes was more clutter than helpful in the print version of the Code. Mr. Ganten assured the commission the core of the Annotated Code such as case notes, summaries of AG opinions, law reviews etc. would still be included.

**Relevant Actions:**

**Without objection the commission decided the commentaries would stay as they are and the bureau would add the negotiation provision in the draft contract that Lexis and the commission would agree to revisit the commentaries at a later time in considering moving the commentaries into the Code.**



Senator Rapert made a motion to keep ALR, AmJur, and CJS references and revisit the topic in a decade if these are still relevant issues. Representative Tucker seconded the motion. Voice vote was taken and the motion carried.

Without objection the commission and the bureau would keep negotiating on the cited notes.

***Changing the binding method for bound volumes from Smyth-sewn to burst bound.***

- o Mr. Ganten commented that the Arkansas Code is very unique because it is one of the few books that Lexis produces that is still using Smyth-sewn, and made the argument that the gluing technology today is better. Lexis had testing done by RR Donnelley the largest printing company, and burst bound is the better product. This is a cost effective change.

**Relevant Actions:**

Senator Rapert moved to accept the change to burst bound. The motion was seconded by Bettina Brownstein. Voice vote was taken and the motion carried.

***Other Electronic formats***

- o Mr. Ganten stated CD-ROM technology has reached the end of the road and most computers do not have CD-ROM drives anymore.
- o Ms. Garrity, Bureau of Legislative Research commented the members that have asked for a copy of the Code through the bureau are asked if they prefer a CD or a flash drive, and most of them say they don't have CD-ROMs anymore. When the Bureau receives the XML download from Lexis we have put it onto flash drives for the members that request it.

**Relevant Actions:**

Bettina Brownstein moved to discontinue the CD/DVD products as requested by Lexis. The motion was seconded by Representative Tucker. Voice vote was taken and the motion carried.

***Statement of Liability***

- o A proposed change by Lexis to what is in the RFP where the bidder acknowledges that the Code Revision Commission owns the copyright. Lexis asked that its liability be limited to any copyright infringement for which it is directly responsible and if it is third parties Lexis will not have to be involved. The bureau does not object to this liability limitation.

**Relevant Actions:**

Without objection the commission agreed to this proposal for language consistent with the proposal by Lexis on the statement of liability.

The commission also decided, without objection, that the Bureau will negotiate the five business days term for returning conformed acts and for proof review in the draft contract.

***Right of sale***

- o Ms. Thayer was recognized to discuss the proposed change on the right of sale. Lexis proposed that the commission's power to grant competing licenses be limited to only non-commercial uses which does differ from what is in the RFP and what the current contract allows.
- o Mr. Ganten addressed the basis of the underlying contract, which is that Lexis does the codification work for the state legislature free of charge. Under the current contract it does that in exchange for the exclusive right to publish and sale. The word "market" on the 4<sup>th</sup> line of the RFP opens the door for the

Code Revision Commission to sell it and monetize it separately, and Lexis certainly did not feel that it was consistent with the way the current relationship has been up to now. Also, the word non-commercial, is to prevent the commission from entering into separate agreements with other parties to license the entire Code. For two reasons: (1) it infringes on Lexis's right to publish and sale; and (2) the reality is that it's probably going to include Lexis in some shape or form because it is going to be Lexis that is asked to provide the content to a third party, and those are Lexis's concerns.

- o Mr. Henderson explained how this compares to what the present contract allows: Legislation was drafted in 1983 that authorized the commission to create a code, and one of the provisions was the commission could not obligate the state to pay any money for any work unless it was expressly appropriated for that purpose. William S. Arnold, chair of the commission at the time decided what the commission would do is put an invitation for bid out in such a way that the publishers and bidders if they were going to bid, would have to get their monies, expenses, and their profits from the selling of the books, in return for that the commission would not be involved in selling or reselling of the Code. It was also in the renewal of the 1997 contract that the publisher would be making monies from the selling of the books and the online services. The State of Arkansas has not had to pay the publisher anything for the work up through this time. The tradeoff has been to give the publisher the exclusive right to sell.
- o Representative Shepherd asked how does Westlaw get to use it? Mr. Henderson commented that Westlaw may have a contractual agreement with Lexis. Mr. Ganten commented that Westlaw did and still does license it from Lexis, but in practice Westlaw takes the acts as they are approved by the Governor, they are then incorporated in its version of the Code with a disclaimer that it is not the official code, and Westlaw keeps updating its own codification, and at the end of the year it runs a comparison against Lexis to get all of the changes that are made like the conformed acts.
- o Mr. Hilliard and Ms. Clark, president-elect, ABA, stated that they believed Arkansas should own the Code. The ABA does use the law commercially and believes the terms and conditions in the eligible users paragraph under public access by Lexis basically says, "If I want to use it as a lawyer, I'm in violation", and its cause for concern. Senator Rapert asked Mr. Hilliard if he was having to pay a fee to access the Code or being barred from any access to the Arkansas Code on their website. He answered, no, but that it speaks of who can use it.
- o Mr. Ganten commented that the true intent was to make the website accessible for anybody to access and know the plain letter of the law, and the RFP means to broaden the status quo, meaning Lexis understands there are certain circumstances where the commission should have the right to give the content to a third party, but where Lexis wants to draw the line is with the commercial use, and basically Lexis is saying it does not want the commission out selling the Code, because that would cut into Lexis's ability to make it work for them quite frankly.

#### Relevant Actions:

**Without objection the bureau is directed to negotiate consistent with the discussion today on these various points and the commission will come back for a meeting in June to have a final draft contract for consideration, in hopes that the commission will be able to take an up or down vote on the final contract at that time.**

#### IBM request-EXHIBIT D

Senator Rapert commented that he does not want the commission to disrupt the goodwill that Lexis offers of doing the Code for free by allowing IBM to use it. Senator Rapert suggested we instruct IBM to deal with Lexis in regard to their request. Mr. Henderson stated that how it has always been done in the past is for Lexis to handle such request and not the commission.

**Relevant Actions:**

**Without objection Mr. Henderson will direct IBM to speak with Lexis.**

With no further business, the meeting adjourned.



# **MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING**

**Tuesday, August 28, 2018**

**2:30 P.M.**

**Room 149, State Capitol**

**Little Rock, Arkansas**

Commission members present: Representative Matthew Shepherd, Chair; Representative Clarke Tucker; Senator Will Bond; Senator Jason Rapert; Commissioner Bettina Brownstein; Commissioner Haley Heath; Theresa Beiner, Dean, University of Arkansas at Little Rock; Cory Cox, Office of the Attorney General; Matthew Miller, Assistant Director, Bureau of Legislative Research. Also attending were; Marty Garrity, Director, Bureau of Legislative Research; Anders Ganten, Senior Director, Government and Corrections, LexisNexis; Brian Rosenthal, President, Arkansas Bar Association; and Vincent Henderson II, Arkansas Code Revisor.

Representative Shepherd called the meeting to order.

## **Minutes of the April 19, 2018, Meeting (Exhibit A)**

Without objection, the Minutes were approved as presented.

## **Approval of Proposed Contract with LexisNexis– (Exhibit B)**

Representative Shepherd recognized Marty Garrity, Bureau of Legislative Research to talk about the key points of the proposed contract changes with LexisNexis. Ms. Garrity talked about the term and termination of the contract as well as, the proposed changes accepted in the contract.

LexisNexis, the prospective vendor suggested certain modifications to the Agreement. The Commission accepted some, but not all, of the modifications.

The following modifications were discussed by the Commission and accepted:

Binding Method. The binding method for bound volumes will be burst bound.

Electronic Formats. Production of the Arkansas Primary Law DVD will be discontinued. LexisNexis will provide the BLR with the A.C.A. in electronic format through an XML custom output, as approved by the Commission and the BLR. LexisNexis will also provide the BLR with an electronic version of the A.C.A. that can be installed on the computers of the members of the General Assembly.

Statement of Liability. The liability of LexisNexis under Section 1.21 of the RFP, which is incorporated by reference into this Agreement, shall be limited in that LexisNexis shall not be made a party to any proceedings or actions related to copyright infringement by a third party. LexisNexis' liability would be limited to any copyright infringement for which LexisNexis is directly responsible. Add a Special Supplement. LexisNexis proposed adding a special supplement to be published in even-numbered years, as needed, to include any legislation adopted during the fiscal session, court rule changes, etc. Prior to moving forward with work on a special supplement, LexisNexis shall provide written notice to the Commission. The written notice shall be given to the Commission within ten (10) business days of adjournment of a fiscal session of the Arkansas General Assembly, and unless objection is made by the Commission to the decision by LexisNexis to publish a special supplement, within thirty (30) business days of receipt of the notice, LexisNexis may proceed.



The following modifications were discussed by the Commission and rejected:

**Commentaries Volume.** LexisNexis proposed discontinuing publication of the commentaries volume of the A.C.A. and to place the commentaries within the A.C.A. following their relevant Code sections. Although this proposed change was rejected by the Commission, this change may be adopted by a vote of the Commission and a written amendment to this Agreement subsequent to the execution of the Agreement.

**References.** LexisNexis proposed to do away with certain references (e.g. AmJur, ALR) that appear as notes to code sections throughout the A.C.A.

**Cited Notes.** LexisNexis proposed to discontinue the "cited notes", which are the case citations at the end of each code section throughout the A.C.A.

The Commission considered the "Right of Sale" clause separately as the Arkansas Bar Association asked the Commission to consider changes to the terms of that clause.

Mr. Rosenthal, President of the Arkansas Bar Association, spoke about the basis of the non-commercial uses of the online database of the Arkansas Code under the Agreement, stating that attorneys would not be authorized users under the clause and he would like the online Code to be accessible to all users without penalty. He stated that the unannotated form is used for academic purposes, not limited to handbooks and continuing legal education.

Mr. Ganten addressed Mr. Rosenthal's concerns and said Lexis is only concerned with the wholesale or reproduction of their services.

Language was proposed to be added to the "Right of Sale" clause to read as follows:

For purposes of this paragraph, "non-commercial uses" includes without limitation use for the purpose of conducting legal research, including for use in the practice of law, by practicing attorneys, judges, law students, and other members of the public for educational and academic purposes. Persons or organizations seeking to reproduce more than a small number of code sections may contact the LexisNexis permissions department at [permissions@lexisnexis.com](mailto:permissions@lexisnexis.com).

Motion to approve the addition to the Right of Sale section of the contract was adopted without objection.

The commission discussed the clause concerning the prohibition of a boycott of Israel as required by Arkansas Code § 25-1-503 requiring a written certification that the person or company is not currently engages in, and agrees for the duration of the contract not to engage in a boycott of Israel. Pursuant to the statute, in the Agreement, LexisNexis certified and agreed that it is not currently engaged in and agreed for the duration of the Agreement not to engage in a boycott of Israel.

A motion was made to strike the provision from the contract. A substitute motion was made to strike from the contract clause "pursuant to Arkansas Code Annotated § 25-1-503", and to retain the remaining part of paragraph fourteen (14) of the contract.

The substitute motion to strike the language “pursuant to Arkansas Code Annotated § 25-1-503” from paragraph fourteen (14) of the contract, and to retain the remaining part of paragraph fourteen (14) of the contract, was adopted.

Finally, a motion was adopted to approve the contract with LexisNexis as presented to the Commission with the changes as approved by the Commission at this meeting.

With no further business, the meeting adjourned.



# MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

Thursday, December 20, 2018

2:00 P.M.

Room 149, State Capitol  
Little Rock, Arkansas

Commission members and other members present: Speaker Matthew Shepherd, Chair; Senator Jason Rapert; Commissioner Bettina Brownstein; Commissioner Haley Heath; Commissioner Candice Settle (*conference call*); Theresa Beiner, Dean, University of Arkansas at Little Rock Bowen School of Law; Margaret Sova McCabe, Dean, University of Arkansas at Fayetteville (*conference call*); Vincent Henderson II, Arkansas Code Revisor; Matthew Miller, Assistant Director, Bureau of Legislative Research

Speaker Shepherd called the meeting to order.

## **Minutes of the August 28, 2018, Meeting (Exhibit B)**

Without objection, the minutes of the August 28, 2018, meeting were approved as presented.

## **Advance Code Service Cover Color- (Exhibit C)**

Speaker Shepherd recognized Mr. Henderson to talk about the option to change the color of the advanced code service books. After discussion the red vellum cover choice was selected.

## **Technical corrections to legislatively amendable constitutional provisions**

Speaker Shepherd addressed the commissioners about how each session generally the code revision refers several bills that are technical corrections that are not designed to change the substantive nature of the law but are more related to the format, style and the grammar and to try and bring some consistency to the code. He asked Mr. Henderson to present the constitutional provisions.

Mr. Henderson stated the provisions have to do with those portions of the state constitution that can be amended by the General Assembly. There has been an increase in the number of these types of amendments and no one has the authority to make any sort of editorial changes or corrections because amendments to the constitution do not fall within the commission's authority under Arkansas Code § 1-2-303, but we continue to see in initiated constitutional amendments things that under ordinary circumstances we would fix or present to the commission to fix. Mr. Henderson made the commission aware that code revision is in the middle of replacing the constitution volume and it should come by January.

Mr. Miller gave an example of last session when there were several problem amendments to the medical marijuana amendment. He said so we can amend those sections on a 2/3 vote and he recommended that the General Assembly amend the various constitutional amendments to give the commission the power to make those changes. Mr. Miller mentioned that he and Mr. Henderson had discussed the idea of a ratifying resolution at the next session working with the Speaker, with language together requiring the text that was changed by this commission to be set out in a resolution to be approved by the general assembly to ratify the decision and to keep a paper trail.

Senator Rapert stated that he would generally be in favor of giving the commission authority, if we pursue this route to be able to make technical changes to make sure the Arkansas Code reads appropriately, and he thinks this is the time to do it and he thought it can be explained very easily right alongside the technical

corrections bills.

Speaker Shepherd asked that if the commission were to agree to go in this direction a bill would have to be drawn up to give the commission that authority and set forth the procedure. He said that he wanted it to be clear that this would only affect the provisions in the constitution that are subject to amendment by the General Assembly itself. He was also concerned about the procedure being essentially left to the membership to make those proposals and the difficulty is rarely does the membership all get on the same page and therefore you may have competing sections, inconsistent numbering. Mr. Miller said the only other alternative is passing a bill right at the end of session and the timing of that is hard because the General Assembly would have to stop passing bills on medical marijuana something like a week short of it. Speaker Shepherd stated if the General Assembly were to do this it is not reducing any type of threshold it is just providing a means by which code revision can take a more comprehensive look and then hopefully make a proposal that can be ratified and confirmed.

Ms. Brownstein made a motion that the commission approve the recommendation that has been suggested to have a recommendation by the commission and a ratification procedure by the General Assembly. The motion was seconded by Senator Rapert. The motion was approved by the commission.

#### **Technical Corrections Bills– (Exhibit D)**

Speaker Shepherd explained that the commission would be making recommending to the General Assembly certain technical corrections to the law by technical correction bills. He then asked Mr. Henderson to explain the suggested correction bills. Mr. Henderson explained that the staff in compiling these technical corrections were attempting to keep the Code consistent throughout and conform the various provisions to the entire Code based on legislative intent.

Exhibit D1 – Title 1 concerning general provisions of law. After explanation, there were no changes.

Exhibit D2 – Title 2 concerning agriculture. After explanation, there were no changes.

Exhibit D3 – Title 4 concerning business and commercial law. After explanation, there were no changes.

Exhibit D4 – Title 5 concerning criminal offenses and the Arkansas criminal code. After explanation, there were no changes.

Exhibit D5 – Title 6 concerning education. After explanation, there were changes approved as amended. Section 2 remove and renumber subsequent sections.

Exhibit D6 – Title 8 concerning environmental law. After explanation, there were changes approved as amended. Take subsection (f) and create a separate bill as corrected. Section 4 page 5, retain “willful”.

Exhibit D7 – Title 9 concerning family law. After explanation, there were changes approved as amended. Remove and renumber subsequent sections. Take removed language and create a separate bill.

Exhibit D8 – Title 11 concerning labor and industrial relations. After explanation, there were no changes.

Exhibit D9 – Title 14 concerning local government. After explanation, there were no changes.

Exhibit D10 – Title 15 concerning natural resources and economic development. After explanation, there were no changes.



Exhibit D11 – Title 16 concerning practice, procedure, and the courts. After explanation, there were no changes.

Exhibit D12 – Title 17 concerning professions, occupations, and businesses. After explanation, there were no changes.

Exhibit D13 – Title 18 concerning property rights and interests. After explanation, there were no changes.

Exhibit D14 – Title 19 concerning public finance. After explanation, there were no changes.

Exhibit D15 – Title 20 concerning public health and welfare. After explanation, there were no changes.

Exhibit D16 – Title 20 an act to repeal the health care independence program Act of 2013 as the health care independence program expired on December 31, 2016. After explanation, there were no changes.

Exhibit D17 – Title 21 concerning public officers and employees. After explanation, there were no changes.

Exhibit D17 – Title 23 concerning public utilities and regulated industries. After explanation, there were no changes.

Exhibit D17 – Title 24 concerning retirement and pensions. After explanation, there were no changes.

Exhibit D17 – Title 25 concerning state government. After explanation, there were no changes.

Exhibit D17 – Title 26 concerning taxation. After explanation, there were no changes.

Exhibit D17 – Title 27 concerning transportation and motor vehicle laws. After explanation, there were no changes.

Ms. Brownstein made a motion to approve the batch of technical correction bills and make changes as approved to titles 6, 8, and 9 that were pulled out of the batch. The motion was seconded by Ms. Heath. The commission approved this motion.

Ms. Brownstein made a motion to take section 2 out of TNL043 title 6. The motion was seconded by Ms. Heath. This motion was approved by the commission.

**Report of the Code Revisor:**

Mr. Henderson mentioned that Code Revision has completed reviewing all of the replacement volumes but that the Constitutions volume was a little late due to the heavy workload in preparing for the next legislative session. The volume is done and is scheduled to come out in January.

Mr. Henderson also spoke about the differences in the Arkansas Code and Georgia Code Annotated, copyrighting of the Code and an article concerning a copyright lawsuit involving the State of Georgia and the Georgia Code Annotated.

With no further business, the meeting adjourned.



# MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

**Tuesday, September 17, 2019**

**10:00 A.M.**

**Room 138, State Capitol**

**Little Rock, Arkansas**

Commission members and other members present: Speaker Matthew Shepherd, Chair; Representative Jimmy Gazaway; Senator Will Bond; Senator Bob Ballinger (*conference call*); Commissioner Bettina Brownstein; Commissioner Candice Settle (*conference call*); Theresa Beiner, Dean, University of Arkansas at Little Rock Bowen School of Law; Margaret Sova McCabe, Dean, University of Arkansas at Fayetteville School of Law (*conference call*); Vincent Henderson II, Arkansas Code Revisor; Matthew Miller, Assistant Director, Bureau of Legislative Research

Speaker Shepherd called the meeting to order.

## **Minutes of the December 20, 2018, Meeting (Exhibit B)**

The minutes of the December 20, 2018, meeting were approved as presented upon motion by Senator Bond and seconded by Ms. Brownstein.

## **Proposal for Replacement volumes by Ms. Leslie Metheney, Director, Government Content, LexisNexis Legal and Professional – (Exhibit C)**

Representative Shepherd recognized Ms. Metheney, Director of Government Content with LexisNexis for consideration of a proposal for the replacement volumes of the Arkansas Code. Ms. Metheney stated that she was going to make her presentation short because she met with staff prior to this meeting to go over the multiple choices for replacement volumes and they came to a conclusion with the input of Mr. Henderson to whom she deferred for the presentation. Mr. Henderson, Arkansas Code Revisor, directed the commissioners' attention to the letter in their packets from Ms. Metheney which listed the possible replacement volumes and indicated what Lexis estimated the pocket part supplements would be in page count for each volume and the percentage of increase from two years ago. He explained that Lexis expects that supplements will possibly be 30% larger than two years ago.

Mr. Henderson recommended volumes 2A Business and Commercial Law, 6C Family Law, which would be split into two volumes, 26A, 26B, 27A, and 27B Taxation. These would be replaced next year with the goal of finishing them by the end of August. LexisNexis also asked for a 3% price adjustment for all purchases.

Senator Bond moved that the commission approve the replacement of volumes 2A, 6C, 26A, 26B, 27A, and 27B in 2020 and that the chair of the commission be given authority to authorize the Bureau of Legislative Research to begin work on replacement volumes for 2021 on the recommendation from the Code Revisor and the director of the Bureau of Legislative Research. Ms. Brownstein seconded the motion. The motion passed.

Ms. Brownstein asked about the percentage or the number of people who purchase books anymore for the Arkansas Code as opposed to online in the state. Ms. Metheney answered instead of estimating the numbers, she asked that she be allowed to get the numbers and distribute them to the commission. She stated that the statutory material tended to hold its own.

Ms. Metheney asked the chair for a decision on a different matter, a requested price increase adjustment in replacement volumes, index volumes, and Code supplements of 3%.

Speaker Shepherd mentioned that about nine months to a year ago when the commission talked about the new contract with regard to the printing of the Code he thought the commission had considered the price and thought the factors had been considered and wanted to know whether this was something different than what had been previously considered with the new contract. Ms. Metheney answered pricing is only considered in the contract for one year and then every year after that Lexis would have to come back to the commission for any increase.

Ms. Brownstein asked whether the present pricing was good through 2020 and that this request was for 2021. Ms. Metheney agreed. Speaker Shepherd asked whether the requested price change would not apply to what was just approved, but what was to begin to be worked on. Ms. Metheney answered that the requested price change would apply to the material about to begin to be worked on and not what was just approved.

Ms. Brownstein moved to approve the price increases as proposed by LexisNexis for replacement volumes, index, and cumulative supplements for 2021. Ms. Settle seconded the motion. The motion passed.

#### **Codification conflicts– (Exhibit D)**

Speaker Shepherd recognized Mr. Matthew Miller, Assistant Director, Bureau of Legislative Research, to present the conflicts to the commission. Mr. Miller asked Mr. Henderson, Arkansas Code Revisor, to explain the suggested codification conflicts. Mr. Henderson explained that the staff in compiling these technical corrections were attempting to keep the Code consistent throughout and conform the various provisions to the entire Code based on legislative intent.

#### **Exhibit D1 – Constitutional Revisions Submitted for Approval of the Arkansas Code Revision Commission under Act 684 of 2019.**

Consideration of possible revisions to Act 684 of 2019 to correct spelling of “accredited-post-secondary” by removing the hyphens and correcting the spelling of “postsecondary”. Without objection, the recommendation was approved.

Consideration of possible revisions to Act 1004 of 2019 to insert a comma before the phrase “existing before the date of the dispensary application” in Amendment 98, § 8(g)(2)(C)(i)(a). Ms. Brownstein moved to add a comma. Ms. Settle seconded the motion. Without objection the motion passed.

Consideration of possible revisions to Act 1004 of 2019 to insert the operative date in place of “the effective date of this subdivision (g)(2)(C)(i)(b)” in (g)(2)(C)(i)(b). Ms. Brownstein moved to insert the actual effective date for the effective date language. Ms. Settle seconded the motion. Without objection the motion passed

#### **Exhibit D2 – Requests Made to the Arkansas Code Revision Commission for the Correction of Technical Errors Related to the Transformation of State Government Under Act 910 of 2019.**

Request from Amy Fecher, Secretary of Transformation and Shared Services, to revise § 21-5-402(a)(1)(E), amended by Act 910, § 3496, to “the Secretary of Transformation of Shared Services or his or her designee” in lieu of “the Secretary of the Department of Finance and Administration or his or her designee”. Ms. Brownstein moved to approve the correction. Ms. Settle seconded the motion. Without objection the motion passed.

#### **Exhibit D3 – Conflicts Not Involving Act 910 of 2019.**

- **§ 2-1-301 et seq. and § 25-38-203(b)(1).** Act 501, § 1 created new provisions of law concerning truth in labeling of agricultural products that are edible by humans, with those provisions administered by the Arkansas Bureau of Standards. Act 741, § 2, amended Arkansas law concerning the promulgation of rules by the Arkansas Agriculture Department regarding the labeling of



agricultural products that are edible by humans. Ms. Brownstein moved to codify both. Without objection the motion was approved.

- **§ 5-73-104, § 5-73-109, § 5-73-129, § 5-73-132.** Act 495 made revisions to these four sections of law concerning firearm noise suppressors and compliance with the National Firearms Act. Act 1051 amended the same sections of the Arkansas Code with language concerning firearm noise suppressors and machine guns and compliance with the National Firearms Act. Without objection the recommendation to codify the later act was approved.
- **§ 6-15-2701(c)(2) –** Act 631, § 2, amended the subsection to reference a "school district's support plan". Act 757, § 30, amended the subsection to reference a school's "comprehensive school-level improvement plan". This section was also amended by Act 1083, § 1, and that change was incorporated into the section. After some discussion by the commission, the Speaker decided to have the commission consider this issue later in the meeting after the representatives of the Department of Education had had a chance to get advice from the department.
- **§ 6-18-505.** Act 557, § 5, amended Arkansas Code § 6-18-505(c)(1). Section 6-18-505 was subsequently repealed in full by Act 640, § 9. Ms. Brownstein moved to codify the later act which repealed the entire section. Without objection the codification of the later act was approved.
- **§ 6-18-1005.** Act 190, § 3, repealed Arkansas Code § 6-18-1005. Section 6-18-1005 was subsequently amended by Act 1091, § 2. Without objection the commission agreed to codify the earlier act, the repealing act.
- **§ 6-20-2305(b)(4)(C)(ii).** Act 532, § 1, repealed Arkansas Code § 6-20-2305(b)(4)(C)(iii), while Act 757, § 49, amended that subdivision. Without objection the commission agreed to codify the earlier act, the repealing act.
- **§ 6-61-201.** Act 55, § 1, amended Arkansas Code § 6-61-201(a)(1), while Act 1084, § 1, amended the entirety of Arkansas Code § 6-61-201, including § 6-61-201(a)(1). Without objection the commission agreed to codify the later act.
- **§ 25-17-307.** Act 256, § 8, and Act 315, § 2927, each amended Arkansas Code § 25-17-307. Act 315 contained a provision that a conflicting act should prevail over its provisions. Without objection the commission agreed to codify Act 256 in lieu of Act 315.
- **§ 26-57-259(c).** Act 580, § 12, amended Arkansas Code § 26-57-259(c). Act 1071, § 28, amended § 26-57-259(c) as amended by Act 580. However, in the process of setting out § 26-57-259(c) in Act 1071 as it was amended by Act 580, the word "not" was omitted at page 51, line 22 where it is otherwise present in Act 580. Rep. Davis spoke on this conflict as a technical error. A motion was made and approved to insert "not", it being apparent that the removal was an inadvertent technical error. The motion passed. Mr. Henderson also explained that this correction would be put in a later technical corrections bill for the 2021 legislative session for the General Assembly to ratify the commission's codification decision.
- **§ 27-24-208.** Act 167, § 1, added new language to Arkansas Code § 27-24-208 to authorize the issuance of a Purple Heart recipient special license plate to a surviving spouse. Act 915, § 1, also added new language to § 27-24-208 allowing the issuance of certain special license plates to



surviving spouses. Ms. Brownstein moved to codify the later act. Without objection the motion was approved.

- **§ 27-51-1602.** Act 577, § 4, amended Arkansas Code § 27-51-1602(2)(B) concerning what the definition of a “handheld wireless telephone” does not include. Act 738, § 7, repealed the existing § 27-51-1602 along with the rest of the subchapter and substituted new language. Act 577 added further exceptions while the later act removed a section and created a new section. Mr. Henderson commented that his recommendation is to take the two acts as they are and treat the later act as far as subchapter 16 as law, having done away with that language that was in the earlier act with a note concerning the earlier act. Mr. Miller stated so basically the second act prevails. Ms. Brownstein moved to codify the later act and include a note. Ms. Settle seconded the motion

Robert Coon with Impact Management Group, representing ATT, commented that the conversations he had with their staff is from a policy standpoint that they felt like the restatement of that section in the subsequent act was consistent with the descriptive nature of what was described in the first act and by adding the exclusion to that definition, they recognized that changed it from “handheld telecommunications device” to “wireless telecommunications device”. It would leave that one section of the Code with a different exclusion from all the other exclusions. He deferred to the commission to do what they feel is appropriate but ATT would like for that exclusion to be moved over as well.

Ms. Brownstein asked whether the commission has the authority to do that. Speaker Shepherd spoke on what they had done in other situations like this and before they would codify them both just so they both would be out there to prevent any inconsistencies. Mr. Henderson stated as a matter of practice they would take the language from the earlier act and make it into a note with this section in chapter 16. Speaker Shepherd reiterated that there would be a note in the Code that there was a prior act that referenced that particular exception. The Speaker called for a vote on the motion which passed.

- **§ 27-51-1605 and § 27-51-1609.** Act 288, §§ 1 and 2, amended Arkansas Code §§ 27-51-1605 and 27-51-1609 concerning the use of a handheld wireless telephone in a school zone. Act 738, § 7, repealed §§ 27-51-1605 and 1609, along with the rest of the subchapter, and substituted new language.

Ms. Brownstein asked whether the later act does not have the language as the previous act. Ms. Brownstein stated to keep consistency with the commission’s previous action, the commission should go with the later act. Without objection the commission agreed to codify the later act.

#### **Exhibit D4 – Conflicts Involving Act 910 of 2019**

- The Alcoholic Beverage Control Board created in § 3-2-201 did not get expressly assigned to and put within the Department of Finance and Administration under Act 910, although the Alcoholic Beverage Control Division was placed within the Department of Finance and Administration pursuant to § 25-43-702. Under its express authority in Act 910, the commission determined that the intent of the General Assembly was to place the ABC Board within the Department of Finance and Administration along with the ABC Division and that the Code should reflect that intent.
- **§ 6-13-1404(d)(2)(B).** Act 757, § 5, provided that the Arkansas Geographic Information Systems Office shall make changes in the maps of school districts to properly show the boundary lines of resulting districts. Act 910, § 1167, gave this authority to the Division of Elementary and Secondary

Education. Secretary Fecher stated that the commission should go with Act 757 and the Arkansas Geographic Information Systems Office. A motion was made by Ms. Brownstein to insert the Arkansas Geographic Information Systems Office, and without objection, that motion was approved.

- **§ 6-13-1414(d).** Act 757, § 6, provided that the Arkansas Geographic Information Systems Office shall make changes in the maps of the school districts to show the changes of boundaries. Act 910, § 1168, gave this authority to the Division of Elementary and Secondary Education. Without objection a motion to insert the Arkansas Geographic Information Systems Office was approved.
- **§ 6-15-2502(d)(3)(B)(ii).** Act 757, § 22, amended the criteria for establishing educational renewal zones to reference a public school district classified by the Department of Education as being in need of Level 5-Intensive support. However, Act 910, § 1275, gave this authority to the Division of Elementary and Secondary Education, changing from department to division. The earlier section, § 22, conflicts with § 23, the later section, as it moved the responsibility of identifying a public school district as being in need of Level 5-Intensive support from the department to the State Board of Education. Section 23 appears to be what the General Assembly intended, and not § 22's change. Without objection the commission approved the correction to the State Board of Education.
- **§ 6-15-2502(d)(3)(C)(ii).** Act 757, § 23, amended the criteria for educational renewal zones to include the school lying within a school district classified by the State Board of Education as in need of Level 5- Intensive support. However, Act 910, § 1277, gave this authority to the Division of Elementary and Secondary Education. Note this is a similar internal conflict regarding the classification of school districts in need of Level 5-Intensive support between Act 757, §§ 22 (above) and 23. Ms. Brownstein moved that the amendatory language referring to the State Board of Education be used and that that correction also be put in a technical corrections bill for the next regular session. Without objection the motion passed.
- **§ 6-20-2305(b)(4)(D) and § 6-20-2305(e)(4).** These sections were amended by Act 910, § 1684 and § 1691, but it appears the amendatory language was dislocated and split due to a technical error. Without objection the changes to move the language back together were approved.
- **§ 6-45-106(a)(2)(A)(i).** Act 757, § 63, amended the criteria for the Arkansas Better Chance Program to include a school being within a district that has been classified by the State Board of Education as being in need of Level 5-Intensive support. Act 910, § 1817, gave this authority to the Division of Elementary and Secondary Education. Without objection, the correction of the language to refer to the State Board of Education was approved.
- **§ 12-9-602.** Act 151, § 8, made substantive revisions to this section and referenced the authority of the Arkansas Commission on Law Enforcement Standards and Training. Act 910, §§ 5828 – 5832, amended various provisions of § 12-9-602 to redirect authority from the Arkansas Commission on Law Enforcement Standards and Training to the Division of Law Enforcement Standards and Training. It was not clear whether the commission or the division was the proper reference. Act 910 used "division" in place of "commission". Mr. Miller mentioned that if the ACRC used Act 910 for name changes the substantive changes in Act 151 would be lost. Mr. Henderson stated that under Act 910 the term "division" was more in the nature of a correction not addressed in Act 151. The chair decided to have the commission consider this issue and reexamine it later in the meeting after getting input from the Law Enforcement Standards and Training Commission.

- **§ 12-27-143.** Act 106, § 1, authorized the Director of the Department of Correction to award the service weapon carried by a retiring Department of Correction employee to certain persons. Act 910, § 764, gave this authority to the Director of the Division of Correction. As the Department of Correction is now a level higher than the division, the language should be corrected to “Director of the Division of Correction” according to State Representative Andy Davis and Secretary Fecher. Without objection the motion by Ms. Brownstein to correct the reference to the “Director of the Division of Correction” was approved.
- **§ 12-30-210.** Act 982, § 2, directed the Department of Correction’s Industry Division to prepare a specified annual report. Act 910, § 821, gave this authority to the Director of the Division of Correction. Ms. Brownstein moved to correct this by changing to “Division of Correction’s Industry Division”. Without objection the change was approved.
- **§ 15-4-2704(e)(1).** Act 327, § 1, substantively revised § 15-4-2704(e)(1) and changed the mechanism to move up one tier. Act 910, § 398, amended the pre-Act 327 mechanism to move up one tier to involve a publication of the Division of Workforce Services. Without objection the changes made by Act 327 were approved.
- **§ 15-4-2708(e).** Act 327, § 1, amended § 15-4-2708(e) to require the Arkansas Economic Development Commission to approve a research expenditure. Act 910, § 412, gave the authority to the Director of the Arkansas Economic Development Commission. Without objection the change made by Act 327 was approved.
- **§ 19-5-305.** Act 910, § 2260, referred to the Arkansas State Library as being under the Division of Elementary and Secondary Education. Act 910, § 1030, placed the Arkansas State Library directly under the Department of Education and not within the Division of Elementary and Secondary Education. Mr. Henderson explained that if the Arkansas State Library is not under the Department of Education, there are other sections of Act 910 that would need to be examined as this would create internal conflicts. Without objection, a motion to make the change to keep the State Library within the Department of Education instead of the Division of Elementary and Secondary Education was approved.
- **§ 21-4-214(g).** Act 910, § 3495, referenced the Secretary of the Department of Finance and Administration establishing certain policies and procedures. Act 910, § 6124, referenced the Secretary of the Department of Transformation and Shared Services establishing those policies and procedures. Without objection the correction to use Secretary of the Department of Transformation and Shared Services was approved.
- **§ 21-11-105(a)(2).** Act 910, § 3498, referenced the Secretary of the Department of Finance and Administration for a position on the Employment Suggestion Review Board. Act 910, § 6152, referenced the Secretary of the Department of Transformation and Shared Services as holding that position. Without objection the correction to use Secretary of the Department of Transformation and Shared Services was approved.
- **§ 23-46-202.** Act 910, § 579, repealed § 23-46-202. Act 910, § 6253, amended § 23-46-202 concerning the location of the Building Authority Division. Without objection the commission determined that the repeal should be codified and not the amendment.



- **§ 25-4-125(a).** Act 792, § 1, provided that the Governor shall designate the State Broadband Manager. Act 910, § 6292, provided that the Director of the Division of Information Systems is designated the State Broadband Manager. Without objection the commission determined that the Act 792 change should be codified, that the Governor shall designate the State Broadband Manager
- **§ 26-51-201(e).** Act 182, § 4, repealed § 26-51-201(e). Act 910, § 3706, amended the section to update references from "director" to "secretary". Without objection the commission agreed to implement the Act 182 repeal.

**Exhibit D5 – Conflicts Involving Technical Correction Bills Initiated by the Arkansas Code Revision Commission.**

- **§ 6-18-709.** Act 692, § 8, Act 757, § 36, and Act 910, § 1558 each amended § 6-18-709. The three acts were combined, reflecting the repeal of obsolete language in Act 692, the substantive changes to the remaining language of the section in Act 757, and the incorporation of the name change made by Act 910 to the Division of Elementary and Secondary Education. Without objection the changes were adopted by the commission that incorporate the name change made by Act 910.
- **§ 14-237-106(e).** Act 138, § 3 and Act 383, § 24 each amended § 14-237-106(e). Per Section 26 of Act 383, the changes in Act 138 prevail and were codified. Without objection the changes were adopted by the commission.
- **§ 19-5-1210.** Act 388, § 6 amended this section, which was repealed by Act 1024, § 4. Per Act 388, § 8, the changes in Act 1024 prevailed and were codified. Without objection, the changes were adopted.
- **§ 20-10-802(12), § 20-47-406, § 20-48-104, § 20-48-404, § 20-48-413.** Each of these sections were amended by Act 389, §§ 16, 57, 58, 62, and 64 and Act 1035, §§ 12, 16, 18, 27, and 29. Per Section 88 of Act 389, the changes in Act 1035 prevailed and were codified. Without objection the changes were adopted.
- **§ 27-50-407.** Act 394, § 8, repealed § 27-50-407. Act 910, § 4812, amended the section to clarify the duties of the Secretary of the Department of Finance and Administration. Per Act 910, § 6343, the repeal of § 27-50-407 by Act 394 superseded the Act 910 revisions. Without objection the changes were adopted.

**Return by Commission of Consideration of Sections Passed Over Earlier in the Meeting**

**Non Act 910 Issue**

- **§ 6-15-2701(c)(2) –** Act 631, § 2, amended the subsection to reference a "school district's support plan". Act 757, § 30, amended the subsection to reference a school's "comprehensive school-level improvement plan". This section was also amended by Act 1083, § 1, and that change was incorporated into the section. Ms. Lori Freno, Legal Counsel for the Division of Elementary and Secondary of Education, stated that after consulting with the Department of Education that they agreed with the recommendation from Mr. Henderson that the commission adopt the language from Act 631 even though it was the earlier act as Act 757 was just a cleanup act. Without objection the codification of the earlier act to the extent that it conflicts with the later act was approved.

**Act 910 Issue**

- **§ 12-9-602.** Act 151, § 8, made substantive revisions to this section and referenced the authority of the Arkansas Commission on Law Enforcement Standards and Training. Act 910, §§ 5828 – 5832, amended various provisions of § 12-9-602 to redirect authority from the Arkansas Commission on Law Enforcement Standards and Training to the Division of Law Enforcement Standards and Training. It was not clear whether the commission or the division was the proper reference. Act 910 used “division” in place of “commission”. Secretary Fecher suggested that the term “commission” not be codified and that “division” was what was intended to be used. Amanda Yarborough, Attorney for the Commission on Law Enforcement Standards and Training, explained the idea was not to take authority away from the Law Enforcement Standards and Training Commission but that the division was to maintain the information. She further stated that the Commission on Law Enforcement Standards and Training does not disseminate information. That is the responsibility of the division. At the request of the Speaker, Mr. Miller gave an example of the conflict that needed resolution. A motion was made to merge the language of the two acts, Act 151 and Act 910, using the reference to “division” in Act 910, but otherwise incorporating the non-conflicting substantive changes made by Act 151. Without objection the changes were approved. Also, the commission decided to include in the Code an ACRC note in regard to Act 151 and the conflicting language.

With no further business, the meeting adjourned.



# MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

**Tuesday, August 18, 2020**

**3:00 P.M.**

**Room B, MAC**

**Little Rock, Arkansas**

Commission members and other members present: Speaker Matthew Shepherd (*zoom call*), Chair; Representative Jimmy Gazaway; Senator Will Bond; Senator Bob Ballinger; Commissioner Bettina Brownstein (*zoom call*); Commissioner Candice Settle (*zoom call*); Theresa Beiner, Dean, University of Arkansas at Little Rock Bowen School of Law (*zoom call*); Margaret Sova McCabe, Dean, University of Arkansas at Fayetteville School of Law (*zoom call*); Vincent Henderson II, Arkansas Code Revisor; Matthew Miller, Assistant Director, Bureau of Legislative Research; Leslie Metheny, Director, Government Content(*zoom call*); Amy Fecher, Secretary of the Department of Transformation and Shared Services

Commissioner Bond called the meeting to order.

## **Minutes of the September 17, 2019 Meeting (Exhibit B)**

Without objection, the Minutes were approved as presented.

## **ACT 910 Issues for THE ARKANSAS CODE REVISION COMMISSION – (Exhibit C)**

Commissioner Bond recognized Mr. Henderson, Code Revisor, to discuss in detail the issues in Act 910 and the changes requested by Ms. Fecher. Secretary of the Department of Transformation and Shared Services.

1. Amy Fecher, Secretary of the Department of Transformation and Shared Services, requested a revision to Arkansas Code § 19-11-715 to provide that the Secretary of the Department of Transformation and Shared Services has rulemaking authority regarding procurement ethics rather than the Secretary of the Department of Finance and Administration. *These sections constitute internal conflicts within Act 910.*

**Act 910, Section 3474: 19-11-705(b) – Department of Transformation and Shared Services ~~Finance and Administration~~.**

**Act 910, Section 3475: 19-11-706(a) – Secretary of the Department of Transformation and Shared Services ~~Finance and Administration~~.**

**Act 910, Section 3476: 19-11-712(b) – Secretary of the Department of Transformation and Shared Services ~~Finance and Administration~~.**

**Act 910, Section 3477: 19-11-713(b) – Secretary of the Department of Transformation and Shared Services ~~Finance and Administration~~.**

**Act 910, Section 3478: 19-11-715(a) – Secretary of the Department of Transformation and Shared Services ~~Finance and Administration~~.**

**Act 910, Section 3479: 19-11-716(b)(1) – Secretary of the Department of Transformation and Shared Services Finance and Administration.**

**Item 1 was approved upon a motion by Senator Ballinger and seconded by Mr. Speaker.**

2. As part of the review of Secretary Fecher's request, other Code sections that needed to be corrected from Department of Finance and Administration to Department of Transformation and Shared Services in light of Act 910's intent were discovered. *These sections were not amended by Act 910, but require revision to match the changes made by Act 910.*

**Section 19-11-242(1) of 19-11-242. Commodity management rules.**

Department of **Transformation and Shared Services Finance and Administration**

**Section 19-11-264(c) of 19-11-264. Submission of contracts with members of General Assembly required.**

Department of **Transformation and Shared Services Finance and Administration**

**Section 19-11-269. Review of information technology plans.**

Department of **Transformation and Shared Services Finance and Administration**

**Section 19-11-271(a) of 19-11-271. Compliance reporting.**

Department of **Transformation and Shared Services Finance and Administration**

**Section 19-11-1006(a)(3) of 19-11-1006. Submission of contracts required.**

Department of **Transformation and Shared Services Finance and Administration**

**Section 19-11-1014(a) of 19-11-1014. Compliance reporting — Definition.**

Department of **Transformation and Shared Services Finance and Administration**

**Section 19-11-1101(c)(2) and (g) of 19-11-1101. Contracts.**

(c)(2)(A) The requesting agency shall request approval from the **Secretary of the Department of Transformation and Shared Services Chief Fiscal Officer of the State**;

(C) Upon approval of the **Secretary of the Department of Transformation and Shared Services Chief Fiscal Officer of the State**, the requesting agency shall prepare a request to the **Department of Transformation and Shared Services Finance and Administration** for approval to prepare a request for proposal for a technology project authorized under this subchapter;

(g) **The Secretary of the Department of Transformation and Shared Services Chief Fiscal Officer of the State** may promulgate such rules, procedures, and guidelines as he or she may deem necessary and proper in order to carry out the provisions of this section.

**Item 2 was approved. Senator Ballinger made a motion to adopt all changes and Representative Gazaway seconded the motion. The motion carried.**

3. Act 910, § 1030, created Arkansas Code § 25-43-502, which created the new Department of Education and expressly included it in § 25-43-502(a)(10) as a separate division of that department the Division of Public School Academic Facilities and Transportation, which had been created in Arkansas Code § 6-21-112. However, the Commission for Arkansas Public School Academic Facilities and Transportation created in Arkansas Code § 6-21-114(a) was not expressly transferred to any of the departments created in Act 910. Still, that commission was given the responsibility to oversee the division in Act 910.

**6-21-114. Commission for Arkansas Public School Academic Facilities and Transportation — Created.**

**(d) The commission shall:**

**(1) Oversee the operations of the Division of Public School Academic Facilities and Transportation;**

**Item 3 approved as part of the technical correction bill. Senator Ballinger made a motion and Ms. Settle seconded the motion. The motion carried.**

4. Section 6-50-702(6), the definition of “governing council”, was amended by Act 910, § 143, to change the names of certain officers comprising the council, including changing the “Director of the Department of Career Education” to the “Director of the Office of Skills Development”. However, Act 910, § 1857, amended § 6-50-703(a) by changing the names of the departments to the divisions from which representation on the governing council is to come, including changing the name of the “Department of Career Education” to the “Division of Career and Technical Education”.

Section 6-50-702(6) makes the Director of the Office of Skills Development, an office in the Department of Commerce, one of the three members of the governing council, while § 6-50-703(a) instead includes a representative of the Division of Career and Technical Education, a division of the Department of Education. These sections constitute internal conflicts within Act 910.

**6-50-702. Definitions.**

**Director of the Office of ~~Career Education~~ Skills Development.**

**6-50-703. Arkansas Existing Workforce Training Program — Creation — Purpose.**  
**Career and Technical Education [Office of Skills Development]**

**Item 4 will be tabled until the next meeting. 6-50-703. There was discussion on whether to leave in ~~Career Education~~ in addition to Skills Development due to a conflict. Ms. Salas-Ford, Council, Department of Education, spoke on the topic and would prefer Career Education be left in addition to Skills Development. Senator Ballinger made a motion to table this issue concerning §§ 6-50-702 and 6-50-703 and Representative Gazaway seconded the motion. Motion carried.**

5. In three Arkansas Code sections, §§ 6-65-104(b)(2), 6-66-113(b), and 6-67-114(b), Act 910, §§ 2011, 2012, and 2013, respectively, changed “Director of the Department of Education” to “Director of the Division of Elementary and Secondary Education”. First, the reference should now be to “Commissioner of Elementary and Secondary Education” per Act 910. However, despite the changes made by Act 910, we believe that the correct reference should be to the Director of the Division of Higher Education. This is

because the three Code sections concern institutions of higher education, and not secondary educational institutions. Furthermore, Arkansas Code § 6-65-104 is probably obsolete.

**6-65-104. Rural school teachers' training departments.**

Director of the ~~Department of Education~~ Division of Elementary and Secondary Education  
Director of the Division of Higher Education]

**6-66-113. Report by board of trustees.**

Director of the ~~Department of Education~~ Division of Elementary and Secondary  
Director of the Division of Higher Education]

**6-67-114. Biennial report to General Assembly.**

Director of the ~~Department of Education~~ Division of Elementary and Secondary Education  
Director of the Division of Higher Education]

**Item 5. Senator Ballinger made a motion to move § 6-65-104 to the technical corrections bill.**

**Representative Gazaway seconded the motion. The motion carried.**

**Senator Ballinger made a motion and Representative Gazaway seconded the motion to accept the recommendations for changes to §§ 6-66-113 and 6-67-114. The motion carried.**

6. By Acts 2015, No. 892, § 5, the “State Board of Career Education” was reorganized and renamed “Career Education and Workforce Development Board”. In Act 910, § 126, the Career Education and Workforce Development Board was transferred to the Department of Commerce. In several Arkansas Code sections the 2015 name change has not been effectuated yet because those Code sections have not been expressly amended since 2015, at which time we would ordinarily implement the name change. Act 910, § 2390, changed the name of the “Department of Career Education” to “Division of Career and Technical Education” and transferred it to the Department of Education.

Act 910, § 2390, changed the name of the “Department of Career Education” to “Division of Career and Technical Education” and transferred it to the Department of Education.

Scattered throughout Act 910 are sections that amend many, but not all, of the Arkansas Code sections with references to the State Board of Career Education. In many of those sections that are amended by Act 910 the references to the State Board of Career Education are not corrected or addressed. Those sections that do address the references to the State Board of Career Education do not do so in any consistent manner. The powers, duties, functions, and responsibilities of the State Board of Career Education/Career Education and Workforce Development Board and the Department of Career Education have been scattered and dispersed among several different entities, and not just to the Career Education and Workforce Development Board or the Division of Career and Technical Education. An additional layer to this problem is that Act 315 of 2019 amends several Arkansas Code sections that are not amended by Act 910 but do not address the name references either.

**Item 6 The Commission agreed to table this item in its entirety until the next meeting upon a motion by Senator Ballinger, seconded by Representative Gazaway.**



7. Acts 2019, No. 910, § 2212, amends § 10-3-1602(2) and contains a list of state entities, revising “State Board of Career Education” to “State Board of Education”. Act 910, § 2213, amending § 10-3-1602(4), contains an analogous list but this time “State Board of Career Education” becomes the “Career Education and Workforce Development Board.”

**10-3-1602. Duties.**

(2) Reviewing policy issues affecting educational reform on or before November 15 of the year preceding a regular session and making recommendations concerning any necessary legislative changes proposed by school districts, cooperatives, institutions of higher education, the Division of Elementary and Secondary Education, the State Board of Education, the Division of Career and Technical Education, ~~the State Board of Career Education~~ **[Career Education and Workforce Development Board]**

(4) Reviewing and assuring coordination between the school districts, cooperatives, institutions of higher education, the Division of Elementary and Secondary Education, the State Board of Education, the Division of Career and Technical Education, ~~the State Board of Career Education~~ **the Career Education and Workforce Development Board**, the Division of Higher Education, the Arkansas Higher Education Coordinating Board, the Governor’s office, and private institutions; and

**Item 7. Motion to ratify modifications made by Commission staff by Senator Ballinger and seconded by Ms. Settle. The motion carried.**

8. Two sections of Act 910 amended § 20-27-1507 in an inconsistent manner. It is clear that the General Assembly intended by the amendment to § 20-27-1507(a) and (b) by Act 910, § 5035, as well as all the other changes made throughout subchapter 15 by other sections of Act 910, including §§ 2291 and 2292 that amended § 20-27-1507(c)(2)(A) and (e), that the amendment to § 20-27-1507(a) and (b) by Act 910, § 2290, was an oversight, not intended, and that the correct reference should be to the Department of Health, and not the Division of Higher Education.

As amended by Act 910, § 2290, the section reads as follows:

**20-27-1507. Education of artist in training.**

(a) An artist trainer shall be a registered instructor in a school licensed by the Department of ~~Higher Education under § 6-51-601 et seq.~~ Health.

(b) In consultation with the State Board of Private Career Education, the ~~Department~~ Division of Higher Education shall develop standards to determine:

(2)(A) The artist trainer shall maintain a training log of the clock hours completed by the artist in training on forms approved by the Department of ~~Higher Education~~ Health.

(c) The Department of ~~Higher Education~~ Health shall adopt a minimum curriculum for each area of body art training that shall be followed by all artist trainers, artists in training, and body art training facilities.

As amended by Act 910, § 5035, the section reads as follows:

**20-27-1507. Education of artist in training.**

(a) An artist trainer shall be a registered instructor in a school licensed by the ~~Department of~~ Higher Education under § 6-51-601 et seq. Department of Health.



(b) ~~In consultation with the State Board of Private Career Education, the Department of Higher Education~~ **The department** shall develop standards to determine:

(2)(A) The artist trainer shall maintain a training log of the clock hours completed by the artist in training on forms approved by the Department of ~~Higher Education~~ **Health**.

(c) The Department of ~~Higher Education~~ **Health** shall adopt a minimum curriculum for each area of body art training that shall be followed by all artist trainers, artists in training, and body art training facilities.

**Item 8. Senator Ballinger moved to accept the recommended changes to make the references to the Department of Health to be consistent. Representative Gazaway seconded the motion. The motion carried.**

9. In § 20-77-2509(e), “Governor” should have been changed to “Secretary of the Department of Inspector General” as it was in subsection (a) by Act 910, § 5263. In that way both the annual report and the quarterly reports of the Medicaid Inspector General are to be submitted to the Secretary of the Department of Inspector General. Otherwise, the annual report would be submitted to the Secretary of the Department of Inspector General, while the quarterly reports would bypass the secretary and instead be submitted directly to the Governor.

**20-77-2509. Reports required of Medicaid Inspector General — Definition.**

(a) The Medicaid Inspector General shall, no later than October 1 of each year, submit to the ~~Governor~~ **Secretary of the Department of Inspector General**.

(c) Quarterly by April 1, July 1, October 1, and January 1 of each year, the Medicaid Inspector General shall submit to the ~~Governor~~ **[Secretary of the Department of Inspector General]**.

**Item 9. The decision was made by the Commission to leave as is and take it up later if necessary.**

10. In § 20-78-206(a)(2)(A)(ii), “Commissioner of Education” should have been changed to “Secretary of the Department of Education” to conform to the change made in subdivision (a)(3) by Act 910, § 5104.

**20-78-206. Division of Child Care and Early Childhood Education — Rules.**

(ii) The immunization shall be evidenced by a certificate of a licensed physician or a public health department acknowledging the immunization. The division shall consult with the ~~Commissioner of Education~~ **[Secretary of the Department of Education]** or his or her designated representative in regard to rules relating to education.

(3) The ~~director~~ **Secretary of the Department of Health and the commissioner** ~~Secretary of the Department of Education~~ and their designated representatives are directed to cooperate with and assist the division in developing rules in the respective areas of health and education.

**Item 10. Senator Ballinger moved to accept the modifications. Representative Gazaway seconded the motion. The motion carried.**

11. In various places in the following sections concerning Arkansas Rehabilitative Services which was assigned by Act 910 to the Department of Commerce there is the phrase “the appropriate division of the Department of Human Services”. However, DHS no longer has authority over Arkansas Rehabilitative

Services. It has been transferred to the Division of Workforce Services in the Department of Commerce. Also in 20-79-207(4), it appears that Arkansas Rehabilitation Services was intended to replace the orphaned “state board” reference as the only other reference to state board in the section, in subdivision (2), was amended by Act 910 to Arkansas Rehabilitation Services.

**Section 20-79-205. Administration.**

The deputy director of the ~~appropriate division of the Department of Human Services~~ Division of Workforce Services

**Section 20-79-206(b) and (c). Operation of rehabilitation facilities.**

(b) Gifts, grants, fees for services, income from the sale of products or items of manufacture or handwork, and donations may be deposited into one (1) or more banks and expended by the ~~appropriate division of the Department of Human Services~~ Division of Workforce Services, in compliance with the rules of the Secretary of the Department of Finance and Administration, in the establishment and operation of rehabilitation facilities and such other program services as may be determined by the ~~appropriate division of the Department of Human Services~~, which are consistent with the purposes of this subchapter.

(c) The ~~appropriate division of the Department of Human Services~~ is authorized and empowered to lease or purchase public or private property, real, personal, or mixed, for the purpose of establishing and operating rehabilitation facilities.

**Section 20-79-207. Cooperative agreements.**

The ~~appropriate division of the Department of Human Services~~ Division of Workforce Services, through Arkansas Rehabilitation Services, is empowered and directed to:

(1)(A) Cooperate with any other division of the ~~department~~ Department of Commerce in an effort to rehabilitate those individuals with a disability who are applicants for or recipients of public assistance.

(4) Cooperate with political subdivisions and other public and nonprofit organizations and agencies in the establishment of workshops and rehabilitation facilities and use such facilities as meet the standards established by the ~~state board~~ Arkansas Rehabilitation Services in providing rehabilitation services; and

**Section 20-79-208(b) and (c)(2). Ownership, exchange, and sale of equipment.**

(b) The ~~appropriate division of the Department of Human Services~~ Division of Workforce Services

(2) Any funds received by the ~~appropriate division of the department~~

**Section 20-79-211(a). Appropriations.**

(a) Budget estimates of the amount of appropriations needed each fiscal year for rehabilitation services and for the administration of the program shall be submitted by the deputy director to the appropriate division of the Department of ~~Human Services~~ Commerce.

**Section 20-79-213(b). Eligibility for rehabilitation services.**

(b) However, except as otherwise provided by law or as specified in any agreement with the United States Government with respect to classes of individuals certified to the ~~appropriate division of the Department of Human Services~~ Division of Workforce Services ~~thereunder~~,

**Section 20-79-215. Hearings.**

Any individual applying for or receiving rehabilitation who is aggrieved by any action or inaction of Arkansas Rehabilitation Services shall be entitled to a hearing in accordance with the rules adopted and

promulgated by the ~~appropriate division of the Department of Human Services~~ Division of Workforce Services on that subject.

**Item 11. Senator Ballinger made a motion to ratify the changes recommended by staff and Ms. Settle seconded the motion. The motion carried.**

**The Commission directed that § 20-79-205 be included in a technical corrections bill to correct “deputy director” to “director”.**

12. Section 25-30-104, as amended by Acts 2019, No. 910, § 2389, including the section catchline, now requires the State Board of Education to coordinate “their” activities. The problem is that the sentence went from two subjects to one, but merely correcting the plural pronoun “their” to the singular pronoun “its” doesn’t make sense with the requirement to coordinate.

As amended by Act 910, § 2389, the section reads as follows:

**25-30-104. Coordination with State Board of Education and ~~Department of Education~~ Division of Elementary and Secondary Education.**

The ~~Career Education and Workforce Development Board and the~~ State Board of Education shall coordinate their activities to ensure that academic, workplace, and technical skills create opportunities for a strong comprehensive education regardless of the student's ultimate career choice.

In view of the change made to the section catchline, the intent of the amendment would seem to be to replace in the text the original reference to the State Board of Education with the Division of Elementary and Secondary Education.

**25-30-104. Coordination with State Board of Education and Division of Elementary and Secondary Education.**

The State Board of Education ~~of the Department of Education~~ and the Division of Elementary and Secondary Education

**Item 12. Senator Ballinger made a motion to adopt the changes. Representative Gazaway seconded the motion. The motion carried.**

#### **Questions Concerning Arkansas Code § 6-4-304**

Ms. Erin Franks, Chief Legislative Affairs Director, Department of Education, has asked that Department of Education representatives be allowed to discuss the following list of questions concerning § 6-4-304 with the Commission.

**These questions were withdrawn by the Department of Education.**



**ACT 910 Issues for the Department Transformation and Shared Services (Exhibit C-2)**

1. Amy Fecher, Secretary of the Department of Transformation and Shared Services, requested a revision to Arkansas Code § 19-11-269 to remove the responsibility for submission of planning and technical requirements documents to the Office Intergovernmental Services and instead require the Office of State Procurement to ensure they have been submitted to the Department of Transformation and Shared Services.

**Section 19-11-269 – Review of information and technology plans.**

**Item 1. This section was covered on Exhibit C-2.**

2. Secretary Fecher also requested a revision to Arkansas Code § 21-5-109 to transfer from the State of Arkansas Chief Fiscal Officer to the Secretary of the Department of Transformation and Shared Services the authority to establish the standards and procedures and for granting exemptions to the direct deposit requirement for new employees. This section was not amended by Act 910 of 2019 but requires revision to implement its intent of transferring the Office of Personnel Management from the Department of Finance and Administration to the Department of Transformation and Shared Services.

**Sections 21-5-109 (a) & (b) 21-5-109. New Employees – Electronic direct deposit – Definition**

(ii) The Secretary of the Department of Transformation and Shared Services ~~Chief Fiscal Officer of the State~~

(B) The Secretary of the Department of Transformation and Shared Services ~~Chief Fiscal Officer of the State~~

(c) The Secretary of the Department of Transformation and Shared Services ~~Chief Fiscal Officer of the State~~

**Item 2. The commission moved to adopt these changes. Senator Ballinger made the motion and Representative Gazaway seconded the motion. The motion passed.**

3. Secretary Fecher also requested revisions to Arkansas Code §§ 22-2-102 and 22-2-113 to remove the reference to Building Authority Division and replace with the Department of Transformation and Services. Act 910 of 2019 transferred the Building Authority Division to the Department of Transformation and Shared Services. This revision logically places these responsibilities with the department as a whole.

**Section 22-2-102. Definitions.**

(2) “Minimum standards and criteria” and other like phrases mean those standards and criteria relating to construction, design, maintenance, and leasing of state agencies' capital improvements adopted by the Department of Transformation and Shared Services ~~Building Authority Division~~ after appropriate public hearings and notice to the public and interested persons and organizations;

**Section 22-2-113. Schedule of supervision — Type three — All other cases.**

(a) Department of Transformation and Shared Services ~~Building Authority Division~~

(2) Department of Transformation and Shared Services ~~Building Authority Division~~

(6) Department of Transformation and Shared Services ~~Building Authority Division~~

(ii) Department of Transformation and Shared Services ~~Building Authority Division~~;

(1) the Department of Transformation and Shared Services ~~Building Authority Division~~;  
Department of Transformation and Shared Services ~~Building Authority Division~~; Department of Transformation  
and Shared Services ~~Building Authority Division~~ from entering into an agreement with the Department of  
Transformation and Shared Services ~~Building Authority Division~~  
(2) Department of Transformation and Shared Services ~~Building Authority Division~~

**Item 3. The Commission decided to pass over these sections.**

4. Secretary Fecher also requested a revision to Arkansas Code § 22-9-208 to remove the reference to Building Authority Division from subsection (a)(3) as this section was amended by Act 910 of 2019 to include the Department of Transformation and Shared Services. Act 910 of 2019 transferred the Building Authority Division to the Department of Transformation and Shared Services. This revision removes a duplicative reference.

**Section 22-9-208. Renovation of historic sites – Legislative intent and construction**

(a)(3) The procedures provided in subdivision (a)(2) of this section should be applicable for specific projects only after review and approval by the Chief Fiscal Officer of the State, ~~the Building Authority Division~~,

**Item 4. The commission approved these changes. Senator Ballinger made moved to accept the changes and Representative Gazaway seconded the motion. The motion passed.**

5. Secretary Fecher also requested revisions to Arkansas Code §§ 22-10-502 and 22-10-503 to provide that the Secretary of the Department of Transformation and Shared Services has rulemaking authority regarding public-private partnerships rather than the Arkansas Economic Development Commission or the Building Authority Division.

**Section 22-10-502. Arkansas Economic Development Commission – Duties.**

(a) The Secretary of the Department of Transformation and Shared Services ~~Arkansas Economic Development Commission or the Building Authority Division~~

**Section 22-10-503. Rules.**

(a) The Secretary of the Department of Transformation and Shared Services ~~Arkansas Economic Development Commission or the Building Authority Division~~

(b) The Department of Transformation and Shared Services ~~commission or division~~ and the authority the Arkansas Development Finance Authority may jointly promulgate rules that establish procurement guidelines and requirements that vary depending on the type of qualifying project.

**Item 5. The Commission decided to pass over these sections and hold until next meeting.**

6. Secretary Fecher also requested revisions to Arkansas Code § 25-4-115 moving the authority to enter into information technology professional service contracts to the Secretary of Transformation and Shared



Services from the Director of the Division of Information Systems. Additionally, Secretary Fecher requested to transfer the responsibility for determining the resignations, vacancies in positions, or the inability to employ the persons with the technical skills to the Secretary of the Department of Transformation and Shared Services from the State's Chief Fiscal Officer.

**Section 25-4-115. Professional services contracts between divisions and outside vendors**

(a) (1) In the event that, due to unforeseen circumstances, the Secretary of Transformation and Shared Services ~~Division of Information Systems~~ cannot provide sufficient information technology support to state agencies, the Secretary of Transformation and Shared Services ~~Director of the Division of Information Systems~~ is authorized to enter into professional services contracts for the necessary information technology support.

(2) The department ~~division~~ may also consolidate information technology needs to satisfy agency requests.

(b) (1) The division may utilize moneys appropriated for maintenance, operation, and payment of regular salaries of the department ~~division~~

(2)(A) Secretary of Transformation and Shared Services ~~Chief Fiscal Officer of the State~~

(B) In addition, the Secretary of Transformation and Shared services ~~Chief Fiscal Officer of the State~~ shall obtain the advice of the Legislative Council

Item 6. The Commission determined that several of these changes were substantive, for example, changing "division" to "department", others were technical, specifically changing "Chief Fiscal Officer of the State" to "Secretary of Transformation and Shared Services". Senator Ballinger moved to approve the technical changes only. Representative Gazaway seconded the motion. The motion passed.

7. Amy Fecher, Secretary of the Department of Transformation and Shared Services, requested revisions to Arkansas Code §§ 25-34-107 and 25-34-108 to replace the references to the Department of Finance and Administration with the Department of Transformation and Shared Services.

**Section 25-34-107. Surplus equipment not sold.**

(c) (1) Unsold surplus computer equipment may be sent to the Marketing and Redistribution Section of the Office of State Procurement of the ~~Department of Finance and Administration~~ Department of Transformation and Shared Services

**Section 25-34-108. Disbursement of revenues.**

(1)(B) Fifteen percent (15%) of the proceeds shall be deposited with the Marketing and Redistribution Section of ~~Department of Finance and Administration~~ Department of Transformation and Shared Services

Item 7. Representative Gazaway moved to ratify the changes recommended by staff. Senator Ballinger seconded the motion. The motion passed.

8. Secretary Fecher also requested a revision to Arkansas Code § 25-43-808 to transfer the certification receivership on the assignment of duties for county health unit administrators to the Secretary of the Department of Transformation and Shared Services from the State's Chief Fiscal Officer.

**Section 25-43-808. Additional compensation — County health unit administrators.**

(1) The Department of Health shall certify to the Secretary of the Department of Transformation and Shared Services ~~Chief Fiscal Officer of the State~~

**Item 8. Commission decided to pass over this requested change.**

**ACT 910 ISSUES FOR THE ARKANSAS CODE REVISION COMMISSION (Exhibit C-3)**

1. Wes Ward, Secretary of the Department of Agriculture, requested revisions to Arkansas Code §§ 25-38-202, 25-38-206, 25-38-211, and 25-43-202 to remove the Red River Compact Commission from the list under the Department of Agriculture. It should have been the Red River Commission. The Red River Compact Commission is a federal entity which we do not have the authority to move under a state department.

**The Commission decided not to take action in regard to the Red River Compact Commission.**

2. 14-118-203

(e) Members of the commission shall receive no pay for their services, but whenever the General Assembly shall have appropriated funds to the Arkansas Water Development Fund administered by the Arkansas Soil and Water Conservation Commission, they may, upon proper application to the Arkansas Soil and Water Conservation Commission, be reimbursed for expenses in accordance with 25-16-901 et seq.

The Soil and Water Conservation Commission no longer exists. It became Natural Resources Commission. The Department of Agriculture suggested that the reference should now be Department of Agriculture.

**The Commission decided not to take action in regard to this request.**

**With no further business, the meeting adjourned.**

## MINUTES OF ARKANSAS CODE REVISION COMMISSION MEETING

**Tuesday, December 1, 2020**

**1:00 P.M.**

**Room B, MAC**

**Little Rock, Arkansas**

Commission members present were: Speaker of the House of Representatives Matthew Shepherd, Chair; Representative Jimmy Gazaway (*zoom call*); Senator Will Bond; Senator Bob Ballinger (*zoom call*); Commissioner Bettina Brownstein (*zoom call*); Commissioner Candice Settle (*zoom call*); Theresa Beiner, Dean, University of Arkansas at Little Rock Bowen School of Law (*zoom call*); Matthew Miller, Assistant Director, Bureau of Legislative Research.

Also present were: Vincent Henderson II, Arkansas Code Revisor; Leslie Metheney, Director, Government Content (*zoom call*); Anders Ganten, Lexis Nexis (*zoom call*); Dr. Charisse Childers, Director, Division of Workforce Services; Charles Lyford, Legal Counsel, Arkansas Rehabilitation Services Division and Division of Services for the Blind; Trella Sparks, Staff Attorney for the Arkansas Highway Commission; Courtney Salas-Ford, Chief Legal Counsel, Department of Education; Mitch Rouse, Chief Legal Counsel for the Department of Transformation and Shared Services.

Speaker of the House of Representatives Shepherd, Chair, called the meeting to order.

### **Minutes of the August 20, 2020 Meeting (Agenda Item B)**

Without objection, the Minutes of the August 20, 2020, meeting were approved as presented.

### **Undecided ACT 910 issues remaining from August 18, 2020 meeting (Agenda Item C)**

Speaker Shepherd recognized Mr. Henderson, Code Revisor, to discuss in detail the remaining unresolved and conflicts issues arising out of Act 910 of 2019.

#### **1. 6-50-702. Definitions.**

Director of the Office of ~~Career Education~~ Skills Development.

#### **6-50-703. Arkansas Existing Workforce Training Program — Creation — Purpose.**

Career and Technical Education [Office of Skills Development]

Mr. Henderson began with § 6-50-702(6), the definition of “governing council”, was amended by Act 910, § 143, to change the names of certain officers comprising the council, including changing the “Director of the Department of Career Education” to the “Director of the Office of Skills Development”.

Speaker Shepherd asked Mr. Henderson if the conflict is the governing council in § 6-50-702 was different than the reference in § 6-50-703. Mr. Henderson stated that that was correct. Speaker Shepherd asked Mr. Henderson for his recommendation. Mr. Henderson recommended to change the term in § 6-50-703 to conform with the definition of governing council as a defined term so that it would instead refer to the “Office of Skills Development” in place of “Division of Career and Technical Education”.

Speaker Shepherd recognized Dr. Charisse Childers, Director of the Division of Workforce Services, to speak on item number 1. Dr. Childers, stated the Department of Career Education was dissolved into four

agencies/divisions and not all changes were caught in the process. Dr. Childers stated the change to the governing council had to do with the governing council that was to oversee the existing worker training program that was housed in the Arkansas Economic Development Commission and that was the purpose for its creation. The purpose of the governing council was to oversee grants and the worker training program in the Arkansas Economic Development Commission and to have representation from the entities that would or could be involved in that training through the existing working training program. So, the change to Office of Skills Development in alignment with the language that followed in the bill is correct and that would include the Office of Skill Development in place of the Division of Career and Technical Education. What happened in many circumstances was because the Department of Career Education sounded similar to what had already existed which was the Division of Career and Technical Education there were times in the bill drafting and maybe codification where it was that the Department of Career Education was the same as Division of Career and Technical Education, and that is not the case.

Speaker Shepherd recognized Charles Langford, counsel for the Rehabilitation Services & Division of Services for the Blind within the Division of Workforce Services. Mr. Langford, in answer to a question by the Chair, stated that anything that is out of the scope of the Commission's technical corrections authority could be placed in a clean-up bill and that would apply to this item 1, concerning the Office of Skills Development.

**This item was referred for inclusion in the Commission's technical corrections package for the next legislative session.**

2. Mr. Henderson explained that by Acts 2015, No. 892, § 5, the "State Board of Career Education" was reorganized and renamed "Career Education and Workforce Development Board". In Act 910, § 126, the Career Education and Workforce Development Board was transferred to the Department of Commerce. In several Arkansas Code sections the 2015 name change has not been effectuated yet because those Code sections have not been expressly amended since 2015, at which time we would ordinarily implement the name change.

**A. 6-50-505. Waiver of rules — Articulation agreements — Duties of State Board of Career Education and Workforce Development Board.**

For example, Arkansas Code § 6-50-505, was amended by Act 315, but which was not amended by Act 910. The highlighted text indicates the correct names based on the name changes effectuated to implement the 2015 and the 2019 acts.

The problem that was created by Act 910 was that the Division of Career and Technical Education, which is authorized to adopt rules in this area, was placed in the Department of Education, while the Career Education and Workforce Development Board (the new as of 2015 name for the State Board of Career Education) which can provide waivers of those rules, was placed in the Department of Commerce. In other words, one department may issue the rules while a different department may issue waivers to those rules. While this is a possible intended result, it is an unusual one, especially since it skews the implementation of the law in a way that is contrary to how the Arkansas Code section was initially enacted, i.e., the board supervising the then-department with the authority to waive the supervised department's rules.



Mr. Henderson recommended that in subsection (a) the references to the State Board of Career Education and the Department of Career Education be corrected to State Board of Education in the Division of Career and Technical Education.

**This item was referred for inclusion in the Commission's technical corrections package for the next legislative session.**

**B. 6-52-205. State Apprenticeship Coordination Steering Committee — Duties.**

Mr. Henderson explained that in Arkansas Code § 6-52-205, as amended by Act 910, § 150, which changed in subdivision (b)(1) "Department of Career Education" to "Office of Skills Development", it did not address the reference in subsection (a) to the State Board of Career Education. He recommended that the reference be corrected to the Career Education and Workforce Development Board.

Mr. Henderson stated he believed that (a) should probably be the Career Education Workforce Development Board in light of the fact that (b)(1) is also Skills Development. Speaker Shepherd asked if the Office of Skills Development falls under the Career Education Workforce Development Board. Mr. Henderson stated yes it does.

**This item was referred for inclusion in the Commission's technical corrections package for the next legislative session.**

**C. 6-52-204. State Apprenticeship Coordination Steering Committee.**

And then there was Arkansas Code § 6-52-204, as amended by Act 910, §§ 148 and 149, which changed in subdivision (b)(1) "Department of Career Education" to "Office of Skills Development", but did not address the reference in subdivision (a)(4) to the Department of Career Education. We corrected that reference to the Office of Skills Development which we believe makes sense in light of the changes made elsewhere in the section and in § 6-54-205 above.

Mr. Henderson stated in (b)(1) and (c)(1) it was changed to Office of Skills Development by Act 910, however the reference to Department of Career Education in (a)(4) was not changed. He stated that it probably should be Office of Skills Development in light of what was done in § 6-52-205 as well internally with this section and this could also be corrected in a technical corrections bill.

**This item was referred for inclusion in the Commission's technical corrections package for the next legislative session.**

**D. Arkansas Code § 6-51-213(c)(1) states:**

(c)(1) The Director of the Division of Career and Technical Education, as executive officer of the board for the purpose of administering the federal act and this act, shall, by and with the advice and consent of the board, designate assistants as may be necessary to carry out properly the provisions hereof.

Mr. Henderson stated the division reference was renamed from the State Department of Career Education and assigned to Department of Education, the board referred to State Board of Career Education which was not amended by Act 910. Technically that board was renamed Career Education Workforce Development

Board. The problem is that the referenced director of the division in the Department of Education is named the executive officer of a board that is in the Department of Commerce and is authorized to designate assistants in the Department of Education's division with the advice and consent of the board in the Department of Commerce. To whom are these assistants responsible? The director is also required to implement the board's rules. If he or she fails or refuses to carry out the board's rules, what recourse would the board have? The board should probably be changed to be the State Board of Education.

Speaker Shepherd stated it's a similar issue to what we're seeing elsewhere where the Career Education was essentially split in two and certain functions went to one department or another and this would be making a change from State Board of Career Education and changing that reference to State Board of Education and that would in § 6-51-213. He proposed sending it for drafting.

Dr. Childers was recognized for a comment. She explained that in § 6-51-213 that is correct, however in § 6-51-213(c)(1) should read the Commissioner of the Division of Elementary and Secondary Education instead of the Director of the Division of Career and Technical Education and then section § 6-51-213(c)(2), should also have commissioner in the place of director. The reason for this is when the Department of Career Education existed, I was a non-voting member of the board as the Director of the Department of Career Education and in doing so the board had the ability to approve and direct federal and state vocational funds. In the current capacity now of the career education and other federal and state vocational and educational funds that is under the oversight in the direction of the State Board of Education. And, so as Commissioner Key is the Commissioner of the Division of Elementary and Secondary, our recommendation is that it should read the Commissioner of the Division of Elementary and Secondary Education instead of the Director of the Division of Career and Technical Education because the Director of the Division of Career and Technical Education is a staff member and director of that division but is not a member of the State Board of Education. That individual can provide recommendations and can inform the commissioner but does not have the sole responsibility of directing those funds as the State Board of Education does.

Mr. Henderson was recognized and asked Dr. Childers whether the Commissioner of the Division of Elementary and Secondary on the State Board of Education. Dr. Childers stated yes, referencing § 6-11-102(b), the Commissioner of the Division of Elementary and Secondary Education is an ex-officio member of the State Board of Education. Mr. Henderson asked who the Executive Officer of the board is.

Courtney Salas-Ford, Chief Legal Counsel, Department of Education, was recognized and stated that she concurred with Dr. Childers comments about it being "commissioner". She further stated that she didn't know if it actually applied to the commissioner or anyone, as Dr. Childers stated the commissioner is an ex-officio member but he's a non-voting member and acts as secretary to the State Board of Education but only the members themselves she thought would constitute executive officers. Ms. Ford said she would suggest going farther and replace director with commissioner, but then possibly remove the executive officer of the board reference.

Speaker Shepherd asked about another meeting during session and if that's a possibility? Mr. Henderson replied yes. Speaker Shepherd suggested that he prepare draft language correcting § 6-51-213(a) and additionally work with the department to draft legislation in regard to (c)(1) and circulate to the commission in advance of session or if need be call another commission meeting during the session to review the actual language.

**The proposed changes were referred for bill drafting for the next session.**

- E.     **6-51-203. Determining school location and establishing courses of instruction.**  
          **6-51-205. Board responsibility for school operation — Personnel and equipment.**  
          **6-51-208. Student fees.**  
          **6-51-209. Accident insurance for students.**

In Arkansas Code §§ 6-51-203, 6-51-205, 6-51-208, and 6-51-209, there were several uncorrected references to the State Board of Career Education. In light of the subject matter and because of the correction made in Arkansas Code § 6-51-213, these references should be corrected to State Board of Education. Mr. Henderson referenced specifically: § 6-51-203(a) and (b); § 6-51-203(a); § 6-51-208(a); § 6-51-209(a).

Speaker Shepherd recognized Dr. Childers for comment. Dr. Childers stated in several references to the State Board of Career Education in the above sections, these references would be incorrect if they referenced the State Board of Education in place of the State Board of Career Education. The entity that is a technical institute and is the only technical institute in the state that was transferred during transformation to the Arkansas Department of Higher Education and now the Division of Higher Education is under the Department of Education. So, her recommendation as a former Director of the Department of Career Education would be that the references be changed to the “Arkansas Higher Education Coordinating Board”, as the existing school governed by these statutes, The Northwest Technical Institute in Springdale was assigned to the Division of Higher Education. In § 25-43-505 The Black River Technical College in Pocahontas was the one remaining vocational school but it was transferred to the Division of Higher Education in 1993. So it was operating as a vocational school and now it’s operating as a technical college under Division of Higher Education as is The Northwest Technical Institute due to transformation in 2019.

Mr. Henderson stated in light of the information it would be advisable to have this as a separate bill.

**The proposed changes were referred for bill drafting for the next session.**

- F.     **6-51-401. Course of instruction generally.**

Mr. Henderson explained that Arkansas Code § 6-51-401, was amended by Act 315, § 349, and Act 910, § 1861. However, neither act addressed the reference to the State Board of Career Education in subsection (a), although Act 910 did change the reference to the Department of Career Education to the Division of Career and Technical Education.

Again, if we were to use the 2015 name for the State Board of Career Education, we would have a law that authorizes one department to establish plumber training programs while directing another department to create courses of study to be used in those plumber training programs. That is because the Act 910 amendment moved the course creating responsibility to a division in the Department of Education. Despite the amendment made by Act 910, and in light of the subject matter, he suggested that the reference in subsection (a) to the Career Education and Workforce Development Board in the Department of Commerce would appear to be a more accurate reference. The amendment made in subsection (b) would have been better if it had been changed to the Office of Skills Development. In that way the both parts of this act would be under the Department of Commerce. The alternative would be to change the reference in subsection (a) to the State Board of Education.



Speaker Shepherd recognized Dr. Childers for comment. As far as this recommendation concerning § 6-51-401 she stated that § 6-51-401, 402, 403, and 404 could be repealed. During transformation certain sections were repealed that were specific to the correspondence courses and this should have been repealed at the same time. These statutes originated in 1975 and were last substantively amended in 1999, training to be a plumber is done through apprenticeships rather than course work and secondary school. Even the Northwest Technical Institute does not offer a course or training program in plumbing. The apprenticeships are administered by the Career Education Workforce Development Board and Office of Skills Development and the state-supported community colleges and § 17-38-401 supports that.

Speaker Shepherd stated that he would like to refer this for drafting of the changes as proposed and that the department could work on a bill to repeal the sections outside of the commission process. Speaker Shepherd also stated he was concerned if the commission start repealing large chunks of statutes, that the commission might be pushing its authority beyond reconciling conflicts to actually deleting multiple sections. Mr. Miller was recognized and stated there would be language in the technical correction bill that makes it clear that should the department have their own bill, it would supersede whatever were to happen in the technical corrections bill.

**The proposed changes were referred for bill drafting for the next session.**

### **3. 22-10-502. Arkansas Economic Development Commission – Duties.**

#### **22-10-503. Rules.**

Secretary Fecher requested revisions to Arkansas Code § 22-10-502 and § 22-10-503 to provide that the Secretary of the Department of Transformation and Shared Services has rulemaking authority regarding public-private partnerships rather than the Arkansas Economic Development Commission or the Building Authority Division.

Mr. Henderson stated Act 910 transferred the Building Authority Division over to The Department of Transportation and Shared Services and that position promulgates rules for all statewide projects. So, in § 22-10-502(a) we would take out the Arkansas Economic Development Commission or the Building Authority Division and put in the Department of Transformation and Shared Services. Also, in § 22-10-503(a) the same thing, as well as in subsection (b).

Speaker Shepherd stated so that in item 3 with regard to § 22-10-502 and § 22-10-503(a) Secretary Fecher would like for the change to be made from the Arkansas Economic Development Commission or the Building Authority Division to the Secretary of the Department of Transformation and Shared Services and then later on in subsection (b) which is at the very end of § 22-10-503 that would be the addition of the Department of Transformation and Shared Services with the deletion of the commission or the division and the authority of the Arkansas Development Finance Authority. Speaker Shepherd noted that the commission was being asked to make a change potentially from a commission or division to an individual. He asked for an explanation as to why the Arkansas Code Revision Commission should make the requested changes from a commission or from the division to the secretary.

Speaker Shepherd recognized Mitch Rouse, Chief Legal Counsel for the Department of Transformation and Shared Services, who explained that it was simply a typographical error and that it should be Department of Transformation and Shared Services instead of the Secretary.



Speaker Shepherd stated so with that change basically we would take out secretary and it would be Department of Transformation and Shared Services and we would make those two replacements.

**Item 3 was referred for drafting as inclusion in part of our package of legislation.**

### **Technical Corrections Bills (Agenda Item D)**

Speaker Shepherd asked Mr. Henderson to briefly advise what these pieces of legislation would do. Speaker Shepherd announced that the commission would vote on these bills as a batch. If after hearing these or if there is discussion on a particular bill, it can be out of the batch for further consideration separately.

Mr. Henderson stated several of these are pretty simple and straightforward bills. He explained them as follows, each bill containing corrections in one title:

**Title 1** This bill would clarify obsolete references to the Arkansas Transportation Commission which has been abolished and was transferred to the Arkansas Department of Transportation and remove some language referring to some repealed sections. Mr. Henderson pointed out the language in section 3, noting that every technical corrections bill has this language. Mr. Miller explained that this language establishes that if legislation is passed in the same session that conflicts with a technical corrections bill, that conflicting legislation would supersede the conflicted language in the technical corrections bill.

**Title 2** Mr. Henderson explained that this bill clarified a couple terms making them singular “livestock” and “poultry” clarifying some language in the way the term is used. The proposed bill would correct grammar, reorganize the definition and clarify some language with respect to the federal hog ratification fund and draft it in language ordinarily used in describing a fund and its uses.

**Title 4** In Section 1 the language doesn’t fit in with the introductory language in the Code section and this would correct it.

**Title 5** Some references to a defined term would be corrected, and a style change made to conform it to general Code style. In Section 4 a slight grammatical error would be corrected, references clarified, a style change made, corrected grammatical error, and clarified application. Section 5 rewrote language in line with how criminal statutes are drafted. In Section 6 clarified a reference and made clear that the license referred to is a license to conceal a handgun.

**Title 6** Mr. Henderson suggested repealing some old language and added new language for clarification and a new reference; repealing the rural teachers training departments language as requested by the Commission at its last meeting.

**Title 7** Some language was duplicated in (b)(1) and (b)(2) for clarification.

**Title 8** A reference would be clarified to make a stylistic change from “city” to “municipality”. The bill would correct a reference to regulations as the United States Environmental Protection Agency does have regulations, the Arkansas division has rules. The bill would clarify the definition of open burning and correct a reference from Department of Labor to what is now the Division of Labor.

**Title 9** Mr. Henderson suggested repealing some old language and adding some language for clarification, for example, the term “re-disclosed” should just be “disclosed”. In Section 2 minimum age to marry would be amended to include the possible requirement of consent by guardian for persons over 17 but under 18 to marry. There are some places in the statute that do not include a guardian for purpose of consent along with a parent or parents. This bill would incorporate for consistency the requirement for a guardian’s consent. The bill would also change child to contracting party because that is the term being used elsewhere in the statute. In Section 3 Mr. Henderson suggested repealing obsolete language as well as in Section 4. In Section 5 he would fix certain language by changing “re-disclosed” to “disclosed” in the sections.

**Title 10** Mr. Henderson recommended repealing obsolete references in Sections 1, see the expired reference in Section 1(b)(1) on line 27 and 28; obsolete language in Section 2; in Section 3, page 3, line 35, the entire section as expired on July 1, 2019; and in Section 4 as that section expired on sept 30, 2017.

**Title 12** A reference would be clarified; Game and Fish Commission still has regulations. With respect to sexual assault, definitions were removed from one of the sections that was in that subchapter and put into the definitions section for the entire subchapter. Definitions were reworked with the current language in the statute. In Section 3 the catchline was amended to include fictive kin on page 8, line 8. While the language in the catchline included “fictive kin” the language in the text did not, but it was probably intended for it to be in the text. Federal, state, or local government entities in Sections 4, 5, 6, and 7 were clarified. In Section 8 there is an error concerning punitive isolation or consolidation confinement in (b)(2)(a) as it was not put in (b)(2)(b) yet it refers to (b)(2)(a) as probably intended. Section 9 amending § 12-32-102(c) in which “pregnant inmate or detainee” is used inconsistently, and corrected to refer to the complete term in these instances. In Section 10 references to “jailer personnel” were corrected to “jail personnel”. In Section 11 the criminal penalty and the civil forfeiture would be clarified.

**Title 14** A minor change was made to be consistent with other 2019 legislation in Section 1. The term “and/or” was corrected with the appropriate “or” in Sections 2, 3, 4, 5, 6, 7, 8, 9, and 10.

**Title 15** In Section 1 a phrase was clarified. In Section 2 “applications for rebate” is a defined term so it was corrected in (a)(1) and (2), and in (b)(2) “financial incentive agreement” was included for consistency. In Section 3 on page 3, line 2, the word “a” was removed as unnecessary. And in Section 4 “willfully” was changed to “knowingly”.

Speaker Shepherd asked if anyone had a question or comment about the changing the mental state of the offense from “willfully” to “knowingly”. His recollection was “knowingly” is more commonly used as legislation is now drafted as opposed to “willfully” as used in the past.

Commissioner Settle stated that “willfully” would not be the same thing as “knowingly”, but recognized she had lost that argument previously

Senator Ballinger asked a question about the language concerning a license to carry a concealed handgun in the **Title 5 bill**. On page 3, line 36, he would strike that change and leave the language as is. Mr. Henderson stated he would just take Section 6 out.

**Title 16** Mr. Henderson stated everything that was taken out was obsolete concerning references to municipal courts and municipal clerks now that district courts have replaced the municipal courts. The bill also would repeal sections concern obsolete justice of the peace courts and old city courts.

Commissioner Settle has a question about Section 12 regarding “but not limited to” being changed to “without limitation” stating she was not sure that they are the same thing. Mr. Henderson stated it was now a practice per the Bureau of Legislative Research Legislative Drafting Manual as a matter of course.

In Section 20, “necessary” was deleted as it was unnecessarily duplicated. In Section 21, some references were corrected in light of Act 910.

In Section 22, page 34, lines 19 and 20, Mr. Henderson explained that he had considered changing “man-made” to “artificial” to make it consistent with “natural” used in the sentence, but wanted advice from the Commission. In Section 23, an “and” was corrected to “or”.

Senator Bond asked about the change to “artificial”, why it was being suggested and is that something stylistically applied across the board. Speaker Shepherd asked why we would change these terms from “man-made” to “artificial”. Mr. Henderson said he suggested it to make it consistent with the term “natural” as used in the statute. Mr. Miller said it is the only time it is used in Title 16.

Speaker Shepherd agreed with Senator Bond and did not want to make the change from “man-made” to “artificial”.

**Title 17** This bill would simply correct some references from division to department and correcting some internal citations and clarifying language in Section 3 by restructuring that section.

**Title 18** Concerning § 18-46-104 regarding certain liens, Mr. Henderson explained that some unnecessary language was removed. Mr. Henderson pointed out that in § 18-46-104(a)(2) the language says that each provider shall have a lien on a “claim, right of action, and money” to which the patient is entitled because of injury and to costs and attorney fees incurred in enforcing that lien. He stated that he did not think this was intended to create a lien for the costs and attorney fees separately in part from the lien itself, so he put in a subsection (b) the reference to costs and attorneys’ fees for enforcing the lien. Mr. Henderson stated that it seemed out of place to begin with but the way this would otherwise read you would have a lien also for the costs and attorneys’ fees for enforcing the lien, which Mr. Henderson didn’t think was the typical lien. So the language was duplicated as far as the particular providers and explained that they would be entitled to attorneys’ fees and costs for enforcing the lien.

Speaker Shepherd asked whether this was like a medical lien. Mr. Henderson answered affirmatively. Speaker Shepherd said as he understood it, that because subsection (a) says each shall have a lien and then in (2) it refers to on any claim, right of action, and money to which the patient is entitled because of that injury and to costs and attorney’s fees incurred in enforcing the lien, does that create an additional lien, and by moving it to subsection (b) would we be providing for costs and attorneys’ fees but no lien related thereto.

Senator Bond asked whether that language got put in recently and said he agreed with the proposed codification, asked whether we should be rewriting this. Mr. Miller stated that no changes had been made since 1993.

Speaker Shepherd said what he would propose without objection is to send this into the batch of bills that are still on our agenda for us to look at in future discussions and that we not include that in this packet of



technical corrections. Mr. Henderson says he would like to go ahead and take that out, but leave the other corrections that are in subsection (a).

**Title 20** Mr. Henderson suggested a change of reference from the Deputy Director to Division of Workforce Services because there is no deputy director.

**Title 21** Mr. Henderson would make a small correction to clarify “to have his or her annual salary adjusted” in Section 1. In Section 2 he would recommend repealing § 21-8-705 because it expired December 2016. In Section 3 Mr. Henderson suggested repealing certain outdated language, and adding the term “a legal resident of an adjoining state” to conform throughout.

**Title 23** As protected cell is a defined term, in Sections 1 and 2, Mr. Henderson recommended inserting “protected”. In Section 3 he recommended repealing § 23-79-160 because it is obsolete.

**Title 26** In Section 1, line 24, Mr. Henderson would change “willfully” to “knowingly” and “misdemeanor” to “violation” and take out some obsolete references and some dates in Sections 2, 3, and 4. In Section 5 he recommended repealing an expired provision. In Section 6, he recommended changing the terminology of “qualified widow and widower” to “surviving spouse” because the section refers to federal law and that is now the language used. Mr. Henderson suggested removing a defined term that is not used and taking out repealed language in Sections 7, 8, 9, 10, and 11. He rewrote a provision in Section 12, taking substantive language out of a definition and codifying it in a separate section in Section 13. In Sections 14, 15, 16, and 17 he recommended repealing obsolete language. In Section 18, he corrected a conjunction. In Section 19, he merged the tax deduction for Boys and Girls Clubs of America as they have been merged as an organization. Senator Ballinger pointed out that on page 16, lines 31 and 33, there are some references to “surviving spouse” needing to be included in the corrections.

**Title 27** Mr. Henderson recommended correcting “gross weight” to “gross loaded weight”.

Speaker Shepherd called out the changes that will not be made in the technical corrections bills which include reference to the language regarding the license to carry; the change from man-made to artificial; the language moving the attorneys, fees and costs related to the medical lien statute, and to go ahead and make the change in regard “to widow and widower” throughout that piece of legislation.

Senator Ballinger spoke about a **Title 12** reference about the Game and Fish Commission and the inclusion of “and regulation” if that language was specifically taken out with that legislation he would have it taken out and let the Game and Fish Commission have it inserted by legislation.

Trella Sparks, Staff Attorney for the Arkansas Highway Commission, said with respect to the proposal in Section 1 of the **Title 1** bill to change a reference from “Arkansas Transportation Commission” to the “Arkansas Department of Transportation” she would ask that it be changed to the “Arkansas State Highway Commission”, the reason being Arkansas Transportation Commission was abolished and its duties are divided between The State Highway Commission and Department of Transportation and § 1-3-103 refers to issuing general orders and the publication of them and that would fall under the responsibility of the State Highway Commission. Speaker Shepherd asked if she was also wanting the same for section 2, to which she agreed.



Speaker Shepherd announced that the bills before the Commission would be submitted for filing as technical corrections bill, however the changes made that would be incorporated or not incorporated as the case may be would be this change from “Department of Transportation” to the “Arkansas State Highway Commission”; we would delete the addition of “and regulation” related to the Game and Fish Commission that Senator Ballinger mentioned earlier; not make the change from “man-made” to “artificial”; not make the change regarding the lien for costs and attorneys’ fees; we would make additional changes regarding “widow and widower.

Speaker Shepherd stated that sponsorship of the technical corrections bills would be discussed later among the legislative members of the Commission.

**Publisher proposed Arkansas Code replacement volumes and price adjustments for next three years**  
**(Agenda Item E)**

Speaker Shepherd then recognized Mr. Henderson to discuss the proposal from the publisher concerning proposed replacement volumes and price adjustments.

Mr. Henderson explained that there are two parts to the letter from LexisNexis: a list of proposed replacement volumes for 2021, 2022, and 2023, and a proposed price adjustment schedule. He stated that he is recommending that we replace four volumes in 2021 4A and 4B, and 5 which would be reorganized and split to add an additional volume. In 2022, he would recommend replacing volumes 6B, 21 split into two volumes, and 28A and 28B which would be split into three volumes. That would be total of 10 volumes over the two-year period. LexisNexis requested that the Commission consider replacement volumes for 2023. Mr. Henderson further explained that after discussing this part of the proposal with Ms. Metheney, in light of the fact that there will be two more regular legislative sessions before the 2023 replacement period, that it might be a little premature decide what volumes to replace in that third year.

Ms. Metheney from Lexis Nexis is recognized. She explained that she appreciated the problem of identifying the third year of replacement volumes. Due to the large amount of legislation that Arkansas generates she stated that it is important to keep up the Arkansas Code we need to average six replacement volumes a year. If we only do ten it creates a problem where we will get behind. She suggested doing one more volume, such as 24B which would be split, and would not be that much more additional work, would keep the Code up, and would keep the Code replacement schedule from being more onerous for both their editorial staff and the commission’s staff.

Senator Bond asked for clarification of the recommendations and request. Mr. Miller explained that Mr. Henderson was recommending 10 total volumes and Ms. Metheney was requesting the Commission add another volume to be split to that list. Mr. Miller asked Mr. Henderson what 24B would include. Mr. Henderson responded that it would include the last volume of Title 23.

Senator Bond moved to accept staff recommendation, and Senator Ballinger seconded. The motion passed.

Ms. Metheney explained LexisNexis’ pricing proposal: for replacement volumes a little less than 4% price increase; for the index less than a 4% price increase, and for the cumulative supplement a 4.1% price increase. She stated that in comparison to the Producer Price Index where actual industry costs are up 10%-

15% the publisher did not want to go that far but wanted to keep to a modest increase and felt that the 4% range was a fair number.

Senator Bond said he was fine with the increase and assumed there has to be some small increase yearly for print. Senator Bond said he was not sure if Mr. Henderson had an opinion on it but he was fine with the request.

Mr. Henderson said the price increase is well in line in view if the cost increases for publishing in the Producer Price Index. He also pointed out that the pocket parts supplement price would not increase until the 2023 supplements.

Senator Bond moved to approve the requested price increases. Commissioner Settle seconded the motion. The motion was approved.

**Discussion of United States Supreme Court copyright decision, Georgia v. Public.Resource.Org Inc., No. 18-1150 (U.S. Apr. 27, 2020) (Agenda Item F)**

Mr. Henderson stated this is just a short explanation of Georgia v. Public.Resource.Org and Mr. Anders Ganten with Lexis has been following the case closely and asked him if he would give a short presentation to the Commission on the decision and what effect, if any, it has on the Arkansas Code of 1987 Annotated.

Speaker Shepherd recognized Mr. Ganten.

Mr. Ganten explained that the Supreme Court earlier this spring ruled on the case Georgia v. Public.Resource.Org which had to do with the status of the Official Code of Georgia Annotated and the copyrightability of the Georgia Code Annotated. Georgia's copyright was challenged by a company in California and Arkansas joined in an amicus brief. The Supreme Court ruled and the ruling isn't straightforward. PublicResource.org declared victory in terms of the copyrightability of the annotations. What we found in our analysis is that at this the ruling of the Supreme Court does not have a particularly broad application and one of the reasons why I am saying that is that Georgia and the way they do their codification work and code work differs from any other state and so mechanically the work that we do with the state of Georgia is fairly similar to what we do with the state of Arkansas. One big difference is there is a section at the beginning of the Code of Georgia that explicitly says that the annotations are merged in with the rest of the code text. Moreover, at the end of each legislative cycle, there is a vote by the full legislature to formally adopt the Official Code of Georgia Annotated. So, because they're doing that in a specific way adopting the annotations legislatively, the Supreme Court came to the conclusion that everything is from the government and as such not copyrightable and no other state really does it that way at this time, in our point of view as far as LexisNexis is concerned. The decision is limited to Georgia.

Speaker Shepherd explained that at this point no action is to be taken. This is just a status report at this time. Senator Bond inquired about the Supreme Court holding. Mr. Miller explained the facts of the case and that the Supreme Court ruled for PublicResource.org.

Commissioner Brownstein stated that she believed that the case did apply to Arkansas and asked for Mr. Henderson's view concerning the ramifications later on.

Mr. Henderson explained the potential applicability of the case to Arkansas. The State of Arkansas owns the copyright to the Arkansas Code of 1987 Annotated. One of the issues the court was trying to work around was the copyrightability of the annotations by the state. The Court went on a tangent about the annotations that did not make sense, except perhaps to them. The Commission may have to discuss separating the annotations from the Code itself, allowing the publisher to copyright them with a contractual obligation to either transfer them to the State or to a future contractor. The actual statute language is not in question. It was the annotations that were in question in the case.

Mr. Ganten explained what actions might be possible in the future depending on getting some clarity from the Copyright Office in the next year. It may be advantageous to do something similar to what Mr. Henderson stated or perhaps grant a nonexclusive license to the State.

#### **Recodification proposals (Agenda Item G)**

Mr. Henderson stated that these are some proposals not for a decision today but for the Commission to look at. We are looking at recodification finally, Title 19 Public Finance being the most necessary and closer to consideration. We also have different titles in various stages of development: Title 3 Alcoholic Beverages, Title 7 Elections, Title 16 Practice, Procedure, and Courts. He asked that the Commission take a look at those. Next year sometime after the session, we may come back and ask the Commission to authorize us to do more recodification other than Title 19, already approved, to set up a plan or program to go about doing the recodification work, possibly having someone appointed or having someone volunteer to chair an ad hoc committee, bringing interested parties together to look at the draft, this would be more than technical corrections, this would be substantive, how we should write or rewrite Title 19 to figure out how to better fit with how things are done now.

Speaker Shepherd asked if this is something for the Commission to take a look at for consideration and discussion at a future meeting. Mr. Henderson answered in the affirmative.

#### **Other Business (Agenda Item H)**

None.

#### **Report of Code Revisor (Agenda Item I)**

Mr. Henderson stated all of the replacement volumes were finished and awaiting the volumes to get back from the publisher, but our work was done. He pointed out the letter the Chair sent to the Speaker of the House, the President Pro Tempore of the Senate, and the Legislative Council, as required under Act 910 reporting the changes the Commission made as a result of Act 910 from the October 2020 meeting.

With no further business, Speaker Shepherd adjourned the meeting.

