LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

August 23, 2019

Friday, August 23, 2019

Persons Present:

Adams, Marguerite (Peggy) L.
Boudreaux, Bernard E., Jr.
Breard, L. Kent
Burrell, Roy
Caraway, Jay
Carroll, Andrea B.
Castle, Marilyn
Comeaux, Conrad
Comeaux, Jeanne. C.
Coreil, Jeffrey
Crigler, James C., Jr.
Cromwell, L. David
Davrados, Nick
Dawkins, Robert G.
Dimos, Jimmy N.
Doguet, Andre'
Domingue, Billy J.
Griffin, Piper D.
Hamilton, Leo C.
Hargrove, Joseph L., Jr.
Hash, Endya L.
Hawthorne, Trippe
Hester, Mary C.
Hogan, Lila T.
Holdridge, Guy
Janke, Benjamin West
Kostelka, Robert "Bob" W.
Kunkel, Nick
Lampert, Loren M.
Lavergne, Luke A.
Lawrence, Quintillis Kenyatta
Lee, Amy Allums
Maloney, Marilyn C.
Manning, C. Wendell
Mascari, Pam
Mengis, Joseph W.
North, Donald W.
Ottinger, Pat
Philips, Harry "Skip", Jr.
Price, Donald W.
Richardson, Sally Brown
Riviere, Christopher H.
Saloom, Douglas J.
Scalise, Ronald J., Jr.
Sklamba, Steve
Smith, Anne K.
Stuckey, James A.
Talley, Susan G.
Taranto, Todd
Tate, George J.
Thibeaux, Robert P.
Veron, J. Michael
Vetter, Keith
Waller, Mallory
Weems, Charles S., III
Wilson, Evelyn L.
Ziober, John David

President Susan G. Talley called the August 2019 Council meeting to order at 10:00 a.m. on Friday, August 23, 2019, at the LSU Foundation in Baton Rouge. After asking the Council members to briefly introduce themselves, the President called on Ms. Mallory C. Waller, Coordinator of Research, to present the resolutions that had been assigned to the Law Institute by the Legislature during its 2019 Regular Session.

Ms. Waller explained that House Concurrent Resolution Nos. 46 and 47 concerning vulnerable road users had been assigned to the Code of Criminal Procedure Committee, along with Senate Concurrent Resolution No. 138 concerning whether victims of and witnesses to crimes should be advised of certain rights prior to providing information during interviews. Next, she informed the Council that House Resolution No. 220 and Senate Resolution No. 220 had been assigned to the Law Institute's newly formed Torts and Insurance Committee. Ms. Waller noted that the first of these resolutions asked the Law Institute to study the inconsistencies between the two statutes on bad faith insurance claims, and the second of these resolutions asked the Law Institute to study the Louisiana Governmental Claims Act. She then informed the Council that House Resolution No. 250 concerning interference with the custody of a child had been assigned to the Marriage-Persons Committee, and House Resolution No. 306 concerning the time period for the finalization of adoptions had been assigned to the Children's Code Committee.

Next, Ms. Waller explained that House Resolution No. 283 and Senate Resolution No. 254, both concerning in forma pauperis proceedings, had been brought on behalf of the Louisiana State Bar Association and assigned to the Law Institute's Code of Civil Procedure Committee. Finally, she stated that Senate Resolution No. 37 concerning series LLCs had been assigned to the Corporations Committee, which she noted was in the process of drafting a comprehensive revision to Louisiana's LLC laws. Ms. Waller concluded her presentation by asking members of the Council to contact her if they wished to participate in any of these studies or to recommend colleagues who might be interested. The President then called on Mr. L. David Cromwell, Reporter of the Security Devices Committee, to present proposed changes to the Comments to the Private Works Act.

Security Devices Committee

Mr. Cromwell began his presentation by providing the Council with information about the amendments that had been made to the Private Works Act bill during the legislative process, ultimately leading to the bill's passage. He first explained that R.S. 9:4804, a section on notice that had been discussed by the Security Devices Committee and its special advisors many times, had been amended to remove the provision that would have required sellers of movables to provide only one notice of nonpayment rather than to provide such notices periodically. The Reporter explained that the contractors' lobby was opposed to this provision, which had been intended to work in conjunction with the following provision, R.S. 9:4805, allowing an owner or contractor to make formal requests for statements of amounts owed to a claimant and providing a consequence if the claimant failed to respond. To eliminate the contractors' opposition, R.S. 9:4804(C) was removed from the bill, but so was R.S. 9:4805 in order to ensure that the legislation continued to achieve a balance among the various stakeholders.

Next, Mr. Cromwell noted another significant amendment that had been made to the Private Works Act bill, namely the restoration of a provision concerning notices of nonpayment only in connection with residential works, an updated version of which could now be found in R.S. 9:4822(D). He explained that the prior version of this provision, which applied only to sellers of movables and had been deleted by the Committee, had been reworked to provide that if any claimant in connection with a residential work chooses to give notice of nonpayment within the proper timeframe, then the period within which the claimant must file his statement of claim or privilege will be extended from 60 days to 70 days. The Reporter also noted that a corresponding definition of "residential work" had been added to R.S. 9:4810. He then explained several additional amendments that had been made during the legislative process, including extending the time period within which a lessor of movables must give notice from 20 days to 30 days, limiting the number of times a lessor of movables must respond to a request for information from an owner or contractor, and requiring a subsubcontractor not in privity of contract with the contractor to provide notice 30 days before instituting his claim against the contractor.

Mr. Cromwell then explained that in light of these amendments, the Comments that were included in the bill also needed to be updated, and the proposed changes to these Comments are redlined throughout the materials. The Council turned to the first of these changes in the Comments to R.S. 9:4802 on page 6, and the Reporter explained that the reference on lines 8 through 10 had been deleted because R.S. 9:4805 had been removed from the bill, as well as that the reference on line 15 had been updated because a new subsection had been added in R.S. 9:4822. A motion was made and seconded to adopt these changes as presented, and the motion passed with no objection. Mr. Cromwell then directed the Council to the Comments to R.S. 9:4804 and noted that "twenty" had been changed to "thirty" on page 10 in accordance with the previously discussed amendment pertaining to the notice required to be given by lessors of movables. He also noted that the reference to R.S. 9:4805 had been removed on page 11 and that additional Comments needed to be added to discuss the notice required to be given by subsubcontractors not in privity of contract with the contractor and the notice of nonpayment that can be given by claimants in connection with residential works. A motion was made and seconded to adopt these changes as presented, and the motion passed with no objection. Turning to the change in the Comments to R.S. 9:4806, Mr. Cromwell noted that the reference to the specific provision in the definitions section on

page 10 had been removed because these definitions are often re-alphabetized as new terms are added, and the cross-reference on page 11 had been updated to account for the addition of a new subsection. A motion was made and seconded to adopt the proposed changes as presented, and the motion passed with no objection.

Next, the Council considered the proposed changes in the Comments to R.S. 9:4808, particularly the updated references on pages 16 and 17 of the materials and the change of "and" to "or" on page 18, which was made for purposes of consistency throughout the Act. A motion was made and seconded to adopt these changes as presented, and the motion passed with no objection. A motion was also made and seconded to adopt the updated reference in the Comments to R.S. 9:4809 on page 18, and that motion also passed with no objection. Mr. Cromwell then explained the changes in the Comments to R.S. 9:4810 on page 11, namely the addition of a reference to the provision of the Civil Code that requires mortgages to state the "nature and situation" of the immovable, as well as the correction of a citation to the *Norman Voelkel* case on line 10 and a cross-reference on line 36. A motion was made and seconded to adopt these changes as presented, and the motion passed with no objection. The Council also approved the proposed change on line 8 of page 22 before turning to the Comments to R.S. 9:4812 on page 25. A motion was made and seconded to correct the cite to the *E. E. Rabalais* case on line 11 of page 25, and the motion passed with no objection. Motions were also made and seconded to correct the citation on line 10 of page 26 and the cross-reference on line 34 of page 31, and both of these motions passed with no objection. The Council also approved the deletion of the specific reference on line 24 of page 36 before Mr. Cromwell directed their attention to line 20 of page 38, where there was a proposed change to the language of R.S. 9:4822(D) itself. The Reporter noted that the phrase used throughout the Act is "statement of claim or privilege" rather than "statement of privilege or claim," and a motion was made and seconded to adopt this change. The motion passed with no objection, and after a brief discussion of how this revision would be implemented, the Council turned to the suggested changes in the Comments to R.S. 9:4822.

Mr. Cromwell explained that, beginning on page 42 of the materials, several changes needed to be made in the Comments to R.S. 9:4822 due to the addition of a new Subsection D, including the reference on lines 13 and 14 of page 42 and other cross-references and Comment designations throughout. The Reporter also noted that "claim or privilege" had been changed to "claim and privilege" on line 19 of page 42 because claimants always have both a claim and a privilege under R.S. 9:4802, and that the citation to the *Bernard Lumber* case had been corrected on line 31 of the same page. Along with several technical changes, a new Comment had been added on page 43 discussing new Subsection D concerning notices of nonpayment in connection with residential works, and the cross-references and Comment designations on pages 44 and 45 had been updated accordingly. Mr. Cromwell also noted that the previous Comment (n) on lines 1 through 6 of page 46 had been deleted because the substance of the referenced provision had essentially been restored as Subsection D, and that a reference to the notice required of subsubcontractors not in privity of contract with the contractor had been added on lines 15 through 18 of the same page. A motion was made and seconded to adopt all of these changes in the Comments to R.S. 9:4822 as presented, and the motion passed with no objection.

Next, the Council considered the corrections in the Comments to R.S. 9:4831, on pages 49 and 50 of the materials. A motion was made and seconded to adopt these changes as presented, as well as the change to the cross-reference on line 16 of page 53, and the motion passed with no objection. Finally, the Council considered the change in the citation to the *Federal National Bank* case on line 11 of page 57, as well as the changes in the Comments to R.S. 9:4844 on page 60, including the correction of the cross-reference to the applicable provision of the Uniform Commercial Code and the deletion of Comment (g) concerning R.S. 9:4805, since that provision had been removed from the bill. Motions were made and seconded to adopt these changes as presented, and the motions passed with no objection.

At this time, the Council expressed its appreciation to Mr. Cromwell for his hard work in ensuring the passage of this legislation. Mr. Cromwell then concluded his presentation of proposed changes to the Comments to the Private Works Act, and the President called on Mr. Patrick S. Ottinger, Reporter of the Mineral Law Committee, to begin his presentation of materials.

Mineral Law Committee

Mr. Ottinger began his presentation by noting that he would be presenting reports in response to two separate legislative resolutions. The Reporter asked the Council to first turn its attention to the document titled "Report in Response to 2017 SR 159" concerning the issue of "royalty as rent." He explained the background principle that, as stated in Mineral Code Article 123 – R.S. 31:123 – mineral royalties are classified as rent, and that the statute's statement of this principle represented the codification of a long line of jurisprudence recognizing the principle as true. He added that such jurisprudential recognition spans a vast range of contexts and that this was axiomatic with respect to the law of mineral leases. Mr. Ottinger also provided the Council with background information concerning the resolution, explaining that a state mineral lessee had gone bankrupt, and that the state had accordingly made a claim for rent in the bankruptcy proceedings. The bankruptcy court, however, had disallowed the state's claim under Section 545 of the Bankruptcy Code, which allows a trustee to avoid the fixing of a statutory lien where, among other things, that lien is for rent. The Reporter noted that the State Mineral Board had been surprised and concerned by this outcome and, in response, had proposed a bill during the 2017 Regular Session that sought to circumvent the relevant bankruptcy provision by amending R.S. 31:123 to add a simple statement that royalties did not constitute rent. Ultimately, Mr. Ottinger continued, this bill was converted to a study resolution, sent to the Law Institute, and assigned to the Mineral Law Committee.

The Reporter explained that, upon looking into the issue, the Committee found a number of considerable problems with the aforementioned approach. Chief among these, he noted, was the fact that rent is an essential element of a lease. Accordingly, the Reporter explained, amending R.S. 31:123 to add a statement to the effect that "royalties do not constitute rent" would alter the very underlying nature of all existing mineral leases, rendering them no longer leases at all, but rather innominate contracts. He emphasized that this would have exceptionally far reaching effects, including making such contracts no longer subject to the Mineral Code. Accordingly, the Committee had sought to find an alternative solution to the state's unsecured creditor problem, involving various constituencies throughout the process. Mr. Ottinger noted that the Committee began by examining other states' statutes and the interaction between those statutes and the provision of the Bankruptcy Code at issue. The Reporter explained that the Committee quickly discovered that Louisiana's problem stemmed from the well-established fact of Louisiana law that a mineral lease is, by nature, a *lease*. Conversely, the Reporter added, other states consider mineral leases to be more analogous to property rights, and thus, of an entirely different nature than Louisiana mineral leases.

The Reporter noted that, with this in mind, the Committee developed a solution that would authorize a contractual lien in the form of a UCC security interest. He pointed to the language drafted by the Committee on page 2 of the materials and highlighted its mandatory nature. Mr. Ottinger further noted that the Committee's language had ultimately appeared in a bill that was filed and enacted during the 2019 Regular Session, but that because the Council had not yet approved the recommendation, the resulting bill had not been made on recommendation of the Law Institute. The Reporter also highlighted for the Council several key differences between the Committee's recommendation and Senate Bill No. 242 of the 2019 Regular Session: First, the bill was permissive rather than mandatory with respect to the creation of the security interest. Second, the scope of the security interest described in the bill was greater than that recommended by the Committee. Third, certain language was removed from the bill during the legislative process in an attempt to address issues related to the impairment of contracts. Fourth, the bill contained language granting the State Mineral Board permission to subordinate the state's security interest for any amount exceeding that owed to the state. Finally, the bill granted the relevant committees of the House and Senate a period of review before the clause is utilized in contracts.

Having explained the unusual procedure that had been followed and emphasizing that the Committee's recommendation had already been acted upon, the Reporter then asked for the Council's approval of the report. A motion was made and seconded to approve the report, at which time a Council member asked whether the language removed by the legislature from the Committee's proposal would overstate the scope of the security interest. The Reporter answered that he believed that to be the case but emphasized that such revision was not something the Committee itself recommended. Another Council member, pointing to lines 64 and 65, asked for clarification as to whether "the Board" was the lessor. After the Reporter confirmed that this was, in fact, the case, the Council member then asked why the Committee used "the Board" first and "lessor" later. Mr. Ottinger stated that this was a choice made in light of the style of other similar provisions and expressed his belief that the language was appropriate as written. He noted that he understood and even agreed with the Council member's point but maintained that no change was necessary. Another Council member, noting his lack of familiarity with the language "as extracted collateral" inquired as to the nature of the term and whether it was appropriate for use without additional explanation. Mr. Ottinger clarified that it was indeed a defined term.

Next, a Council member pointed out that if the state happened to fail to file a financing statement in connection with the contractual lien provided for in the Committee's recommended version of R.S. 30:127, they would be back to square one in terms of inability to recover in bankruptcy. The Council member suggested adding to the report a simple statement emphasizing such point, and after the Reporter agreed with this suggestion, the Council member proposed language that was accepted as a friendly amendment. The language, placed in its own paragraph at line 72, reads as follows:

> "As the security interest contemplated by the suggested language is one contemplated by the Uniform Commercial Code, the Board would need to satisfy the requirements of that law in order to perfect the security interest, including the filing of a financing statement."

With this addition, the Council returned to the motion to adopt the report as amended, and with all members in favor, the report in response to Senate Resolution No. 159 of the 2017 Regular Session was approved.

Next, Mr. Ottinger turned to the report in response to the second resolution, House Resolution No. 238 of the 2018 Regular Session, which he noted pertained to the issue of production payments. He then proceeded to provide the Council with background information concerning this resolution, noting that this began with a case, *Adams v. Chesapeake*, that he himself tried and then handled on appeal before the U.S. Fifth Circuit Court of Appeals. The Reporter then gave a brief overview of the case, which involved an unleased mineral owner's clever attempt to recover attorney fees. He explained that the owner – notably, an unleased owner – argued that his interest was analogous to a "production payment," an undefined term with a nevertheless understood meaning. Under the relevant provisions, Mr. Ottinger noted, the holder of a production payment would have been entitled to recover attorney fees; an unleased owner, on the other hand, would not. Because the interest of an unleased owner is *not* analogous to a production payment, the argument failed and the Fifth Circuit affirmed the district court's grant of partial summary judgment. Subsequently, this holding was followed by a number of lower courts; one state court, however, declined to do so, intimating that it was not bound by *Adams v. Chesapeake*. As a result of this state court's refusal to follow the decision, a legislator brought a bill during the 2018 Regular Session seeking to codify the holding of *Adams v. Chesapeake* by adding a definition of the term "production payment." After a number of practitioners raised issues with the proposed definition, the bill was converted to a study resolution – House Resolution No. 238 – and was sent to the Law Institute and assigned to the Mineral Law Committee.

The Reporter explained that, upon examining the issue in detail, the Committee concluded that the "cleanest" way to accomplish the resolution's stated goal of codifying the holding of *Adams v. Chesapeake* was to amend R.S. 31:212.21 directly to clarify the scope of its application. He explained that the Committee opted for this approach in lieu of others it felt would be less "surgical." In addition to the alternative on which it ultimately

decided, Mr. Ottinger noted that the Committee also considered drafting its own definition of "production payment." He explained that, although such approach sufficed to accomplish the stated goal, the Committee worried that it might have additional unintended consequences—consequences that would not result from the Committee's recommended approach. With respect to the proposed amendment to R.S. 31:212.21, the Reporter explained that the operative language was the language that had been added and noted that the recommended deletion simply removed an unnecessary word.

At this time, a motion was made and seconded to adopt the provision, and one Council member inquired whether the added language carried with it a negative implication – that an *unleased* owner would *not* have the corresponding remedies – and further inquired as to the policy behind such a rule. Mr. Ottinger answered in the affirmative, explaining that unleased owners would not be afforded the remedies associated with the present provision and that, in his estimation, this was the case because it is the operator who undertakes the risk and the monetary expenditure and assumes the risk. He also noted that unleased owners are dealt with elsewhere in the law. The Council member expressed concern that the rules described by the Reporter would put pressure on owners to contract. In response, Mr. Ottinger contended that the benefits afforded to unleased owners mostly even out with those afforded to lessors, thereby relieving any pressure to contract. A vote was then taken on the motion to adopt R.S. 31:212.21, and the motion passed with all but one member in favor. The adopted proposal read as follows:

> **§212.21. Nonpayment of production payment or royalties; notice prerequisite to judicial demand**
>
> If the owner of a ~~mineral~~ production payment created out of a mineral lessee's interest or a royalty owner other than a mineral lessor seeks relief for the failure of a mineral lessee to make timely or proper payment of royalties or the production payment, he must give his obligor written notice of such failure as a prerequisite to a judicial demand for damages.

Mr. Ottinger then concluded his presentation, and the Council discussed a number of administrative matters, including the possibility of using the LSU Foundation as an alternative meeting location for future Baton Rouge meeting, the decision to no longer provide lunch at New Orleans meetings, the dates of the Council's Spring 2020 meetings – January 10-11, February 7-8, and March 6-7 – and the plan to hold the Law Institute's annual banquet in October of 2020 to avoid a conflict with the LSU Alumni Banquet. Following this discussion, the Council adjourned for lunch.

Tax Sales Committee

After lunch, the President called on Mr. Stephen G. Sklamba, Reporter of the Tax Sales Committee, to begin his presentation of materials. Mr. Sklamba began with an overview of the Committee's work, noting that it had been meeting for six years, with the primary goal of addressing due process concerns related to current tax sale procedure in Louisiana. Highlighting the fact that he had previously presented the Committee's work, he stated his assumption that the Council understood the basic overall scheme employed, and explained that the present revisions would be shifting away from the sale of "tax sale title" to property in favor of the sale of a lien for the outstanding tax debt.

Mr. Sklamba then asked the Council to turn its attention to R.S. 47:1993. He noted that the proposed changes were made on recommendation of a Committee member who served as the assessor in Lafayette Parish, and that the change from "file" to "deliver" was made with the intention of clarifying that indexing was unnecessary. The Reporter pointed out that the deletions on page 2 of the materials were leftover Katrina-related provisions and noted that Subsection E was being deleted because it was rendered essentially meaningless in light of the concept of constructive notice. Similarly, Mr. Sklamba continued, Subsection G was being deleted because the lien referenced would arise by matter of law under the proposed constitutional amendments the Council had previously approved. At this time, a motion was made and seconded to approve R.S. 47:1993, and one Council member noted that Subsection A requires delivery to several

offices including the mortgage officer and questioned why Subsection E did not provide similarly. The Council member pointed out that Subsection E was the only Subsection that, instead, used the alternative language "office where the records of the parish are kept". He further suggested that Subsection E be revised to match the other provisions. The Reporter explained that present law contains the same discrepancy in language, noting that the Committee had simply carried over existing language. The Council member again suggested the aforementioned revision, a suggestion which the Reporter accepted as a friendly amendment.

Another Council member suggested that former Subsection H should be moved to the middle of Subsection E. After brief discussion, Mr. Sklamba accepted as a friendly amendment the suggestion to move the entirety of former Subsection H to line 24, following the word "rolls." In connection with this suggestion, Mr. Sklamba additionally accepted as a friendly amendment a suggestion to redesignate the final sentence of Subsection E – beginning with "In the suit ..." – as Subsection F. Finally, a Council member inquired as to the use of the term "statutory impositions" in lieu of "taxes". The Reporter clarified that this reflected the changes in terminology contained in the constitutional amendments corresponding to the present statutory revisions. With the aforementioned changes in place, the Council voted to approve R.S. 47:1993 as follows:

§1993. Preparation and ~~filing~~ delivery of rolls by assessor

A.(1) As soon as the assessment lists have been approved by the parish governing authorities as boards of reviewers, the assessors shall prepare the assessment rolls in triplicate after which one copy shall be delivered to the tax collector, one copy to the Louisiana Tax Commission, one copy to the recorder of mortgages, and two copies of the grand recapitulation sheet to the legislative auditor.

(2) If an assessor uses electronic data processing equipment to prepare the assessment rolls, the assessment data produced shall be made available upon request in a useable electronic media. The assessors shall prepare any such electronic assessment roll made available to tax collectors in American Standard Code for Information Interchange (A.S.C.I.I.) and may charge the tax collector a fee for preparing such information. This fee shall not exceed the actual cost of reproducing a copy of the assessment data in a useable electronic media and may be based upon the amount of data reproduced, any costs associated with converting to A.S.C.I.I., the amount of time required to reproduce the data, and any office supplies utilized in compiling and reproducing the data.

(3) The assessors shall prepare said rolls by parish, school board, police jury, levee district, special district and by any other recipients of ad valorem taxes, except by municipality. If any municipality requests such a roll, the assessor shall be required to prepare such a roll; however, the assessor's salary and expense fund shall be reimbursed by the municipality in accordance with R.S. 47:1993.1(C).

(4) If any municipality prepares its own tax rolls and assessment lists, upon approval of these rolls and/or lists by the parish governing authorities as boards of reviewers, each municipality shall prepare and submit to the Louisiana Tax Commission and the legislative auditor an annual statement of its millage rates and assessed valuation of property within its respective jurisdiction.

B. The assessors of the parishes of this state shall not ~~file~~ deliver and deposit with the tax collector of their respective parishes the assessment rolls of any current year until the collector shall present a receipt or quietus from the auditor and the parish governing authority that all state and parish taxes assessed on the rolls of the preceding year have been paid or accounted for. If the tax collector is unable to present this

receipt or quietus, the assessor shall immediately notify the auditor, the governing authority, and the tax commission of his completion of the assessment rolls of his parish and of his inability to ~~file~~ deliver them by reason of the tax collector not having obtained the required quietus. Any assessor who shall violate the provisions of this Paragraph shall forfeit any and all commissions to which he may be entitled from parish or state for his labors in making and writing the assessment rolls.

C. The assessors shall secure the approval of the tax commission before ~~filing~~ delivering their assessment rolls with the tax collector, and the tax commission may instruct all tax collectors not to receive from the assessor any assessment roll or collect any ~~taxes~~ statutory impositions thereon without the written consent of the tax commission. The tax commission may require the assessors to take an oath in a form to be prescribed by the tax commission declaring that he has complied with its instructions.

D.~~(1)~~ Each tax assessor shall complete and ~~file~~ deliver the tax roll of his parish on or before the fifteenth day of November in each calendar year. The officer having custody of the assessor's salary and expense fund shall withhold from the assessor's salary five dollars for each day of delay in the filing of the roll after such date.

~~(2) In accordance with the provisions of Article VII, Section 25(F) of the Constitution of Louisiana, tax rolls for 2005 and tax rolls for 2006 for Orleans shall be completed and filed on or before March 31, 2006, except that the tax rolls for 2005 for the parish of St. Bernard shall be completed and filed on or before June 30, 2006. Nothing in this Subsection shall prohibit the completion and filing of tax rolls prior to those dates.~~

~~E. Filing in the recorder's office shall be full notice to each taxpayer, and to each other person whom it may in any manner concern, that the listing, assessment, and valuation of the taxable property has been completed, that the rolls are on file in the sheriff's or tax collector's office and in the office where the mortgage records are kept and that the taxes are due and collectible, as provided by law.~~

~~F.~~ E. The act of ~~depositing~~ delivering the rolls by the assessor ~~in~~ to the ~~office where the records of the parish are kept,~~ recorder of mortgages shall be deemed prima facie evidence that the assessment has been made and completed in the manner provided by law. No injunction shall be issued by any court to prevent any assessor from ~~depositing~~ delivering the rolls. The recorder of mortgages shall keep the roll delivered to him among the record books of his office, and it shall be a part of the record of such office. He shall make the roll or a copy that may be a scanned copy available to the public for inspection.

F. In the suit of any taxpayer testing the correctness of his or their assessments before any court of competent jurisdiction, the decision of such shall only affect the assessment of the person or persons in such suit, and shall in no manner affect or invalidate the assessment of any other person or property appearing upon the tax rolls.

~~G. From the day the roll is filed in the recorder's office, it shall act as a lien upon each specific piece of real estate thereon assessed, which shall be subject to a legal mortgage after the thirty-first day of December of the current year for the payment of the tax due on it, but not for any other tax, which mortgage shall prime and outrank all other mortgages, privileges, liens, encumbrances or preferences, except tax rolls of previous years.~~

~~H. The recorder of mortgages shall keep the roll delivered to him among the record books of his office, and it shall be a part of the record of such office. He shall index the tax roll in the current mortgage book under the head of "tax roll" and no further record thereof shall be necessary; however, the failure of the recorder of mortgages to mark the tax rolls "filed" or to index them shall in no way prejudice the rights of the state or any parish or municipal corporation.~~

The Reporter next turned to R.S. 47:2121, the first provision of Part I of Chapter 5, noting that the Committee had struck and wholly rewritten the entirety of the existing statute. A motion was made and seconded to approve the provision, and one Council member, pointing to the Chapter heading, wondered whether "tax auctions" should be used in place of "tax sales" in light of the language employed throughout the proposed revisions. Mr. Sklamba accepted this suggestion, as well as the deletion of "ADJUDICATED PROPERTY" in the Chapter heading. Another Council member noted that R.S. 47:2121 used defined terms prior to the corresponding definitions section. The Council member further suggested perhaps striking "tax" from other definitions. The Reporter agreed with and accepted these suggestions, noting an additional language change in favor of the term "auction certificate".

Next, a Council member queried whether "it" referred to "the delinquent obligation" or "the right". The member further suggested that the operative phrase should be "right to receive payment of the delinquent obligation" throughout the draft. This led another member to ask whether "the delinquent obligation" in fact referred to the entire obligation or, instead, to some lesser part thereof. The member also disagreed with the previous suggestion and proposed deleting "right to receive payment of". The member further suggested reversing the order of Paragraphs (7) and (8) for the sake of clarity. The Reporter accepted this second Council member's suggestions as friendly amendments. In response to these friendly amendments, a member of the Committee voiced uncertainty that "the obligation" itself was in fact the thing actually being acquired. The Committee member argued in favor of retaining the "right to receive payment of" language. He further noted that there were instances throughout the draft where the term "tax" was used when "statutory impositions" was actually intended. The Committee member suggested that this usage be clarified and made uniform.

A Council member then raised, with respect to the word "title" at line 17 of page 5, the issue that "title" does not have a true meaning in Louisiana law. The Reporter clarified that the use of this language was deliberate, in consideration of the fact that practitioners – even in Louisiana – are accustomed to using the term, and intended to make clear the fact that the revision would be modifying the current system. The Council next returned to discussion over whether the language "right to receive payment of" was necessary or desirable. The Council member who had previously argued against its inclusion opined that no reasonable person would ever read the phrase "acquire the delinquent obligation" any way aside from the way it was intended. Agreeing with this sentiment, another Council member nevertheless suggested that it perhaps made sense to leave the full phrase "right to receive payment of the delinquent obligation" here, while removing it elsewhere, because the provision at issue simply set forth the "purposes". Ultimately, a motion was made and seconded to hold a vote on the issue. The Council voted in favor of removing the language "right to receive payment of" throughout the revision.

Next, a suggestion was made to add the words "other statutory" preceding "impositions" on line 10 of page 5. Another Council member argued that the language included should be only "statutory impositions" without the word "other". The Reporter noted that there was no substantive difference either way, and ultimately, the Council decided on the phrase "and other statutory impositions" in light of the facts that people were accustomed to simply "taxes" and that the Section at issue was one on "purposes." The Council then voted on the motion to approve R.S. 47:2121 and the preceding Chapter and Part headings. The provisions were approved as follows:

CHAPTER 5. PAYMENT AND COLLECTION PROCEDURE; TAX ~~SALES~~ AUCTIONS; ~~ADJUDICATED PROPERTY~~
PART I. GENERAL PROVISIONS; PURPOSE; DEFINITIONS

~~§2121. Purpose; principles; property rights~~ as set forth in 2008 legislation (Act 819, Section 1, eff. Jan. 1, 2009

~~A. Purpose. The purpose of this Chapter is to amend and restate the law governing the payment and collection of property taxes, tax sales, and redemptions to:~~

~~(1) Reorganize the prior law into a single comprehensive Chapter, using consistent terminology.~~

~~(2) Encourage the payment and efficient collection of property taxes.~~

~~(3) Satisfy the requirements of due process.~~

~~(4) Provide a fair process and statutory price for the redemption of tax sale and adjudicated properties.~~

~~(5) Encourage the return to commerce of tax sale and adjudicated properties, without unnecessary public expense, through clear procedures that allow interested persons to carry out the title search and notification procedures considered necessary under contemporary standards of due process to acquire merchantable title to those properties.~~

~~(6) Avoid the imposition on the public of extensive title search and notification expenses for properties that are redeemed or that fail to attract any party willing to bear the expenses of establishing merchantable title.~~

~~(7) Retain, to the extent not inconsistent with the preceding purposes, the traditional procedures governing tax sales, adjudications, and redemptions in this state.~~

~~B. Effect of tax sale on property interest. No tax sale shall transfer or terminate the property interest of any person in tax sale property or adjudicated property until that person has been duly notified and both the redemptive period and any right held by that person to assert a payment or redemption nullity under R.S. 47:2286 have terminated.~~

~~C. Tax sale title. (1) A tax sale confers on the tax sale purchaser, or the political subdivision to which the tax sale property is adjudicated, only tax sale title. If the tax sale property is not redeemed within the redemptive period, then at the termination of the redemptive period, tax sale title transfers to its holder ownership of the tax sale property, free of the ownership and other interests, claims, or encumbrances held by all duly notified persons. Tax sale title is fully transferable and heritable, but any successor of a tax sale title takes it subject to any existing right to redeem the property, or to assert a nullity, to the extent and for the period of time that the right would have existed in the absence of the transfer or succession.~~

~~(2) A person who acquires ownership of property through a tax sale title takes the ownership subject to any interests that are not terminated in accordance with this Chapter. Other than taking subject to those interests, the acquiring person's ownership of the tax sale property after termination of the redemptive period is not affected by any lack of notice to the holders of those interests.~~

~~(3) Notwithstanding any provision in this Chapter to the contrary, the following interests affecting immovable property shall not be terminated pursuant to this Chapter to the extent the interests remain effective against third parties and are filed with the appropriate recorder prior to the filing of the tax sale certificate:~~

~~(a) Mineral rights.~~

~~(b) Pipeline servitudes.~~

~~(c) Predial servitudes.~~

~~(d) Building restrictions.~~

~~(e) Dedications in favor of political subdivisions, the public, or public utilities.~~

~~D. Deficiencies in notices or procedures. Except for acts or omissions that result in redemption or payment nullities, none of the provisions in this Chapter concerning notices or procedures required in connection with a tax sale or tax auction provide a ground for nullifying:~~

~~(1) The tax sale.~~

~~(2) The transfer at the end of the redemptive period of the ownership of property to which tax sale title has been issued.~~

~~(3) The transfer or termination of any duly notified person's interest in the tax sale property or the adjudicated property.~~

§ 2121. Purpose, principles and property rights in accordance with Amendment to Article VII, Section 25

The purpose of this Amendment to this Chapter is to amend and restate the law governing the payment and collection of property taxes and other statutory impositions to do all of the following:

(1) Provide enabling legislation to implement the Constitutional Amendment to Article VII, Section 25.

(2) Clarify that a purchaser at a tax auction acquires the right to receive payment of the delinquent obligation and the lien and privilege securing it and does not acquire title, possession or ownership of the tax debtor's property.

(3) Establish rules and procedures for competitive bidding at tax auctions.

(4) Establish a deadline date and impose a penalty on all delinquent tax debtors who fail to pay property taxes and other statutory impositions ninety days after the deadline date.

(5) Provide procedures to enforce the lien and privilege evidenced by a tax certificate or certificate of no bid.

(6) Provide that the time period after expiration of which a tax debtor can no longer exercise the right of redemption commences from the date of service of process in a subsequent judicial proceeding or from the date of receipt of notice from the political subdivision of a proposed sale of the property for which there was no bid at an auction.

(7) Allow additional time for owners to redeem before the granting of a judgment terminating the owner's interest in the property for unpaid property taxes and other statutory impositions where nonpayment was caused by physical or mental infirmity or death of an owner.

(8) Provide procedures under which a purchaser or political subdivision at a tax sale conducted under prior law may establish merchantable title to property sold or adjudicated.

Next, the Reporter moved to the section on definitions, R.S. 47:2122, and noted that many definitions were simply reproduced from present law. After Mr. Sklamba read aloud all of the new or revised definitions, a motion was made and seconded to approve this statute, at which time a Council member asked why the phrase "any other" had been deleted on line 12 of page 6, opining that the language as it had been previously drafted was correct. Another Council member wondered who the "other persons" were, and Mr. Sklamba clarified that such "other persons" would be anyone who acquired from the taxing authority in a post-adjudication sale. The Council member noted his understanding.

Another question was then posed with respect to the definition of delinquency date. In particular, the Council member wondered whether the definition should refer to "statutory impositions" as opposed to "taxes". The Reporter clarified that it was correct to define "delinquency date" specifically in relation to taxes, because *other* statutory impositions could become due and delinquent on any given date. Next, a Council member noted that, with respect to the definition of "acquiring person", Subparagraphs (b), (c), and (d) used the phrase "acquiring [ownership]" while Subparagraph (a) uses "receiving property." Mr. Sklamba clarified that this distinction was unintentional and accepted as a friendly amendment the Council member's subsequent suggestion to change "receiving" to "acquiring." The Council member further suggested that the definition of "deadline date" be revised.

Another Council member noted that lines 2, 27, and 28 contained inconsistent language, and inquired as to whether "statutory impositions" should be used throughout, given its status as a defined term. This prompted a Council member to point out that the definition of "delinquent obligation" as written contained no notion of delinquency. Concurring, another Council member suggested inserting the phrase "that are not paid by the deadline date" on line 3 after the word "bill." The Reporter accepted this change, as well as a Council member's proposal to make the use of "statutory impositions" uniform throughout. Another Council member then posed a question regarding the definition of "premium." The member noted that, as written, the provision went beyond defining a term and imposed substantive rules. The Reporter agreed and accepted another friendly amendment to delete the rule-imposing language, with the understanding that he would ensure such rules were in fact imposed in the body of the draft.

Next, the Reporter accepted a suggestion to change the term defined in Paragraph (14) to " "redemptive period" or "redemption period" " as opposed to "redemptive or redemption period". He further amended the definition to clarify that the subject of the redemption was the *certificate* rather than the property itself. The Reporter additionally accepted a Council member's suggestion to add a Comment clarifying that the actual parameters of the redemptive period were set forth in R.S. 47:2243, resolving to draft such a Comment to be approved at a later date. After some brief discussion amongst members of the Council regarding the defined term "tax auction property," it was noted that such term was not presently used in the draft. Accordingly, the Reporter agreed to delete this term unless and until it became necessary to add back later. With no remaining commentary with respect to the R.S. 47:2122, the Council returned to the motion to approve the statute. A vote was held and, with all in favor, R.S. 47:2122 was approved as follows:

§2122. Definitions

The following terms used in this Chapter shall have the definitions ascribed in this Section, unless the context clearly requires otherwise:

(1) "Acquiring person" means ~~either~~ any of the following:

(a) A person acquiring property at a tax sale conducted prior to January 1, 2009.

(b) A person acquiring tax sale title to a tax sale property at a tax sale conducted after January 1, 2009, but before the effective date of this Act.

(c) A person acquiring the delinquent obligation and the lien and privilege securing it at a tax auction after the effective date of this Act.

(d) A political subdivision or ~~any other~~ person ~~seeking to acquire or~~ acquiring ownership of or tax sale title to adjudicated property prior to the effective date of this Act.

(2) ~~"Adjudicated property" means property of which tax sale title is acquired by a political subdivision pursuant to R.S. 47:2196.~~

~~(3)~~ "Authenticate" means either of the following:

(a) To sign.

(b) To execute or otherwise adopt a symbol, or encrypt or similarly process a written notice in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a written notice.

(3) "Certificate of no bid" means the instrument filed by the tax collector evidencing that a delinquent obligation was offered for sale at a tax auction and failed to sell.

(4) Deadline date means the last day to pay ad valorem taxes before they become delinquent.

~~"Duly notified" means, with respect to a particular person, that an effort meeting the requirements of due process of law has been made to identify and to provide that person with a notice that meets the requirements of R.S. 47:2156, 2157, 2206, 2236, or 2275, or with service of a petition and citation in accordance with R.S. 47:2266, regardless of any of the following:~~

~~(a) Whether the effort resulted in actual notice to the person.~~

~~(b) Whether the one who made the effort was a public official or a private party.~~

~~(c) When, after the tax sale, the effort was made.~~

(5) "Delinquency date" means the date on which ad valorem taxes become delinquent.

(6) "Delinquent obligation" means statutory impositions included in the tax bill that are not paid by the deadline date plus interest, costs and penalties that may accrue in accordance with this Chapter.

(7) "Forbidden purchase nullity" means a nullity of an auction conducted in violation of R.S. 47:2162.

(8) "Governmental lien" means all liens imposed by law upon immovable property in favor of any political subdivision and filed in the mortgage records, including without limitation, those imposed under R.S. 13:2575, R.S. 33:1236, 4752, 4753, 4754, 4766, 5062, and 5062.1, other than statutory impositions.

~~(6)~~ (9) "Ordinance" means:

(a) An act of a political subdivision that has the force and effect of law, including but not limited to an ordinance, a resolution, or a motion; or

(b) A rule or regulation promulgated by the State Land Office, the division of administration, or by another state agency with authority over adjudicated properties.

~~(7)~~ (10) "Owner" means a person who holds an ownership interest that has not been terminated ~~pursuant to R.S. 47:2121(C)~~.

~~(8)~~ (11) "Payment nullity" means a nullity arising from payment of taxes prior to a tax sale, including payment based on dual assessment.

~~(9)~~ (12) "Political subdivision" means any of the following to the extent it has the power to levy ~~ad valorem taxes~~ statutory impositions and conduct tax ~~sales~~ auctions for failure to pay ~~ad valorem taxes~~ statutory impositions:

(a) The state.

(b) Any political subdivision as defined in Article VI, Section 44 of the Louisiana Constitution.

(c) Any other agency, board, or instrumentality under Subparagraph (a) or (b) of this Paragraph.

(13) "Premium" means the amount bid at auction of a delinquent obligation in excess of the statutory imposition, interest, costs, and penalties.

~~(10) "Redemption nullity" means the right of a person to annul a tax sale in accordance with R.S. 47:2286 because he was not duly notified at least six months before the termination of the redemptive period.~~

~~(11)~~ (14) "Redemptive period" or "Redemption period" means the peremptive period ~~in~~ during which a ~~person may redeem property~~ a tax certificate may be redeemed. ~~as provided in the Louisiana Constitution.~~

~~(12) "Send" means either of the following:~~

~~(a) To deposit in the mail or deliver for transmission by any other commercially reasonable means of communication with postage or cost of transmission provided for, and properly addressed to any address reasonable under the circumstances.~~

~~(b) In any other way to cause to be received any written notice within the time it would have arrived if properly sent.~~

~~(13)~~ (15) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing in tangible form.

~~(14)~~ (16) "Statutory impositions" means ad valorem taxes and any imposition in addition to ad valorem taxes ~~that are~~ included on the tax bill ~~sent to the tax debtor~~.

(17) "Tax auction" means the sale of a delinquent obligation and the lien and privilege securing it pursuant to Article VII, Section 25 of the Louisiana Constitution.

~~(20) "Tax sale property" means property for which tax sale title is sold pursuant to R.S. 47:2154.~~

~~(21)~~ (18) "Tax ~~sale~~ auction purchaser" means the purchaser of a delinquent obligation and the lien and privilege securing it. ~~tax sale property.~~

~~(18)~~ (19) "Tax ~~sale~~ certificate" means the written ~~notice~~ instrument evidencing ~~a tax sale~~ the delinquent obligation and lien and privilege assigned to a tax auction purchaser to be filed in accordance with R.S. 47:2155 ~~and 2196~~.

(20) "Tax certificate holder" means a tax auction purchaser, his successors or assigns.

~~(15)~~ (21) "Tax debtor" means, as of the date of determination, the person listed on the tax roll in accordance with R.S. 47:2126.

~~(16)~~ (22) "Tax notice party" means, as of the date of determination, the tax debtor and any person requesting notice pursuant to R.S. 47:2159.

~~(17)~~ (23) "Tax sale" means the sale or adjudication of property or tax sale title ~~to property pursuant to R.S. 47:2154 and 2196~~ under prior law.

~~(19)~~ (24) "Tax sale party" or "tax auction party" means the tax notice party, the owner of property, including the owner of record at the time of a tax ~~sale~~ auction, as shown in the conveyance records of the appropriate parish, and any other person holding an interest, such as a mortgage, privilege, or other encumbrance on the property, including a tax sale purchaser or purchaser of a tax certificate at a previous auction or sale, as shown in the mortgage and conveyance records of the appropriate parish, and other interested parties whose identities and whereabouts are reasonably ascertainable and whose interest may be terminated in a proceeding in accordance with R.S. 47:2266.

~~(22)~~ (25) "Tax sale title" means the set of rights acquired ~~by a tax sale purchaser or, in the case of adjudicated property, on the applicable political subdivision, pursuant to this Chapter~~ under former Article VII, Section 25 and the law in effect prior to the effective date of this Act.

~~(23)~~ (26) "Written notice", "notice", "written", or "writing" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

After passing over R.S. 47:2123 without requesting Council approval, Mr. Sklamba next turned the Council's attention to R.S. 47:2124. He explained that Subsection A was deleted because it dealt with the concept of redemption nullity, which would no longer be recognized under the proposed revisions. Noting that there were no additional substantive changes to the Section, he asked for the Council's approval. A motion was made and seconded to approve R.S. 47:2124, at which time one Council member suggested that the Reporter and the Committee draft for future approval a set of detailed transition rules that would govern past sales that occurred under prior iterations of the law. The Council member noted his understanding as to why the Committee deleted Subsection A from the present revision but emphasized that such immunity ought to be provided for somewhere.

He further urged that transition rules would be an absolute necessity for the implementation of the revision as a whole. Others, including the Reporter, strongly agreed with each of these opinions. Mr. Sklamba resolved to draft such provisions, including one preserving former Subsection A's immunity, and noted that he would present them to the Council for approval at some later date. After additional discussion regarding the immunity provided for in proposed Subsection A, the Reporter agreed to carry down the language "either in their personal or their official capacity" from former to current Subsection A. With these contingencies agreed upon, the motion to approve R.S. 47:2124 carried with all in favor, and the provision was approved as follows:

§2124. Liability of tax collectors and tax assessors

~~A. Tax collectors and tax assessors shall bear no liability, either in their personal or in their official capacity, arising out of any redemption nullity.~~

~~B.~~ A. Liability shall not be imposed on tax collectors or tax assessors or their employees either in their personal or official capacity based upon the exercise or performance or the failure to exercise or perform their duties under this Chapter.

~~C.~~ B. The provisions of Subsection ~~B~~ A of this Section are not applicable to acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.

~~D.~~ C. Any action against a tax collector or tax assessor shall be brought prior to the earlier to occur of:

(1) One year after the claimant knew or should have known of the act or failure to act giving rise to the cause of action.

(2) The date of termination of the right of the claimant to bring an action for nullity.

~~E.~~ D. The liability of the tax collector or tax assessor in his official capacity for the obligations of his office terminates when he ceases to hold office and his successor is appointed, who shall then succeed in his official capacity to all of the obligations of the preceding holder of the office incurred in his official capacity, subject to the provisions of R.S. 47:2162.

The Reporter moved next to R.S. 47:2126, explaining the several minor revisions made by the Committee. A motion was made and seconded to approve the provision, and a Council member expressed to the Reporter his belief that the changes made to the present Section were a superb improvement upon the law. He also noted that the word "roll" had been omitted at the end of line 25. Mr. Sklamba thanked him for his assessment of the revisions and accepted the addition of "roll" at the end of line 25 as a friendly amendment. Another Council member inquired as to why the provision included the language "or later" in line 19. Committee member and Lafayette Parish assessor Conrad Comeaux answered that the language was intended to provide contingencies in the case of some emergency, such as a flood. A Council member, concurring, added that the language gave some latitude to the collector. The Council then returned to the motion on the floor, and all votes were cast in favor of approving R.S. 47:2126, which read as follows:

PART II. PAYMENT AND COLLECTION

§2126. Duty of assessors; single assessment; exception

Each assessor shall deliver to the appropriate tax collector the tax roll for the year in which taxes are collectible by November fifteenth of each calendar year, except as otherwise provided by law. At the same time, the assessor ~~may file~~ shall deliver the tax roll to the recorder of mortgages for

~~in the mortgage records of~~ the parish in which property subject to the taxes is located. The assessor shall use reasonable efforts to list on the tax roll all co-owners of record of the property~~, or if there has been a tax sale to a party other than a political subdivision, the tax sale purchaser and the other owners, to the extent their interests were not sold at tax sale~~. The tax roll shall be updated as of January first or later of the year in which the taxes are collectible. There shall be only one assessment for each tax parcel, and the full assessment shall be on each tax bill sent pursuant to R.S. 47:2127(C); however, if requested by a tax debtor, the assessor may, but shall not be obligated to, make separate assessments for undivided interests in each tax parcel. The assessor shall not list the name of the purchaser of a tax certificate on the tax roll.

Finally, the Council considered R.S. 47:2127, and after a motion was made and seconded for its approval, a Council member pointed out that the notice did not mention accrual of interest "on a non-compounding basis" despite such method of calculation being specified in Subsection D. A friendly amendment was offered and accepted to add such language to the notice on page 12, line 8. Another Council member inquired about the language "respective of year" on page 10. Mr. Sklamba noted that this was simply existing law that had been carried over. Another Council member asked what the sentence on page 10, line 40 meant, highlighting the fact that, as drafted, the definition of governmental lien excluded statutory impositions, rendering the sentence meaningless. The Reporter explained that the sentence was intended to prevent "double-dipping," and noted that, once included on the tax bill, such a lien *becomes* a statutory imposition. After brief discussion, the Council decided to recommit the definition of governmental lien, asking that the Committee redraft it with consideration for its interaction with R.S. 47:2127.

A Council member then noted that the entirety of the language of line 4 on page 11 could be condensed to simply read "statutory impositions". The member further noted that the requirement for payment contained in the line was already stated elsewhere and thus redundant. Mr. Sklamba clarified that the redundancy was deliberate, as a Committee member – the sheriff of Jefferson Parish – wanted the requirement to be as clear as possible. He further expressed his agreement, however, that the statement was unnecessary, and ultimately accepted its deletion. Next, the Council member who had previously raised the issue regarding governmental liens and statutory impositions suggested that the sentence be deleted, with the understanding that the concept would be retained elsewhere. The member further noted that he was in favor of revising the definition of "governmental lien." This and related discussion ultimately led the Council to vote in favor of recommitting R.S. 47:2127.

At this time, Mr. Sklamba concluded his presentation, and the August 2019 Council meeting was adjourned.

Nick Kunkel

Mallory C. Waller