

## **MINUTES OF COMMISSION MEETING**

**June 16, 2022**

Present at the New Jersey Law Revision Commission meeting, held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Andrew O. Bunn; Commissioner Virginia Long; Professor John K. Cornwell, of Seton Hall University School of Law, attending on behalf of Commissioner Kathleen M. Boozang; and Professor Bernard W. Bell, of Rutgers University attending on behalf of Commissioner Rose Cuison-Villazor.

### **In Attendance**

Ronald W. Pierce and Dameon M. Stackhouse of the New Jersey Institute for Social Justice; Andre Taylor of the Reentry Program; Raymond Jackson, Al-Tariq Witcheth, Clifford J. Graf, and Hector Rivera of the Returning Citizens Support Group; Jerry Gray and Adrian Porcen of Beginning Again; Yusuf Shabazz and Tyrone Barnes of RTC; Tyleakea S. Price, Carmelo Ortiz, and Edwin Ortiz of YAP Adult Re-entry Services; and Antonne Henshaw of Transformative Justice Initiative were in attendance.

Also in attendance were Michael Rizol of Equity Reconstruction, LLC, and James Hunt, Campaign Leader Team for the New Jersey Safe Passing Law.

### **Minutes**

The Minutes of the May 19, 2022, meeting were unanimously approved by the Commission, on the motion of Commissioner Bunn, seconded by Commissioner Bell.

### **Inmate**

Samuel Silver discussed with the Commission a Draft Final Report proposing the elimination of the term “inmate” from the New Jersey statutes and the replacement of the term with person-first or other updated language, as appropriate. Mr. Silver noted that in August of 2021, the State of New York enacted comprehensive legislation to replace the word “inmate” with “incarcerated person” in its body of statutory law. In addition, he stated that there has been a shift in the field of criminal justice away from terms characterized as “dehumanizing” and “stigmatizing” to those that focus on the individual’s identity and capacity for growth. These developments served as the impetus for the Commission’s examination of the term inmate in New Jersey statutes.

Mr. Silver noted that the New Jersey statutes do not contain a uniform definition for the term inmate. The term is used 1,310 times in 252 statutes that span 16 titles. The term is only defined in Title 30, Institutions and Agencies. Within Title 30, the term inmate is defined in five statutes, in four different ways. The term is used in the criminal context to describe a person who is incarcerated in a county correctional facility either pre-trial or having been sentenced; or a

person in a State correctional facility who is serving a prison sentence. In the non-criminal context, the word inmate denotes one of a group of persons who occupy a single place of residence.

The Commission sought comments from 113 organizations, individuals, and entities. The Commission's work on this project was also referenced in several news articles. Mr. Silver noted that the comments on this project received by the Commission generally fell into one of four categories: no position; alternate language; opposition to the project; and those who supported the project.

The New Jersey Judiciary advised the Commission that they were neutral on the Commission's proposed modifications. The Office of the Essex County Prosecutor stated that their office had no problem with the word inmate, and they also had no problem with the term incarcerated person. The Department of Human Services advised the Commission that they "[did] not have any changes" to the Commission's proposed modifications.

A number of commenters offered alternatives to the Commission's proposed, person-first language, including: correctional rehabilitation participant; incarcerated person; internee; person who is incarcerated; former inmates; guest or guest of the state; and person serving or person served.

The Commission also received comments from persons who opposed the elimination of the term inmate from New Jersey's statutes. One commenter stated that the proposed modifications demonstrated a lack of empathy toward the victims of crime. Another opined that the State's tax dollars should not be spent to humanize persons the commenter characterized as actual criminals, but also noting that where the term was ill-defined, the Commission should better define it. A criminal defense attorney expressed disagreement with the proposed revisions suggesting that the word inmate succinctly describes the person's situation, and that adopting a multi-word phrase does nothing to lessen stigmatization.

A number of individuals and entities expressed their support for the Commission's work in this area. The Department of Community Affairs advised the Commission that it supported the replacement of the term inmate with a uniform, person-first reference for those persons in correctional facilities. The Juvenile Justice Commission stated that terms that can be characterized as dehumanizing and stigmatizing should be changed, especially when referencing young people. The National Commission on Correctional Health Care commented that they support the use of humanizing and respectful language to describe people who experience incarceration. The Morris County Sheriff's Office – Bureau of Corrections also expressed its support for the Commission's work, and stated that the project would most likely be beneficial to individuals who are trying to turn their lives around. The American Civil Liberties Union of New Jersey commended the Commission on its proposed use of person-first language in the correctional context. Finally, the Legal Services of New Jersey issued a statement in support of the removal of the term inmate from the New Jersey statutes.

Members of the public attended the meeting on behalf of social interest organizations to provide the Commission with their comments on the project, which are summarized below.

Ronald Pierce, from the New Jersey Institute for Social Justice, explained his background and his perspective on the impact of the Inmate project. He said that the use of a dehumanizing term like inmate fails to recognize an individual's background. Mr. Pierce continued that people who live with labels, like inmate, begin to accept them and that doing so keeps people from moving forward with their lives and compromises efforts to rehabilitate and reform.

Tyrone Barnes, of Returning Citizens Support Group, added that prison guards are trained to use the term inmate to dehumanize those who are incarcerated. He explained that he is so much more than his prior incarceration – a homeowner, a mentor, a leader at the largest employment agency in Newark – but the term inmate does not recognize these parts of him.

Tyleakea Price, who works with the Youth Advocate Program (YAP) Re-Entry, stated that the word inmate is traumatizing to live with even after incarceration. She conveyed her experience that prison guards would require that they be referred to by name, but would not extend the same respect to the individuals who were incarcerated. Carmelo Ortiz, also with YAP Re-Entry and Returning Citizens, noted that history has shown many times that when people are categorized, they are treated differently. He cited the Stanford prison experiment, carried out by Philip Zimbardo, as an example of how quickly a label leads to differential treatment. He concluded that the word inmate prevents people from seeing individuals for who they are.

Edwin Ortiz, of YAP Re-Entry and the Returning Citizens Support Group, stated that the term inmate is traumatizing. Mr. Ortiz read from a letter written by Eddie Ellis, author of "The Real War on Crime," which eloquently set forth reasons why the dehumanizing and derogatory term "inmate" should be removed from the statute.

Antonne Henshaw, of the Transformative Justice Initiative, explained that he had been referred to as an inmate at a young age, and the term socialized him to believe he would always be an inmate. Mr. Henshaw described the difficult struggle to believe that the word was not his destiny and noted that he fought the label throughout his life. He concluded by asking for help to educate the public that people who have been labeled inmate are human beings just like everyone else.

Chairman Gagliardi rose to his feet to thank the members of the public for attending the Commission meeting, for all of their thoughtful comments, and for sharing their experiences with the Commission. He informed the members of the public that for as long as he has served on the Commission, he has never seen such a large group of people attend a Commission meeting to discuss a project. Chairman Gagliardi stated that this Final Report will be sent to the Legislature for its consideration. He explained that this work will join the Commission's previous work to eradicate pejorative terms from the New Jersey statutes. The Chairman also noted that people who are affected by derogatory words are not always able to attend Commission meetings, and that the Commission does not always have the benefit of first-person accounts of the impact that a statute has on an individual's life and the import of a proposed modification. He indicated that the turnout of the individuals and organizations has helped the Commission recognize the impact of this project and will continue to do so with regard to future projects.

On the motion of Commissioner Bunn, seconded by Commissioner Bell, the Commission unanimously agreed to release the Final Report.

### **Re-Enrollment in PERS**

Whitney Schlimbach discussed a Final Report recommending modification of N.J.S. 43:15A-57.2b.(2) to clarify the scope of the “teaching role” exception to re-enrollment in the Public Employees Retirement System (PERS). The New Jersey PERS requires retired members to re-enroll in the retirement system unless they meet one of the exceptions in N.J.S. 43:15A-57.2. Ms. Schlimbach stated that the teaching role exception refers to the annual compensation limit set by the salary cap exception, which immediately precedes the teaching role exception and exempts members from re-enrollment if they earn below a certain amount per year.

In 2001, the teaching role exception was drafted as a continuation of the existing salary cap exception. Legislative statements accompanying bill make clear that exception was intended to exempt members returning to qualifying teaching roles even if the compensation exceeded the \$10,000 limit set in the salary cap exception. The Legislature, however, also amended the salary cap exception in 2001, and increased the yearly limit to \$15,000. This amendment eliminated the source of the \$10,000 reference in the teaching role exception. A parallel administrative code provision, N.J.A.C. 17:2-2.3(a)10, supports the interpretation that members returning to qualifying teaching roles are exempt regardless of annual salary.

The proposed statutory modifications include eliminating the reference to the \$10,000 annual salary amount and adding language that makes clear that the exemption in N.J.S. 43:15A-57.2(b)(2) is available “regardless of the amount of compensation.” This change would clarify scope of teaching role exception. Ms. Schlimbach noted that this would be consistent with legislative intent to exempt those retirees regardless of salary. In addition, Ms. Schlimbach noted that the \$10,000 salary reference has been outdated and unconnected to anything in statute since the salary cap exception was increased to \$15,000 soon after the teaching role exception was enacted.

Ms. Schlimbach noted that the proposed modifications to subsection a. include language to render the statute gender-neutral, consistent with the rest of statute. In addition, the proposed modifications divide the statute into subsections to improve clarity and accessibility. The reference to \$10,000 annual salary in the teaching role exception in subsection b.(2) is also eliminated and language added to clarify that retired members returning to qualifying teaching roles are exempt “regardless of the amount of compensation.” The proposed modifications to subsections b. and c. also divide the statutory language into subsections. Ms. Schlimbach noted that no modifications were proposed in subsection d.

In connection with the proposed modification set forth in the Appendix to the Report, Staff sought comments from knowledgeable individuals and organizations. The Commission did not receive any objections to the proposed modifications.

Commissioner Bunn asked why the \$15,000 figure was not eliminated from subsection b.(1). Ms. Schlimbach responded that the \$15,000 figure is the salary cap exemption applies to any retiree returning to employment that does not qualify for another exemption, and makes less than \$15,000 per year. Commissioner Bunn stated that the statute is the only source of information, so if the number in the salary cap exception has become outdated, it might be better consider modifying the language to remove the monetary figure altogether. Chairman Gagliardi suggested that the \$15,000 statutory reference could be replaced with the language authorizing the Director of the Division of Pensions and Benefits to set the salary cap amount, subject to the statutory restrictions.

Commissioner Bell asked when the figure was last modified by the Director of the Division of Pensions and Benefits. Ms. Schlimbach responded that she did not have that information but would be able to provide it to the Commission at a future meeting.

The Commission asked Ms. Schlimbach for additional research to provide answers to the questions raised by Commissioner's Bunn and Bell so that the Commission could discuss new draft language at an upcoming meeting.

### **Definition of Personal Conveyance**

Samuel Silver discussed a Draft Revised Tentative Report addressing the definition of "personal conveyance" in N.J.S. 39:4-92.4, which protects pedestrians and vulnerable road users from the risk of injury by motor vehicles on New Jersey roadways. Mr. Silver explained that the statute requires motor vehicles to approach pedestrians and other transportation devices with "due caution." He noted that each of these listed transportation devices is defined in Title 39, except for the term "personal conveyance" and that the absence of a statutory definition for that term may leave it open to competing interpretations.

At the January and February 2022 meetings of the Commission, Staff was instructed to draft language that was less cumbersome and that better captured the range of individuals in need of protection while on a roadway. In addition, the Commission asked Staff to provide a definition of the term "pedestrian" that is comprehensive and concise to ensure protection of any individuals who may be on a roadway. Mr. Silver explained that the goal of the recommendations is to reach those who do not have the protection of a motor vehicle while on the roadway.

Mr. Silver advised the Commission that Staff has been engaged in ongoing conversations with parties who expressed interest in the project, including: David Guinan, Unit Head of the Safe Corridor Unit at the New Jersey State Police; Eric Heitmann, the Director of the New Jersey Division of Highway Traffic Safety; Jim Hunt from the Team for the New Jersey Safe Passing Law and the New Jersey Bike and Walk Coalition; William Yarzab, Street Smart New Jersey Coordinator; and Michael Rizol, Principal with Equity Reconstruction, LLC.

Mr. Silver reviewed the proposed modifications to N.J.S. 39:4-92.4. Subsection (a)(1), referred to as the pedestrian section, sets forth the definition of the term "pedestrian." The definition directly references N.J.S. 39:1-1 and broadens the definition to protect any person who

is, by law, permitted to be upon the roadway for work or recreation. The modifications to subsection (a)(2), the personal conveyance section, incorporate information from the NJTR-1 Crash Report Manual definition of personal conveyance. This definition includes low-speed electric bicycles, low-speed electric scooters, motorized wheelchairs, electric personal assistive mobility devices, and motorized scooters. Five additional types of personal conveyances are also included in section (a)(2), including bicycles, manual wheelchairs, skateboards, motorized skateboards, and roller skates.

Mr. Silver explained that the State Police asked whether bicycles, considered “pedal-cycles,” should be separated from personal conveyances, consistent with the NJTR-1 Crash Report Manual. Mr. Silver noted that the Policy Director of the League of American Bicyclists indicated that grouping bicycles with other personal conveyances is consistent with the trend in this area that has developed over the past several years.

Mr. Silver also explained that, because the term “personal conveyance” is intended to be comprehensive, the terms bicycle, low-speed electric bicycle, and low-speed electric scooter are recommended for removal from subsection (b), as the modifications to subsection (a) render those terms surplusage. No modifications are proposed with respect to subsections (c) and (d). Finally, Mr. Silver noted that the subsections have been re-numbered or re-lettered, as appropriate, for ease of reference and access.

On June 13, 2022, Commissioner Bell suggested that the title of the Report be modified to reflect that it was a Revised Tentative Report Regarding the Approach of the Pedestrians and Personal Conveyances in N.J.S. 39:4-92.4. Commissioner Bell stated that subsection (a)(1) would be clearer if it included the word “afoot,” which appears in the definition of “pedestrian” in N.J.S. 39:1-1. Mr. Silver responded that there had been some concern that “afoot” might limit the range of individuals protected by the statute when on the roadway.

Jim Hunt, the Campaign Leader Team for the New Jersey Safe Passing Law, who led the campaign to enact N.J.S. 39:4-92.4 and is heavily involved with the educational aspect of these issues, indicated his understanding that the statute had two goals, enforcement, and protection of people on the road. Mr. Hunt stated that the statute should be addressed to motor vehicles approaching *people* using personal conveyances, not just conveyances.

Commissioner Bunn suggested that the subsection a.(2), dealing with personal devices, be expanded to capture future modes of transportation. He recommended that a catch-all provision be added to this section. Commissioner Long concurred and recommended the addition of a provision that covers similar means of conveyance or other devices used for personal transportation. Mr. Hunt supported with the proposed addition of a catch-all provision. Commissioner Bell proposed a modification to the language that clarified that motor vehicles “approaching a pedestrian or person using a personal conveyance” should be added to section (b)(1). He also proposed adding language to section (a)(1) specifying that the person upon the roadway is “outside a motor vehicle.”

Mike Rizol, of Equity Reconstruction, LLC, and the State Traffic Records Coordination Committee, agreed with Mr. Hunt that the purpose of the statute is to provide protection to those

on the roadway. He indicated that the language used in the NJTR-1 is intended to provide State Police with the ability to properly document crashes. If the statute is intended to encourage motor vehicles to use caution with respect to anyone on the roadway, it would be appropriate to eliminate the requirement that a person be on the roadway “lawfully” to fall within the statute’s protection. Mr. Hunt agreed with Mr. Rizol’s understanding of the purpose of the legislation and indicated that he hoped the statute would be as inclusive as possible. Commissioner Long also expressed her agreement with this modification.

Commissioner Gagliardi then asked whether there was agreement that the Report should be released as a Revised Tentative Report with the four additional modifications discussed by the Commission: (1) the addition of language in subsection (a)(1) that the person upon the roadway is “outside a motor vehicle;” (2) a clarification in subsection (b)(1) that the statute protects people using personal conveyances; (3) the addition of a catch-all provision in subsection (a)(2) that includes other similar means or devices of personal conveyance; and (4) the removal of the language “permitted by law” in subsection (a)(1).

The motion to release the Report as a Revised Tentative Report with the additional modifications was made by Commissioner Bunn and seconded by Commissioner Long.

### **Audit Adjustments Involving Returns from Closed Years**

Samuel Silver discussed with the Commission a Draft Tentative Report recommending the modification of N.J.S. 54:10A-10 to resolve the conflict between statutes applicable to situations in which the audit of current filings results in the application of revisions to closed filings that are otherwise beyond the statute of limitations.

In New Jersey, N.J.S. 54:10A-10, authorizes and empowers the Director of Taxation (Director) to adjust any tax reports or returns as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Tax Act. N.J.S. 54:10A-14.1, requires corporations subject to tax or filing requirements to keep all records used for tax liability determinations for at least five years, though the Director may require that they be kept longer.

N.J.S. 54:49-6 sets forth a statute of limitations on audit adjustments. In the absence of tax evasion, fraud, or failure to file a return, the statute holds that no assessment of additional tax shall be made more than four years after the date of the filing of a return.

Neither tax statute explicitly addresses a situation in which the Director adjusts “open filings” and eliminates items that have been carried forward – such as net operating losses (NOLs) – from tax years that were never audited and accepted as filed by the Director.

The apparent inconsistency between the two statutes, and their silence regarding open filings, was brought to the Commission’s attention by *R.O.P. Aviation v. Director, Div. of Tax’n*, 32 N.J. Tax 246 (2021). In that case, for tax years 2007-2011, taxpayer R.O.P. reported that its carried forward NOLs were more than \$18 million and, in 2014, the NOLs were used to offset taxable income. R.O.P.’s tax returns for 2007-2011 were not audited, but the company was audited in 2017. At that point, the auditor disallowed the use of any NOLs for 2014 and of the carried

forward losses from 2007-2011 against the audit increased income of 2012, 2013, and 2015. This resulted in an audited income of \$8.5 million. *R.O.P.* filed a direct appeal from Notice of the Final Adjustment. The court read subsections (a) and (b) of N.J.S. 54:49-6 together and reasoned that auditing a closed year and applying the revisions from that closed year in an open year is indirectly doing that which the statute does not permit – bypassing the four-year statute of limitations. The Director argued that N.J.S. 54:10A-10 authorizes and empowers the Director to adjust any tax returns – even those beyond the four-year statute of limitations.

The Commission authorized Staff to conduct preliminary outreach in March of 2022, which outreach included: the Office of the Attorney General; New Jersey Tax Management Office; private practitioners; and twenty of the twenty-one County Tax Boards. Mr. Silver further noted that Staff had not received any opposition to the NJLRC working in this area.

At the May 20, 2022, Commission meeting, Mr. Silver advised the Commission that he had been contacted by the Director of Taxation who indicated that the Division was recommending a legislative fix to the issue raised in *R.O.P.* Counsel to the Director of Taxation (Counsel) said that he would be happy to receive any specific recommendations that the Commission wished to share with the Director. The Commission authorized staff to prepare a Draft Tentative Report for consideration at the June 2022 meeting.

On June 9, 2022, Mr. Silver sent an e-mail to Counsel and provided him with the details of May 2022 meeting along with a copy of the Draft Tentative Report. In an e-mail dated June 13, Counsel confirmed with Staff that it was the Division’s position that when the *R.O.P.* Court determined that N.J.S. 54:49-6(a) and (b) should be read together, it arbitrarily linked the statute of limitations relating to assessments to the broad powers of Taxation to conduct audits. According to Counsel, this is a link that was never intended to be read as part of the Tax Act.

Mr. Silver explained that on June 13, 2022, Staff received a thoughtful e-mail from Commissioner Bell that contained several questions and areas of inquiry. On June 13 and 14, Mr. Silver spoke with Counsel. Mr. Silver said that Counsel to the Director had advised him that that every other state in the country, and the federal government, permit the type of audits and adjustments that were the subject of litigation in *R.O.P.* In deference to the decision in *R.O.P.*, however, the Division has discontinued the audit practice used in *R.O.P.* Mr. Silver explained that, because *R.O.P.* was an “evaluation case” and the underlying evaluation had not been resolved, the Division of Taxation was unable to file an appeal.

The proposed modifications to the statutes are based upon the *R.O.P.* holding and contemporary legislative drafting practices. The current language of subsection (a) of N.J.S. 54:10A-10 is cumbersome and difficult for attorneys and laypersons to read. It is 211 words long and contains twenty-five conjunctions. In the Appendix, subsections (a)(1)(A)-(E) set forth the condition’s precedent to the Director’s action. Subsection (a)(2) removes language that appears to be surplusage and has been modified in a manner consistent with the court’s decision in *R.O.P. Aviation*.



Commissioner Gagliardi stated that, given the obscure subject matter, he was not sure what impact the Commission could have on this issue. Commissioner Cornwell agreed. Commissioner Bell concurred and added that although he was not an expert in this area, the decision looks like an outlier among other states. He stated that he would not choose to codify a decision that is an outlier. He maintained that what the Division of Taxation drafted was a good start and precise, although subsection 10 should be clarified. Commissioner Bell stated that he supported the Division of Taxation's proposal.

Commissioner Long stated that she was not inclined to act without verifying the state of the law. She said that she would like confirmation that New Jersey is indeed the only state that prohibits the types of audits discussed in *R.O.P.*. She stated that she would like to see the state of the law in other states before moving forward on this subject. Additionally, she noted the Tax Court's has expertise on this subject.

Commissioner Gagliardi suggested that to the extent the NJLRC takes any action, it will be taking limited action along the lines suggested by Commissioner Bell. Staff was also asked to provide the Commission with additional information regarding how other jurisdictions address this issue.

### **Unemployment Benefits from the Wrongfully Incarcerated**

Samuel Silver discussed with the Commission an Update Memorandum proposing a project to clarify the impact of the N.J.S. 43:21-5(a) on an employee who is terminated from employment solely because of an arrest and pretrial detention, followed by a dismissal of the criminal charges. He explained that, for purposes of unemployment benefits, an individual's separation from work as a result of incarceration is reviewed as if the individual voluntarily left their employment. To this time, N.J.S. 43:21-5 does not contain language to address the loss of employment due to wrongful incarceration.

In *Haley v. Bd. of Rev.*, 245 N.J. 511 (2021), Justice Albin noted in dissent that the statute leaves open the possibility that one arm of the government can cause the loss of a person's job by detaining him on charges later dismissed by a grand jury, and that another arm can find that the exonerated worker voluntarily left his position without good cause, thus preventing him from receiving unemployment benefits.

Mr. Silver noted that when this project was presented to the Commission at the January 2022 meeting, the Commission asked the Staff to conduct outreach on the issue. Outreach was conducted and produced no opposition to working in this area. The Employment Law section of the NJSBA advised that it has "no input to offer on this issue." The Chairperson of that section advised Staff that the NJSBA may contact the Commission separately with input.

Outreach also yielded support for the project. A criminal defense attorney stated his support for legislative change in this area. Additionally, Professor Jenny Brooke Condon, Director of the Seton Hall University Equal Justice Clinic, thanked the Commission for its work in this area. She also advised the Commission that as counsel for Haley, the Center for Social Justice agreed with

Justice Albin's dissent that where a person is detained pre-trial, and all charges are subsequently dismissed, there should never be a determination that the person left work voluntarily. Professor Condon also shared that the Supreme Court's decision led to a remand to the agency for a fact-sensitive inquiry. After a second hearing, the Board found that Haley had not left work voluntarily and he was awarded benefits retroactively. Significantly, the Board did not consider any additional information that was not already part of the original record.

Commissioner Cornwell expressed uncertainty about the propriety and ability of the Commission to codify a dissent in a Supreme Court case. Commissioner Long agreed and stated that the Commission could possibly use the dissent to inform proposed language that addresses the majority's fact-sensitive approach. Chairman Gagliardi noted that the Commission has not historically modified a statute to codify a dissenting opinion. He suggested that the Commission's focus may be on the lack of statutory clarity.

Commissioner Bell stated that *Haley* highlights that the Board and the statute are at odds, regardless of whether the focus is on the majority or dissent opinion. He also noted that the New Jersey bail system has undergone a major reform since the enactment of the statute. Commissioner Bell opined that there is a sufficient basis to consider a project based suggested using the statute to produce a more reasonable result.

Chairman Gagliardi suggested that Staff use the direction provided by Commissioners Long and Bell as a basis for additional research on this subject. Additionally, he indicated that the Commission would benefit from the comments of Commissioner Bertone regarding the threshold question of whether proposed modifications should be based on a dissenting opinion. He also noted that the Commission's work in this area need not be couched in those terms. Chairman Gagliardi suggested that Staff also work to provide clarity to what the majority and the dissent agree to be an ambiguous statute.

### **Administrative Update – Work of the Uniform Law Commission**

Laura Tharney discussed with the Commission the process that Staff undertakes when considering the work of the Uniform Law Commission (ULC), as more fully set forth in the Memorandum provided in advance of the meeting. She summarized by indicating that, in recent years, the acts listed as "Targets" and "Targets to Complete" by the ULC have been reviewed by the Commission. In addition, she explained that it is the standard procedure for Staff to review ULC acts that are brought to the Commission's attention by the public or in some other way, or during the course of Commission work in a particular subject area.

After doing so, Ms. Tharney provided an update on the status of the Model Entity Transactions Act (META). The Commission began work on META in March of 2017 after a review of the Uniform Law Commission's work in this area. Shortly after commencing its work, Staff learned that a bill on the subject had been introduced in the Legislature. As a result, Staff discontinued active work in the area, but continued to monitor the Legislature's work on this subject during several legislative sessions.

In January of 2022, Senator Patrick J. Diegnan, Jr., introduced S142, a bill to modernize the business filing statutes to include entity conversion and domestication. In May of 2022, Staff requested authorization from the Commission to conclude its work on this project. The Commission asked Staff to ascertain the trajectory of S142 and report back to the Commission.

Ms. Tharney explained that the bill had been reported out of the Senate Commerce Committee on May 16, 2022, and, on June 06, 2022, S142 was reported from the Senate Budget and Appropriations Committee.

On June 8, 2022, and June 13, 2022, Ms. Tharney spoke with Gregg Tufaro, Chief of Staff to Senator Diegnan. Ms. Tharney was advised that the Senator appreciated the Commission's outreach on this subject and that the bill was expected to move forward.

Ms. Tharney advised the Commission that, in the ten years since the bill has been introduced, this is the first time it has moved beyond introduction and a first committee. She also stated that S142 was listed for a vote in the Senate on June 16, 2022. Ms. Tharney therefore requested that the Commission conclude its work in this area.

Speaking generally, Ms. Tharney explained that a request to conclude work – like the one in this case - is based on a realistic assessment of available Commission resources and an effort to apply those resources efficiently and in accordance with the mandate of the Commission. She explained that over the past ten years the number of open projects has greatly increased, from twenty-eight in 2012 to approximately seventy per year in recent years. Year over year, Staff has worked diligently to improve its process and work product, and to combine in-depth research with a broad outreach effort to gather information for the Commission.

Several factors may contribute to a request to conclude a project.

Ms. Tharney explained that sometimes – as with the property taxation project that the Commission recently concluded – Staff simply does not have the expertise, or the resources to develop the expertise, that is needed in order to prepare a recommendation to the Legislature that meets the standards the Commission has come to expect.

Sometimes, as with the recently-concluded work in the area of human trafficking, the circumstances are such that another entity – in that case created expressly to address the specific issues we were considering, and consisting of specifically chosen experts in the field – begins work in the area and the possibility that Commission work would duplicate or be inconsistent with theirs suggests that the Commission's limited resources would be more effectively applied elsewhere.

Ms. Tharney explained that, in other instances, the Commission begins work in an area and later finds that the Legislature is already working in that area. Ms. Tharney stated that although Staff diligently monitors legislative developments, Staff does not have access to information about the Legislature's work before a bill is introduced. In these circumstances, the practice is to discontinue work regardless of whether the pending legislation is moving forward, to allocate resources effectively and efficiently. This choice is based on the reasonable assumption that an experienced legislator with background and interest in the area of law would have the best chance

of moving forward a proposed bill, particularly in view of the small percentage of introduced bills that are ultimately enacted (approximately 5% of the introduced bills are enacted in a given session).

Ms. Tharney stated that when work on a project is suspended, rather than formally concluded, the project remains on the list of active projects in the Annual Report and on the website. A request to conclude work on a project is consistent with the Commission's goals of accuracy and transparency in its dealings with the public. Concluding a project, Ms. Tharney noted, does not foreclose the Commission's future work in the area.

Commissioner Bell stated that it was very helpful to have the approach to ULC projects laid out clearly in the Memorandum. He added that although he still feels more hesitant to close projects without commenting on the ULC based on the Commission's charge, in this circumstance, it is clear that going forward with META is unlikely to be of any assistance. Commissioner Bell also observed that the number of open projects is high and wondered whether there should be a more regular process for identifying projects to be closed each year.

Chairman Gagliardi proposed that Staff develop a methodology for identifying projects to be discontinued or concluded, and a method for approaching this issue moving forward, to be presented to the Commission at the July meeting.

#### **Miscellaneous**

Chairman Gagliardi noted that N.J.S. 1:12A-6 provides that the Commission shall elect one member as the chairman and that the chair is to serve a two-year term. He proposed that an election for chairperson, and the possibility of electing or appointing a Vice Chair, take place during the July meeting.

#### **Adjournment**

The meeting was adjourned on the motion of Commissioner Long, seconded by Commissioner Bell.

The next Commission meeting is scheduled for July 21, 2022, at 4:30 p.m., at the office of the New Jersey Law Revision Commission.