

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

January 8-9, 2016

Friday, January 8, 2016

Persons Present:

Adams, Marguerite (Peggy) L.
Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Burris, William J.
Crawford, William E.
Crigler, James C.
Cromwell, L. David
Csaki, Molly L.
Cunningham, Mark A.
Curry, Kevin C.
Davidson, James J., III
Dawkins, Robert G.
Dick, Kelley R., Jr.
Di Giulio, John
Dimos, Jimmy N.
Domingue, Billy J.
Freel, Angelique
Gasaway, Grace B.
George, Devin
Green, Rodger "Rory"
Hamilton, Leo C.
Hayes, Thomas M., III
Hebert, Christopher B.
Hogan, Lila T.
Holdridge, Guy
Jewell, John Wayne
Knighten, Arlene D.
Kostelka, Robert "Bob" W.
Landry, Ron J.
LaVergne, Luke
Levy, H. Mark
Lonegrass, Melissa T.
Maloney, Marilyn
McBride, Annie

Medlin, Kay C.
Mengis, Joseph W.
Mohamed, Amed M.
Morris, Glenn G.
Nathan, Max, Jr.
Norman, Rick J.
Pohorelsky, Peter
Popovich, Claire
Recasner, Gina
Reed, Angelique
Richardson, Sally
Righteous, Tina
Riviere, Christopher H.
Samuel, Cynthia A.
Scardulla, Anna "Annie" F.
Simon, Anne
Sole, Emmett C.
Stuckey, James A.
Swaim, Justin
Talley, Susan G.
Tate, George J.
Title, Peter S.
Tooley-Knoblett, Dian
Trahan, J. Randall
Tucker, Zelda W.
Vance, Shawn
Varnado, Sandi S.
Waguespack, Francis (Frankie)
Weems, Charles S., III
White, H. Aubrey, III
Woodruff-White, Lisa
Yiannopoulos, A. N.
Ziober, John David

President John David Ziober opened the Friday session of the January 2016 Council meeting at 10:00 AM on January 8, 2016 at the Monteleone Hotel in New Orleans, LA. During the morning session, the Reporter, Mr. Max Nathan, Jr., represented the Successions and Donations Committee and presented materials regarding inventory and detailed descriptive lists in the independent administration of successions and the revision of Code of Civil Procedure Article 3396.18.

SUCCESSIONS

1. Mr. Nathan started his presentation with a reminder to the Council that the reasons for the proposed changes include privacy concerns and the repeal of the state's inheritance tax. He also mentioned that at the August meeting, the Council passed a motion directing the Committee to draft a proposal which states that the sworn detailed descriptive list does not have to be filed, but it has to be furnished to the appropriate interested parties.
2. Today, the first concern of the Council was verification of the satisfaction of the legitime of forced heirs if the detailed descriptive list is not filed in the record. It was also suggested that the proposal allow the universal successors to waive the filing and that it only be sealed upon request. Several members felt that no matter what this proposal says, the forced heirship problem is not solved. The Reporter also informed the Council that the Committee did consider Code of Civil Procedure Article 3136 but decided to limit this proposal to the independent administration context with the option to make similar changes to C.C.P. 3136 at a later date.
3. The Council again discussed the filing and sealing of the detailed descriptive list at great length. There was a motion and a second that the detailed descriptive list must be filed and is sealed only upon request. Numerous members spoke to the value of obtaining a copy of the detailed descriptive list from the Clerk's office for community property partitions, reimbursement claims, and other family matters. Concerns about the cost to obtain this information if it is sealed were also raised. It was mentioned that Louisiana is unique in that we require the filing of the detailed descriptive list, because most states do not. Perhaps educating citizens regarding the importance of the detailed descriptive list and its retention could help alleviate some concerns.
4. The Council again struggled with weighing privacy concerns with the convenience of having this document readily available for other uses and the requirements of the Copeland case. The Council was reminded that in August the motion to require the detailed descriptive list to be filed in every case failed to pass. It was suggested that the Committee come back to the Council with a proposal which addresses who files the detailed descriptive list, who may request that it be sealed, and who may request a copy of it.
5. Ultimately, the question was called by a vote of 36-11 and the motion to require the filing of the detailed descriptive list and have it sealed only upon request passed by a vote of 26-21.
6. The Reporter agreed to bring this material back to his Committee for redrafting in light of today's discussion.

BIRTH CERTIFICATES

President John David Ziober, next introduced Professor J. Randall Trahan as the Reporter of the Birth Certificates Committee. The Professor presented: Revision of the Vital Statistics Laws that Pertain to Filiation: Selected Provisions Requiring Council Approval.

1. Professor Trahan began by seeking the approval of the new comment to proposed R.S. 46.2 and 46.3 which further attempts to clarify an issue the Council has struggled with at several previous meetings. At the January 2015 Council meeting, a member mentioned that the phrase "her first husband", as used in proposed R.S. 40:46.2, is confusing and a motion was made and seconded to change the words to "the former husband". At the October 2015 Council meeting, a hypothetical that included multiple former husbands was

considered and sparked more debate. The Reporter explained that the phraseology must capture the essence of Civil Code Article 186 and it must be clear that it refers to the earlier in time husband. The Council adopted a change in the language and the Committee drafted this comment for further clarity. Without further discussion, the comment was approved.

2. The Reporter next reminded the Council of the final lingering issue in this area. The issue is whether the statutory rules regarding changes to birth certificates due to changes in filiation should be directed to the registrar or to judges. The Council was bothered by the perceived ability of the office of vital statistics to ignore a court order regarding the name of a child. At the October meeting of the Council, judges who are members of the Council suggested requiring the parties to notify the office of vital statistics prior to the signing of a judgment in a filiation action. The judges equated this notice provision to others in existing law.

LUNCH

The Council broke for lunch at 11:45 a.m.

The Council resumed the consideration of the Birth Certificates material at 1:30 p.m.

1. Resuming the discussion on the issue of whether changes to birth certificates due to changes in filiation should be directed to the registrar or to judges, the Reporter directed the Council's attention to proposed R.S. 9:410. The Council suggested and the Reporter accepted adding the following to the end of the proposal: "If no objection is filed, the court shall grant the judgment if mover is entitled to the judgment in accordance with law."

2. The Committee proposal uses the term "may" to avoid perhaps dire consequences if everything in the judgment is correct, but notification was not given to the office of vital records. However, a member of the Council suggested that the term "shall" is more appropriate. The Reporter accepted this change, but an escape clause was needed. There was a motion and a second to add the following: "Nothing in this Section shall prohibit the state registrar of vital records from complying with a filiation judgment which meets all legal requirements except the notification required by this Section." After more discussion, this motion was adopted.

3. The final issue regarding this proposal regards consequences. The Reporter informed the Council that these issues may be raised from the bench and not be included in the proposed judgment. Therefore, we need language to cover this possibility. The Reporter also mentioned that he failed to address when a person seeks a judgment of filiation, but does not wish to amend the birth certificate. After discussing all outstanding issues, the Council finally adopted the following:

R.S. 9:410 Filiation Judgment; Notice

A. Before rendition of any filiation judgment ordering the amendment of a birth certificate, including, without limitation, a judgment of disavowal of paternity, contestation and establishment of paternity, or filiation or paternity, the mover shall send a copy of the pleadings, if any, and the proposed judgment to the state registrar of vital records by United States mail or electronic means. The state registrar shall be given thirty days after receipt of the documents to object. If no objection is filed, the court shall grant the judgment if the mover is so entitled in accordance with law.

B. Nothing in this Section shall prohibit the state registrar from complying with a filiation judgment ordering the amendment of

a birth certificate which meets all legal requirements except the notification required by Subsection A of this Section.

4. Without any discussion, the Council approved the comment to proposed 34.13 and 46.10, 46.11, 75, 1122, and 1142. Thereafter the Reporter thanked the Council and his presentation ended at 2:20p.m.

Title 33 Revision Committee

The Chair of the Title 33 Revision, Judge Jimmy N. Dimos, began the Committee's presentation to the January 8, 2016 meeting of the Law Institute Council at 2:23 p.m. After giving a few words on Judge Lanier's condition and his accomplishments, Judge Dimos handed over the floor to the Reporter of the Committee, Ms. Tina M. Righteous. She began her presentation of the Title 33 Revision Committee's work by mentioning the relevant resolutions that had been assigned to the Committee. She then explained that the document before the Council embodied work by the Committee that amounted to technical corrections. The document was entitled, "Louisiana State Law Institute, Title 33 Revision Committee, Proposed Legislation for 2016 Regular Legislative Session, Prepared for the Meeting of the Council, January 8, 2016, New Orleans, Louisiana". Following this brief introduction, the Reporter introduced the Sections of the document individually.

The Reporter asked the Council to first consider R.S. 33:4251. After examining the Section, a member moved that the Section and the next one, R.S. 33:4252, be adopted as presented in the materials. This motion was seconded and some questions ensued that the Reporter answered. Shortly thereafter, the Council agreed that R.S. 33:4251 and 4252 should read as follows:

§4251. Bond issue

~~Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as "municipal corporation" or "municipality" may, in order issue revenue bonds to construct, acquire, or improve a revenue producing public utility, either within or without its boundaries, obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 30, Sub-title 2, Chapter 4.~~

§4252. Requisites of bonds; authority to issue single bond to United States government agencies

A. Bonds issued under this SubPart Subpart shall be authorized by resolution, or by ordinance if required by home rule charter or applicable law, of the governing body and shall be payable solely from the income and revenues to be derived from the operation of the utility. The bonds shall not constitute an indebtedness or pledge of the general credit of the

municipal corporation political subdivision within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect.

B. ~~They shall be in coupon form but may be made registerable as to principal if so provided in the resolution authorizing the issuance. The bonds shall be in the denomination of one hundred dollars or a multiple thereof, shall mature serially or otherwise in the manner provided by the governing body, but not later than forty years from their date and shall be made payable at the place provided by the governing body. They may be made redeemable at the option of the issuing municipality prior to maturity at the premium (not greater than ten percent of the principal amount thereof) which the governing body determines. The bonds shall be signed by the presiding officer and attested by the secretary or clerk of the municipality under the official seal of the municipality, in the manner provided in the resolution authorizing their issuance. Interest coupons to be attached thereto may be executed with the facsimile signature of the officers, and in the event that any officer whose signature appears on the bonds or coupons ceases to hold office before the delivery of the bonds to the purchaser, his signature shall nevertheless be valid and sufficient for all purposes. The bonds shall be sold in the manner and at the times which the governing body determines, except that in no event shall the bonds be sold at a price of less than par or bear an interest rate of greater than eight percentum per annum. The bonds shall be in such form and have such terms, maturities, prices, redemption provisions and payment provisions as shall be permitted by Chapter 13 of Title 39 of the Louisiana Revised Statutes of 1950, as amended.~~

C. In the event bonds authorized under this ~~SubPart~~ Subpart are proposed to be sold to any agency of the United States Government, pursuant to the terms of a written agreement between the political subdivision and such agency ~~said~~ the bonds may additionally be issued in the form of a single bond, ~~may be fully registerable as to principal and interest, and may provide for repayment of principal, and/or interest, or both,~~ on amortized installments, in lieu of being issued as serial coupon bonds.

She then continued the Committee's presentation by introducing R.S. 33:4253. A motion was made that the Section be adopted as presented in the materials. This motion was seconded and approved without opposition. Revised Statute 33:4253 was approved to read as follows:

§4253. Pledge of revenues of utility; receivership

A. Any bonds issued under this ~~Sub-part~~ Subpart shall be payable from and secured by the pledge of the revenues derived from the operation of the utility constructed, acquired, extended or improved with the proceeds thereof, subject only to the prior payment of the reasonable and necessary expenses of operating and maintaining the utility. Any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the governing body and officials of the ~~municipal corporation~~ political subdivision by the provisions of this ~~Sub-part~~ Subpart. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may pursuant to the application of the holder of the bond, appoint a receiver for the utility, which receiver shall be under the duty of operating the utility and collecting and distributing the revenues thereof pursuant to the provisions and requirements of the resolution or ordinance authorizing the bonds.

B. If more than one series of bonds is issued ~~hereunder~~ pursuant to this Subpart payable from the revenues of any utility, priority of lien on such revenues shall depend on the time of the delivery of the bonds, each series enjoying a lien prior and superior to that enjoyed by any series of bonds subsequently delivered, except that where provision is made in the proceedings authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedure or restrictions provided in such proceedings, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such proceedings.

The Council also agreed with the Reporter that R.S. 33:4254 should remain unmodified—as shown in the materials. Thus, it was agreed that the Section should continue to read as follows:

§4254. Bonds to constitute negotiable instruments

All bonds issued under the provisions of this Subpart shall constitute negotiable instruments within the meaning of the negotiable instruments law.

The Council subsequently considered R.S. 33:4255. A motion was made and seconded that the Section be adopted as modified in the materials. This motion passed without opposition, and R.S. 33:4255 was approved to read as follows:

§4255. Sinking fund

A. Any resolution or ordinance authorizing the issuance of bonds hereunder pursuant to this Subpart shall provide for the creation of a sinking fund into which shall be paid from the revenues of the utility, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the utility, sums fully sufficient to pay the principal and interest of the bonds, and to create such reserve for contingencies as may be required by the resolution or ordinance. The moneys in the sinking fund shall be applied to the payment of interest on and principal of the bonds or to the purchase or retirement of the bonds prior to maturity in the manner provided in the resolution or ordinance.

B. The resolution or ordinance authorizing their issuance may contain such covenants with the future holder of the bonds as to:

- (1) ~~the~~ The management and operation of the utility_;
- (2) ~~the~~ The imposition and collection of fees and charges for the products, commodities or services furnished thereby_;
- (3) ~~the~~ The disposition of such fees and revenues_;
- (4) ~~the~~ The issuance of future bonds and the creation of future liens and encumbrances against the utility and the revenues thereof_;
- (5) ~~the~~ The carrying of insurance on the properties constituting the utility_;
- (6) ~~the~~ The disposition of the proceeds of any such insurance, and
- (7) ~~either~~ Other pertinent matters, deemed necessary by the governing body to assure the marketability of the bonds, provided such covenants are not inconsistent with the provisions of this ~~Sub-part~~ Subpart.

Thereafter, the Reporter asked the Council to turn its attention to R.S. 33:4256. A member made a motion that the Section be adopted as shown in the materials. The motion was seconded and passed without opposition. Thus, R.S. 33:4256 was approved to read as follows:

§4256. Charges for commodities or services provided by utility

A. When any ~~municipality~~ political subdivision has issued bonds and has pledged the revenues of any utility for the payment thereof as herein provided in this Subpart, the ~~municipality~~ political subdivision shall impose and collect fees and charges for the products, commodities and services furnished by the utility, including those furnished to the ~~municipality~~ political subdivision itself and its various agencies and departments, in such amounts and at such rates as shall be fully sufficient at all times to provide for the all of the following:

- (1) To pay the expenses of operating and maintaining the utility;
- (2) To provide a sinking fund sufficient to assure the prompt payment of principal of and interest on the bonds as each falls due;
- (3) To provide such reasonable fund for contingencies as may be required by the resolution authorizing the bonds, and;
- (4) To provide an adequate depreciation fund for repairs, extensions and improvements to the utility necessary to assure adequate and efficient service to the public.

B. No board or commission other than the governing body of the municipality political subdivision shall have authority to fix or supervise the making of these fees and charges.

A motion was made to adopt R.S. 33:4257 as shown in the materials; the motion was seconded and passed without opposition. Revised Statute 33:4257 was approved to read as follows:

§4257. Property of two or more utilities may be pledged

The governing body of the municipality political subdivision may authorize bonds under this ~~Sub-part~~ Subpart payable from the revenues to be derived from two or more utilities owned and operated by the ~~municipal corporation~~ political subdivision (whether or not such utilities are related or used in conjunction) for the purpose of constructing, acquiring, extending, or improving any one or more of the utilities.

The Reporter then introduced R.S. 33:4258. A motion was made to adopt the provision. The motion was seconded, and a Council member asked the Reporter a question which she answered. The Council then agreed, without opposition, that R.S. 33:4258 should read as follows:

§4258. Election to authorize issuance of bonds

A. Before the resolution or ordinance authorizing the issuance of bonds under this Subpart is adopted by the governing body, the question of the issuance of the bonds shall be ~~submitted and approved at either a special or general election which shall be ordered, conducted and canvassed in accordance with either of the following election procedures, at the discretion of the governing body:~~

~~(1) The question of the issuance of the bonds may be submitted to and approved by votes of a majority in number and amount of the property taxpayers who vote at an election held hereunder. In the event the governing body elects to order a property taxpayers' election, all matters pertaining thereto, including the qualifications of voters and the manner of calling and conducting the election and canvassing and promulgating the results thereof shall be governed by the provisions of Chapter 4, Subtitle II, Title 39.~~

~~(2) The question of the issuance of the bonds may be submitted to and approved by a majority of the qualified electors of the municipal corporation who vote at an election held therein substantially in accordance with the general election laws of the state of Louisiana, except that the election shall be ordered, conducted, canvassed and notice thereof published by the governing body in accordance with the procedures set forth in Chapter 4, Subtitle II, Title 39, except where inconsistent with the provisions of this section. In the event the governing body elects to order such an election, all qualified resident electors shall be entitled to vote in the election and voters shall not be required to sign a ballot. Voting machines shall be used in the holding of this type of election and assessed valuation shall not be voted in the election.~~

~~In the event a property taxpayers' election has heretofore been held and promulgated approving the issuance of bonds under this Subpart, as contemplated in Subparagraph (1) above, the governing body may proceed with the issuance and sale of such bonds without complying with the provisions of this section and without any further election approval. by a majority of the electors voting on the proposition at an election in the political subdivision issuing the bonds conducted as provided in Chapter 6-A of the Louisiana Election Code.~~

B. All bonds heretofore issued under the provisions of this Subpart are hereby validated, ratified, and confirmed and declared to be valid and binding obligations of the ~~municipal corporation~~ political subdivision in accordance with the terms of their issuance in spite of any one or more irregularities which may have occurred in the passage of this Subpart or question which might be raised as to the constitutionality of any procedural provision of this Subpart. All proceedings heretofore had in connection with the issuance of such bonds are hereby ratified, validated, and confirmed.

The Reporter then asked the Committee to consider R.S. 33:4259. A member made a motion that the provision be adopted as shown in the materials. This motion was seconded. The President addressed a question to the Reporter. After the Reporter answered the President's question, a motion was made to have the Committee specifically define what a "political subdivision" is in the Subpart (i.e., Subpart C of Part I of Chapter 10 of Title 33 of the Revised Statutes). Another motion was made to create a new Subpart that would provide a definition of "political subdivision." This motion was seconded. At this point a member addressed the body and spoke against the motion to define the term. Another member spoke in support of this sentiment. Yet another member of the Council voiced his objection to defining the term in the proposed legislation. To this, another member objected that she believed the deletions proposed for R.S. 33:4251 to be problematic. This statement was supported by another Council member. This led a Council member to modify his view and state that he was now in favor of merely unstriking some of the language that was shown as struck

in R.S. 33:4251. This response convinced the Council member to change her original motion to just have the Reporter edit her recommended changes to R.S. 33:4251 to read as follows:

§4251. Bond issue

~~Any municipal corporation or any parish or any other political subdivision or taxing district authorized to issue bonds under Section 14, Article 14, of the Constitution of Louisiana, all of which are hereinafter in this Sub-part referred to as "municipal corporation" or "municipality" may, in order issue revenue bonds to construct, acquire, or improve a revenue producing public utility, either within or without its boundaries, obtain funds for the purpose by issuing revenue bonds. For the purposes of this Sub-part, the governing body of the municipal corporation shall be the body empowered to authorize and issue other bonds of the municipal corporation under the provisions of Section 14, Article 14, of the Constitution of Louisiana and Title 39, Sub-title 2, Chapter 4.~~

This motion was seconded; however, the motion failed to pass. Then a motion was made to recommit the issue to the Committee. Specifically, the motion requested that the Committee define a "political subdivision" for the Subpart. This motion was seconded and passed without opposition.

Following the recommitting of R.S. 33:4251, the President asked the Reporter to continue her presentation of the remainder of the Sections in the materials. She agreed to do so by asking the Council to return its attention to R.S. 33:4259. The Council did so and moved that the Section be adopted. This motion was seconded, and R.S. 33:4259 was approved to read as follows:

§4259. Refunding bonds

The governing body of any ~~municipality~~ political subdivision which has ~~heretofore~~ issued or hereafter issues bonds payable from utility revenues under the provisions of this ~~Sub-part~~ Subpart or any other law may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest, and redemption premiums on the outstanding bonds. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are ~~herein~~ required to be authorized by this Subpart, except that no election shall be necessary in the event the refunding bonds are sold at public sale after advertisement in the manner provided by R.S. 39:570 and the annual principal and interest on the refunding bonds is less than the combined annual principal and interest on the bond issue or issues being so refunded, extended and unified. The governing body, in authorizing the refunding bonds, shall provide for

the security of the bonds, the sources from which the bonds are to be paid, and for the rights of the holders thereof in all respects as herein provided ~~by this Subpart~~ for other bonds issued under the authority of this Sub-part Subpart. The governing body may also provide that the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded.

Next, the Reporter introduced R.S. 33:4260. A motion was made to adopt the Section. The motion was seconded and passed without opposition. Thus, R.S. 33:4260 was approved to read as follows:

§4260. Contesting election and bonds; prescription

For a period of sixty days from the date of the promulgation of the result of any election held hereunder, any person in interest may contest the legality of the election in accordance with Chapter 6-A of the Louisiana Election Code, ~~after which time no one shall have any cause of action to contest the regularity, formality or legality of the election for any cause whatever, it shall be conclusively presumed that every legal requirement has been complied with, and no court shall have authority to inquire into such matters after the lapse of sixty days.~~ The resolution authorizing the issuance of bonds shall be published once in a newspaper published in the municipality, or if no newspaper is published therein, then in a newspaper published in the parish in which the municipality is located, or if no newspaper is published in the parish then in a newspaper published in an adjoining parish. For a period of thirty days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued pursuant thereto and the provisions securing the bonds. After the expiration of thirty days no one shall have any right of action to contest the validity of the bonds or the provisions of the resolution pursuant to which the bonds were issued, and all the bonds shall be conclusively presumed to be legal, and no court shall thereafter have authority to inquire into such matters.

Turning to R.S. 33:4261, the Reporter briefly introduced the Section. Shortly thereafter the Council moved that it should be adopted. The motion was seconded and approved. Thus, R.S. 33:4261 was approved to read as follows:

§4261. Service charge for sewerage and garbage facilities

~~Where~~ If the revenues pledged to the payment of bonds under this Subpart are revenues of a utility comprised of sewerage facilities, or garbage facilities, the governing authority of the ~~municipality~~ political subdivision may each year impose against the owners of all real property in the ~~municipality~~ political subdivision a service charge for the facilities afforded by the utility, which charge shall not be a lien upon the property.

The charges shall be sufficient to provide for the cost of operating and maintaining the utility and paying the interest and principal of the bonds secured by the revenues of the utility. No charge shall be made against the owner of any property which is not ~~benefited~~ benefitted by the utility. A list of the names of all owners against whom charges are so made and the amounts of the charge made against each owner may be certified by the governing authority to the official charged with the assessment of taxes against the property at such time and in such manner in each year as to permit the amount of the charge to be carried upon the assessment roll of the real property in the ~~municipality~~ political subdivision. Each charge may be carried on the roll as a special item due by the owner of the property individually and may be identified on the roll as "Special Sewerage or Garbage Charge of _____ (inserting the name of the ~~municipal corporation~~ political subdivision)". The charges may be paid to the official who collects the general taxes assessed against the real property located in the ~~municipality~~ political subdivision, and may be paid at the same time and in the same manner as the general taxes are paid. Where the ownership of any real property changes, the ~~municipality~~ political subdivision may require any subsequent owner seeking sewerage or garbage service to apply therefor, whereupon the charges imposed against the owner may be assessed and collected in the manner ~~hereinabove~~ provided in this Section. The ~~municipality~~ political subdivision may pay the tax collecting official the same commission on the amounts collected by him as he receives for the collection of ad valorem taxes, and may pay the assessing official a sum sufficient to reimburse him for the additional expenses occasioned by reason of listing the charges on the assessment roll. The amounts to be paid to the assessor and collector shall be considered one of the costs of operating and maintaining the utility.

In similar fashion, a motion was made that R.S. 33:4262 be approved to read as proposed in the materials. This motion was seconded and passed without opposition. Thus, the Council approved R.S. 33:4262 to read as follows:

§4262. No restriction of acts authorized

This ~~Sub-part~~ Subpart shall constitute full authority for the accomplishment of all acts ~~herein~~ authorized to be done. No other law restricting the carrying out of the acts authorized to be done shall be construed as applying to any proceedings had or acts done pursuant to this ~~Sub-part~~ Subpart.

After an introduction by the Reporter, a motion was made to adopt R.S. 33:4263. This motion was seconded, and a member asked the Reporter a question. After she answered the question, the motion passed without opposition. Revised Statute 33:4263 was approved to read as follows:

§4263. Municipal hydroelectric facilities

A.(1) Any ~~municipality~~ political subdivision owning and operating a revenue producing electric utility as defined in or covered by R.S. 33:4161, or any public power authority created by any such ~~municipality~~ political subdivision under the provisions of R.S. 33:4172, acting through its governing authority, is hereby authorized and empowered to contract with any other ~~municipality~~ political subdivision owning and operating such a revenue producing electric utility or public power authority of the state of Louisiana, or with ~~municipalities~~ political subdivisions, public power authorities or agencies, electric public utilities or rural electric cooperatives, within or without the state of Louisiana, or with the Louisiana Energy and Power Authority created pursuant to Chapter 10-A of this Title, or with any FERC licensee, as defined in Paragraph (6) of this Subsection, for the purchase or sale of the capability of a hydroelectric generating facility or facilities of such Louisiana ~~municipality~~ political subdivision or public power authority, electric public utilities, rural electric cooperatives, or other person licensed by the Federal Energy Regulatory Commission or other appropriate federal agency having jurisdiction over the granting of such licenses for a term not exceeding the term of such license on such terms and conditions as shall be specified in a written contract that shall be negotiated and executed without any proceedings other than the approval of such contract by the governing authority or body of such contracting parties.

(2) Any such ~~municipality~~ political subdivision or public power authority which contracts to purchase or sell such capability or a part thereof is hereby further authorized to provide for the transmission of such capability over transmission facilities owned by it or by a FERC licensee in such manner as may be mutually agreed upon.

(3) Any such hydroelectric facilities and associated transmission facilities may be owned entirely by such ~~municipality~~ political subdivision or public power authority created by such, may be co-owned in indivision or in divided parts by any such ~~municipality~~ political subdivision or public power authority with any electric public utility or rural electric cooperative located within the state or with the Louisiana Energy and Power Authority or with a FERC licensee, or may be owned entirely by another FERC licensee.

(4) Any such ~~municipality~~ political subdivision or public power authority is hereby authorized to engage with one or more other such ~~municipalities~~ political subdivisions, public power authorities, electric public utilities, rural electric cooperatives, or other FERC licensees in the development, construction, operation, use, maintenance, or financing of such hydroelectric facilities and related transmission facilities, as owners or otherwise.

(5)(a) Any such ~~municipality~~ political subdivision or public power authority may enter into a contract with any such other ~~municipality~~ political subdivision, public power authority, electric public utility, electric cooperative, or other FERC licensee and may provide therein with respect to the relative rights and obligations of the parties relating to the development, construction, operation, use, maintenance, revenues, and expenses of such hydroelectric facilities and associated transmission facilities, as the parties may determine. All such arrangements and agreements shall be reduced to writing and shall include, among other provisions, the proportionate share of the cost thereof to be borne by the ~~municipality~~ political subdivision or public power authority.

(b) Notwithstanding any other provision of law relative to the right of partition available to owners of property, the right of partition shall not be available to any party with respect to any property acquired or held subject to the terms of such contract, except to the extent therein provided, and the contract may provide for the sale, lease, use, or other disposition in whole or in part of such property or interest therein by the owner of such property or interest to any other party to such contract on such terms and conditions and in such manner as may be set forth in the contract, without compliance with any laws applicable to the disposition of property of a ~~municipality or other~~ political subdivision or agency or instrumentality thereof and without application of laws relating to lesion beyond moiety.

(c) The contract may also provide for the creation of a usufruct, right of use, servitude, or other similar right in favor of one of the parties to the contract upon such portions of immovable properties comprising the hydroelectric facilities and associated transmission facilities as are not then owned by such party, in which event any such usufruct, right of use, servitude, or other similar right, as the case may be, shall, notwithstanding any contrary provision of law, be for a term that shall be for the term of the contract or such lesser period as may be stipulated therein or in the instrument creating the usufruct, right of use, servitude, or other similar right, as the case may be. The instrument creating the usufruct, right of

use, servitude, or other similar right, as the case may be, may require the owner of the usufruct, right of use, servitude, or other similar right, as the case may be, to pay to the other party or parties to the contract such share of revenues as the contract may provide throughout the term of the agreement or any specified portion thereof, and may permit the ~~municipality~~ political subdivision or public power authority, without the consent or approval of the State Bond Commission or any other agency, commission, or other regulatory authority of the state of Louisiana or any local political subdivision thereof, to borrow, on such terms and at such rates of interest as the contract may prescribe, against the receipt of such share of future revenues provided that repayment of such borrowing and payment of interest thereon shall be made solely from, or as an offset against, such future revenues and shall not be a general obligation of the ~~municipality~~ political subdivision or public power authority, or constitute an indebtedness or pledge of the general credit of the ~~municipality~~ political subdivision or public power authority, or be a charge upon the income of other revenues thereof.

(d) To the extent provided in the contract, the property or facilities which are the subject of such a contract shall not be subject to expropriation by a party thereto during the term of such contract.

(e) Any such ~~municipality~~ political subdivision or public power authority and any such electric public utility, electric cooperative, or other FERC licensee may construct or acquire such hydroelectric and related transmission facilities by negotiated contract without public advertisement or other limitation of the Public Bid Law or other laws, and title to such facilities shall vest in one or more of the parties to the contract in the proportion and manner therein set forth.

(f) The term of the contract shall be of such duration as the parties may therein stipulate but shall not, in any event, extend more than ninety-nine years beyond the expiration date of the original license granted by the Federal Energy Regulatory Commission with respect to the hydroelectric facilities.

(g) The contract shall be authorized by ordinance adopted by the governing body of any ~~municipality~~ political subdivision which is a party to the contract, and the ordinance shall be published in the same manner as are other proceedings of the governing body. Notice of intention to adopt such an ordinance shall be given by the governing body of the ~~municipality~~ political subdivision and shall be published one time in the official journal of the ~~municipality~~ political subdivision at least seven days before the adoption of the ordinance.

(h) Such contract shall not require the consent or approval of any agency, commission, or other regulatory authority of the state of Louisiana or any political subdivision thereof.

(6) As used in this Subpart:

(a) The term "FERC licensee" shall mean and refer to:

(i) Any person licensed by the Federal Energy Regulatory Commission or other appropriate federal agency on or before December 31, 1988, to construct, operate, or maintain a run-of-the-river hydroelectric generating facility located on the Mississippi River in the state of Louisiana;

(ii) Any person to whom such license has been transferred, in whole or in part, with the approval of the Federal Energy Regulatory Commission, or other appropriate federal agency;

(iii) Any successor, by involuntary transfer or foreclosure or otherwise, to any person to whom such license had been issued, transferred, or assigned, and all subsequent successors of any of the foregoing persons;

(iv) Any assign of any person to whom such license had been issued, transferred, or assigned;

(v) Any successor owner of such hydroelectric facilities;

(b) The term "person" shall mean an individual, a corporation, a partnership, a joint venture, a trust, an unincorporated association, or a government or any agency, municipality, parish, or political subdivision thereof; ~~and.~~

(c) The terms "hydroelectric facilities" or "hydroelectric generating facilities" shall mean and refer to a run-of-the-river hydroelectric generating facility located on the Mississippi River in the state of Louisiana and initially licensed by the Federal Energy Regulatory Commission or other appropriate federal agency on or before December 31, 1988.

B. The parties entering into contracts pursuant ~~hereto~~ to this Section are hereby authorized to create an advisory board with such rights, duties, and obligations with respect to such hydroelectric projects and associated transmission facilities as shall be provided in the written agreement creating such advisory board.

C.(1) In substantially the manner provided by this Subpart C ~~of Part I of Chapter 10 of this Title~~, as amended and supplemented by other constitutional and statutory provisions, including, but not limited to, Chapter 13 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, any such ~~municipality~~ political subdivision or any such public power

authority of the state of Louisiana, acting through its governing authority, may issue revenue bonds to finance all or any part of the costs of acquiring, constructing, and operating any such hydroelectric project and associated transmission facilities or its respective interest therein, which bonds shall be payable from the revenues of its electric utility system or of its combined utility system or of such project and facilities alone, including payments made to it under contracts entered into pursuant to the provisions hereof of this Section.

(2) Any election ~~heretofore~~ held by a municipality before June 30, 1983, to authorize bonds to finance a hydroelectric facility is hereby ratified and approved.

(3) Payments made by any such ~~municipality~~ political subdivision or public power authority of the state under any contracts entered into in accordance ~~herewith~~ with this Section shall be considered as operating expenses of its electric system or combined utilities system or of such project and facilities alone, as the case may be.

D.(1) In addition to the issuance of revenue bonds as described in Subsection C ~~heretofore~~ of this Section and without the need to comply with the requirements of any other law except the provisions of this Section, any such ~~municipality~~ political subdivision, ~~and/or any such~~ public power authority, or both, acting through its governing authority, may, for the purposes specified in Subsection C of this Section, otherwise borrow money and incur indebtedness, that shall be payable solely from the proceeds of such bonds, borrowings, or the revenues of its electric utility system or of its combined utility system or of such project facilities alone, as the case may be, in any manner determined by such governing authority and may create and provide appropriate evidence thereof by adopting an ordinance or resolution containing the terms and conditions of such borrowing, subject to the approval of the State Bond Commission.

(2) The bonds authorized by Subsection C ~~heretofore~~ of this Section and the indebtedness authorized by this Subsection may be additionally secured by credit guarantees, letters of credit, and/or any other security device or devices approved by the State Bond Commission.

E.(1) Every ordinance or resolution authorizing the issuance of bonds or other debt obligations ~~hereunder~~ pursuant to this Section shall be published at least once in the official journal of the issuer of such bonds or other debt obligations. Such notice shall state that for thirty days after the date of publication any person in interest may contest the legality of such ordinance or resolution and of any provision therein made for the security and payment of such bonds or other debt obligations, after which

no one shall have any cause of action to test the regularity, formality, legality, or effectiveness of the ordinance or resolution and the provisions thereof, for any cause whatever.

(2) Thereafter, it shall be conclusively presumed that every legal requirement for the issuance of the bonds or other debt obligations, including all things pertaining to the election, if any, at which the bonds or other debt obligations were authorized, has been complied with. No court shall have authority to inquire into any of such matters after the expiration of said thirty day period.

F.(1) The provisions hereof of this Section shall be liberally construed to the end that through the contracts ~~herein~~ authorized by this Section greater economy and efficiency in the provision of electrical and energy services to the citizens of the state may be achieved, and further to this end, the governing authority of each ~~municipality~~ political subdivision or public power authority entering into a contract as authorized ~~hereby~~ by this Section shall be empowered to adopt such other ordinances and resolutions, take such other action, and pay and/or collect such amounts as may be contemplated by or made necessary under such contracts.

(2) The acquisition, construction, ownership, operation, maintenance, and use of a hydroelectric generation facility and associated transmission facilities and the issuance of obligations to finance such facilities is hereby declared to be a valid public purpose in the best interests of the citizens of the state.

Following this action a motion was made to adjourn the meeting. This motion was seconded and passed without opposition. Thereafter, the President of the Louisiana State Law Institute Council adjourned the January 8, 2016 meeting of the Council.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

January 8-9, 2016

Saturday, January 9, 2016

Persons Present:

Adams, Marguerite (Peggy) L.
Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Burris, William J.
Carroll, Andrea
Casso, Teri James
Chetta, Chloe
Crawford, William E.
Crigler, James C.
Cromwell, L. David
Csaki, Molly L.
Dawkins, Robert G.
Dick, Kelly R., Jr.
Dimos, Jimmy N.
Domingue, Billy J.
Freel, Angelique
Garvey, Meghan
Gelpi, Jeffery
Gilbert, James
Hamilton, Leo C.
Hammond, Margot E.
Hayes, Thomas M., III
Hebert, Christopher B.
Hogan, Lila T.
Holdridge, Guy
Jewell, John Wayne

Knighten, Arlene D.
Kostelka, Robert "Bob" W.
Landry, Ron J.
LaVergne, Luke
Levy, H. Mark
Maloney, Marilyn
McIntyre, Edwin R., Jr.
Medlin, Kay C.
Mengis, Joseph W.
Mohamed, Ahmed M.
Norman, Rick J.
Philips, Harry "Skip", Jr.
Pohorelsky, Peter
Popovich, Claire
Recasner, Gina
Scardulla, Anna "Annie" F.
Sole, Emmett C.
Tate, George J.
Tucker, Zelda W.
Vance, Shawn
Varnado, Sandi S.
White, H. Aubrey, III
Wingerter, Isabel
Woodruff-White, Lisa
Ziober, John David

President John David Ziober opened the Saturday session of the January 2016 Council meeting at 9:00 AM on January 9, 2016 at the Monteleone Hotel in New Orleans, LA. During this session, the Co-Reporters, Karen Hallstrom and Isabel Wingerter, represented the Children's Code Committee and presented materials regarding the expungement of juvenile records, the confidential intermediary process for adoptions, and the final report to the Legislature in response to HCR 117 from the 2015 Regular Session regarding restitution in delinquency cases.

CHILDREN'S CODE

1. Mrs. Wingerter started with the presentation of the final report to the Legislature in response to HCR 117 from the 2015 Regular Session regarding restitution in delinquency cases. The Council expressed some interest in exploring ways to issue civil judgments against parents in juvenile proceedings. This was equated to the authority of the criminal courts to issue civil judgments which are limited to actual damages. The Reporter explained the difference in this circumstance because the parent is not a party to the juvenile proceeding. However, the Reporter agreed that the Committee will continue to study this issue and will report if it devises a constitutional process for a juvenile court to order a parent to pay restitution in a delinquency proceeding. The report was approved for submittal to the legislature as is.

2. Mrs. Hallstrom next presented the materials regarding the expungement of juvenile records. After briefly laying out the history of the project, the Reporter pointed out four changes. First, the records will be sealed instead of destroyed. Second, there will be an opportunity for interested parties to oppose the expungement. Third, Families In Need of Services cases will have the opportunity for expungement. Finally, expungement will be available earlier than the child's twenty-first birthday as a means of helping him apply to college, the military, or a job.

3. The Council immediately started a lengthy discussion about organizations, licensing boards, employers, and forms which still require people to disclose juvenile arrests even if they have been expunged. Article 922 addresses the effect of expungement and the Reporter explained that this attempts to clarify that the person filing out those forms or who is asked questions about his juvenile record, can treat it as if it never existed. The whole purpose of juvenile expungement is to give the child a clean slate for moving forward and true rehabilitation. After much discussion, the Reporter agreed to research other laws to determine if they need to be amended because they currently seek this information despite an expungement. A member also agreed to approach the Supreme Court regarding its practices for admittance to the bar. Thereafter, Article 922 was approved.

4. Taking the document article by article from the top, the Council approved Articles 414, 781, 901, and 917 with little discussion.

5. Regarding Article 918 and the grounds for expungement and sealing, the Council was concerned about changing the term "weapon" to "firearm". By voting to clarify that the crimes referred to had to be committed against a person, they left the term "firearm". The Council was concerned about including lesser criminal offenses for hunting with a firearm. The motion was seconded and adopted and the entire Article was thereafter approved by the Council.

6. With a few technical changes accepted by the Reporter, Article 919 was approved and without discussion Articles 920, 921, 923, 924, 925, and 926 were adopted. The Council also approved the technical changes to R.S. 15:593 and 614.

7. The final presentation from the Children's Code Committee is the response to HCR 85 of the 2011 Regular Session of the Legislature regarding the obtaining of information by an adopted person concerning their biological parents. The Reporter, Mrs. Wingerter, reminded the Council that in 2004 they approved the use of a confidential intermediary for the release of limited information to adopted persons. This proposal also uses the confidential intermediary process, but it is a compromise to allow less than open access.

