

MINUTES OF THE FOURTH MEETING OF THE STATUTE LAW COMMITTEE
2009-2011 Biennium
Corrected

June 17, 2011

The Statute Law Committee held its fourth meeting of the 2009-2011 biennium at 10 a.m. in the Reception Room in the Temple of Justice in Olympia.

The meeting opened with Chair Marty Brown presiding.

Members present: Alexander, Baker, Carrell, Conte, Hoemann, Kline, and Rodger.

Members absent: Carrell, Goodman, Panesko, and Rodne.

Also in attendance were Kyle Thiessen, Code Reviser, who serves as the committee's secretary; Lew Lewis, Deputy Code Reviser; Kerry Radcliff, Washington State Register Editor; and Debbie Deibert, Administrative Secretary.

The minutes of the previous Statute Law Committee meetings on December 8, 2010 and January 19, 2011 were approved (Tab 1).

Kyle offered introductory remarks by first welcoming members of the audience who would be participating in discussions concerning the numbering of sections in the Uniform Commercial Code: Representative Jamie Pedersen, Representative Deborah Eddy and Washington State Bar Association representative Kathryn Leathers. Also in attendance were Edie Adams, Trudes Tango and Jackson Maynard.

Kyle informed the committee that the session laws from 1889 to 1939 and 1980 to present were now on-line. The session laws from 1940 to 1979 would soon be added on-line also. Putting the session laws on-line has been a significant accomplishment and will prove very useful to all.

Kyle remarked that bills which were requested by the Statute Law Committee passed the legislature. These included the statute law committee's publication authority, a technical clean-up bill and the fourth gender neutral bill.

Kyle ended his introductory remarks by informing the committee that in order to achieve budget efficiencies, the office closed at 8 p.m. each evening during session Monday through Thursdays whenever possible. The office still met all service requirements of the legislature and stayed open to a later time when it was required. The 8 p.m. closing time worked well.

Chair Marty Brown moved the agenda item concerning the codification/numbering of ESHB 1492 behind Tab 6 forward in order to accommodate the schedules of guest speakers. A discussion was held concerning the difference in the numbering system between the UCC model numbering system and the Code Reviser's Office numbering system of the RCW. It was noted that a floor amendment to ESHB 1492 directing the sections be numbered using the UCC system passed the House on a 96 to 1 vote and when the bill was heard in the senate committee and on the floor, that body saw fit to leave the amendment.

Joe Panesko, who was unable to attend the statute law committee meeting, submitted his views and reasoning in an e-mail which was presented to the committee. In it, Mr. Panesko advocated that all the UCC be re-codified but no other titles. A copy of Mr. Panesko's e-mail follows:

"Unfortunately I will be in Federal Magistrate Judge Strombom's courtroom from 10am until the end of the day negotiating shellfish management issues with all of the PNW treaty tribes, so I will be unable to attend Friday's meeting. This is the first SLC meeting I'm not able to attend in 6 years that I recall. I'm disappointed to miss the meeting because I have spent a lot of time contemplating the UCC subsection numbering issue.

I've had numerous conversations with Kyle, with others from the SLC, and with others interested in the issue (some of whom I'm copying on this email). With this email, I'm sharing my views on the UCC subsection codification issue with the hope that they be taken into account by other committee members if any substantive votes are taken on the matter at Friday's meeting. Although I am the Bar Association's appointee to the committee under the statutory authority in [RCW 1.08.001\(7\)](#), my opinions do not reflect the formal position of the Bar Association or the Board of Governors, and I haven't had the opportunity to solicit formal BOG input.

I'll convey the outcome first, and then explain my reasoning. I apologize for the length of the email.

My position:

My bottom line position is that I'm in favor of the RCWs implementing the Model UCC subsection numbering, and I favor the SLC voting to adopt this position.

Article 9A, or all of the UCC?

For purposes of SLC consideration, my preference would be for the SLC to adopt its position with regard to the entirety of the UCC, not just a particular article. It doesn't make sense to me to handle this issue on an article-by-article approach. On the other hand, I am not a UCC practitioner, so I am open to the possibility of there being differences amongst the articles that hypothetically warrant following RCW style in some articles but Model style in other articles.

Nearly all of my discussions with others on this topic have focused on the policy-based perspective of whether the RCW should implement Model subsection numbering, and I have not discussed so much the question of whether the SLC can implement model subsection numbering. [RCW 1.08.015\(2\)\(b\)](#) directs the SLC to “make chapter or section division and subdivision designations uniform with that followed in the revised code.” I'm not entirely certain whether this reference to “subdivision” intended to reach subsection numbering, but my inclination is that it does include subsection numbering, and this would seem to impose a legal constraint on the ability of the SLC to use Model UCC subsection numbering absent legislative direction. Such legislative direction is provided in HB 1492 (Chapter 74, link [here](#) – see section 801), which authority extends only to Article 9A. I would advocate further legislation clearly authorizing the SLC to depart from uniform “section division and subdivision designations” for all of the UCC to clarify any ambiguity on this point.

Impact of the delayed effective date?

Chapter 74 has a delayed effective date of July 1, 2013, and that delay does not exempt section 801 from its scope. Despite the delayed effective date, my opinion is that any codification of Chapter 74, even if released before July 2013, comply with the legislative direction to utilize UCC numbering. It does not make sense to me to do a “pre-effective-date” codification of the laws using Washington's system, and then recodifying after July 2013 to shift over to the Model system. I do not feel that further legislative direction is necessary for this issue as to Article 9A, and advocate that the SLC to vote to use Model subsection numbering in the forthcoming codification of Article 9A.

Caveat – My opting for Model subsection numbering is strictly limited just to the UCC:

I arrive at my position on this issue only after significant analysis and discussions. Uniformity within the RCW is perhaps the largest and most significant asset of the official code, and the lack of uniformity and lack of permanence of the older, private codes in the first 60 years of statehood were some of the primary factors that drove the effort to create the official RCW.

According to the State Uniform Law Commission [materials](#), Washington State has adopted over 50 Uniform Laws. Those Uniform Laws have been implemented into the

RCW using the RCW style standards, with one exception to my knowledge -- the UCC. I arrive at my position regarding UCC subsection numbering primarily because of the fact that the SLC (and/or Legislature) has previously taken the position that the UCC should receive special treatment in the RCW section numbering and chapter divisions to conform to the structure of the Model UCC. I accept that decision without question. Because the chapter divisions and section numbering already receive unique treatment, I think it is logically consistent to allow the subsection numbering also to track the Model form. That being said, I feel strongly that any vote by the SLC should make clear for the record that departing from uniformity is not being taken lightly, and that such exceptions should be considered only in the rarest of circumstances. The value of our RCWs would be significantly diluted if we slide down the slope towards implementing the uniform law or model section numbering and subsection numbering for all of the uniform laws sprinkled throughout the code.

Concern over lack of consistency within the Model UCC, and a review of the history shedding light on how the issue has developed

I reviewed various historic versions of the Model UCC available in the Temple of Justice law library (side note: the older model versions are not available online so I am extremely thankful that the final budget maintained enough funds for the law library to stay open). The original Model UCC from the 1950s utilized subsection numbering consistent with Washington State's RCW style. So when Washington first adopted the UCC in 1965, there was uniformity both within the RCW and with the Model. My understanding is that the NCCUSL changed its style guide some time thereafter. Despite changing its style guide, the NCCUSL did not immediately revamp model codes such as the UCC; instead, it appears that model codes were converted to the new NCCUSL subsection numbering style only as they were substantively revised. With the Model UCC, it appears that the various articles have been updated on a piecemeal basis over time, such that different editions of the Model UCC show differing levels of internal consistency in subsection numbering style across the articles. While most of the latest Model UCC has been converted to the converted NCCUSL style, some inconsistencies still appear to exist. For example, the current Model UCC still shows Articles 2 and 2A as using subsection numbering consistent with the RCW style. This inconsistency within the Model UCC on subsection numbering definitely gives me pause, but ultimately doesn't push me to reject the Model style.

As I mentioned in the previous paragraph, the original RCW UCC in 1965 used the RCW subsection numbering style which happened to coincide with the Model UCC style at that point in time. It appears that only within the last 10-15 years have a few amendments within the RCW started converting over to the current Model subsection numbering on a piecemeal basis (which was possibly in violation of RCW 1.08.015(2)(b)). I think consistency is important, so regardless of which way the SLC votes, or which way the legislature comes out should it revisit the issue, the RCWs should be fixed to implement a consistent solution."

Discussion also included the importance the UCC plays not only in this state, but

in the nation and internationally. Uniform numbering for the purpose of national and international research and citing should be considered. It was put forward that the numbering of UCC sections is a special case and it should deviate from the state's numbering system. The Chair asked Justice Alexander about the Supreme Court's opinion. Justice Alexander noted that it has never come up and has never been a problem. Justice Alexander asked Kyle if the numbering has caused a problem in the past. Kyle reported that he has not received any calls or complaints concerning its numbering.

Kyle continued that if the committee directs the Code Reviser's Office to number the UCC using the its model numbering system, that he hopes not to renumber the entire UCC immediately, but to renumber as bills come in. He pointed out that the office has broad authority to use a numbering system and that the office and committee can do clean up bills as time presents itself.

Senator Kline noted that one mandate of the committee is to serve the entire justice system. He questioned whether there could be complaints that we don't know about, in part because the Statute Law Committee is not well known. Barbara Baker added that there is value in numbering consistency; however it may be more important in this case to use the UCC model numbering system for interstate and international users. Representative Pederson continued the discussion by adding that both casual and intense users of the UCC are not all lawyers, but also include bankers and trades persons. Avoiding litigation is imperative and the user needs to be able to get in to the commentary and the best access to that is by uniformity. Ken Conte concurred with the conclusions that Joe Panesko came to that it is easier to go from article to commentary using the UCC model and it seems necessary and desirable to stick with a uniform system.

Justice Alexander asked for a motion to be made as to the direction the committee should give to the code reviser. Barbara Baker seconded the motion that the code reviser's office should use the model uniform numbering system for Article 9 and to move up the date to codify. Representative Pedersen commented that the state would be considering additional articles in the future and that the rest of the UCC could be renumbered based on the UCC model as bills come forward. Marty Brown noted the precedent we are setting allows the committee and the code reviser's office to do this.

Barbara Baker stated that the Statute Law Committee should take the time to discuss these important matters even in the throes of a legislative session.

A question was put forward if the Statute Law Committee should adopt a broader policy. It was noted that we do get model acts from a variety of sources, but in agreeing with Joe Panesko's memo, that the UCC be the only exception to the RCW numbering system.

Barbara Baker made the motion:

Resolved, that the Code Reviser's Office codify the articles of the UCC in the style recommended by the NCCUSL; and

Further resolved, that the UCC model numbering system be updated as legislation is introduced, passed and signed by the governor.

Justice Alexander seconded the motion. The motion passed unanimously.

Senator Kline asked for an example to clarify what sections would be re-numbered. The example was: If a bill came in to amend 3 sections of Article 1 of the UCC, then during the codification stage all of Article 1 would be numbered according to the UCC model numbering system.

The chair thanked everyone for their input on the UCC numbering system and directed that the committee turn its attention to the remaining agenda items.

Kyle Thiessen reported that the publication account still appeared to be stable and referred the committee to the expenditure and revenue report (Tab 2).

Kyle introduced Kerry Radcliff and once again presented the committee with a volume of the Washington Administrative Code bound by Trappist monks in Oregon. Kerry talked about the new method for publication and what would appear as "official" on our web site. She provided members with a handout which displayed our WAC web page. Each chapter would start on its own page and it would "stand alone" so someone could view and print a specific chapter. She mentioned she would like it to have updated date ranges for access to WAC chapters. She noted that it would be easy to archive and would be the same format as if published. Kerry reported that currently the Washington State Register and the Washington Administrative Code departments are busy with the merger of several agencies into Department of Enterprise Services.

Kyle noted that the office's operating expenditures were well within its appropriation (Tab 3). Also provided to the committee was a report on the travel expenses of Washington State's Uniform Legislation Commission (Tab 4). Kyle

gave a brief overview on how uniform laws are developed. Kyle requested permission from the committee to travel to the national uniform legislation commission's annual meeting held in July in Chicago. He reported that there would be a roundtable meeting discussing authentication of rules and statutes on-line which he wanted to be a part of. Kyle also sought permission for Kerry Radcliff to travel to the National Association of Secretary of State in West Virginia. Kerry Radcliff holds office as the secretary-treasurer for the Administrative Codes and Registers section of NASS. Key issues concerning code and register publications, on-line availability of the registers and codes, and on-line authentication were to be discussed and as an officer in this national organization, Kyle felt it imperative for her to attend. The majority of committee members agreed that Kyle should decide about travel for his office. Barbara Baker abstained from comment.

The committee further discussed the travel and dues for the Uniform Legislation Commission. Justice Alexander felt the national dues should be paid in full. After a brief discussion the majority of the committee felt that a fifty percent dues payment would be in line with the practices of dues payments by other legislative entities during these difficult financial times. Also, a limit of \$10,000 was set for the combined travel expenses of the members of the Uniform Law Commission.

Kyle advised the committee that behind Tab 5 was the requested amount of general fund money appropriation by the Code Reviser's Office and section 107 of 2ESHB 1087 which contains the office's budget appropriation as passed by the legislature.

A report of 2011 multiple amendments with the recommendations of the code reviser as to codification were presented to the committee. Kyle explained that by sharing the list with the committee and with house and senate staff, the office has received helpful comments and in one case resulted in a changed approach due to the input of committee staff. Members of the statute law committee are given a two to three-week period of time to review and comment on the multiple amendment recommendations. (Tab7)

Thereupon, the meeting adjourned at 11:47 a.m., the next meeting to be held at the call of the Chair.

K. KYLE THIESSEN, Secretary

MARTY BROWN, Chair Date
(Tab references are to the meeting binder.)