

OLS CLE Presentation

New Jersey Law Revision Commission

Process And Projects

Presented by:

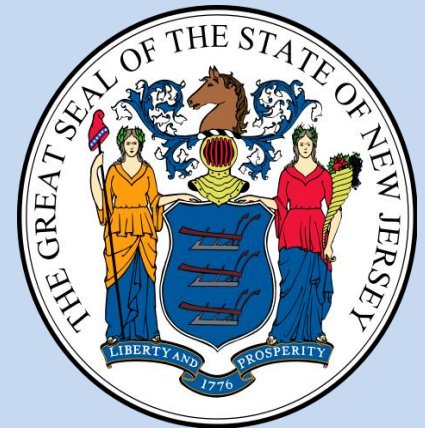
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NJLRC – Process and Projects

NJLRC – Process And Projects

- What is the New Jersey Law Revision Commission?
- What is the Commission's process?
- What sort of projects does the Commission work on?

Law Revision Commissions Generally

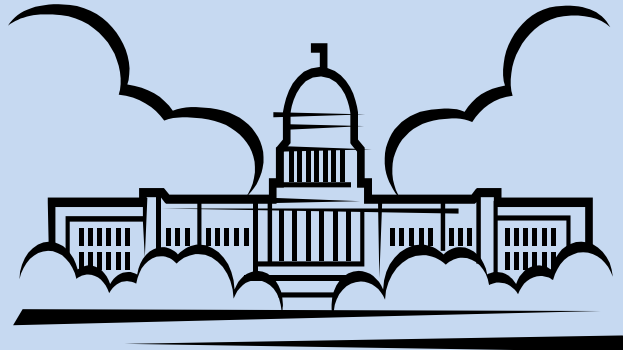
- How common are LRCs?
- Do they all function the same way?
- How do they operate?

Law Revision Commissions Generally

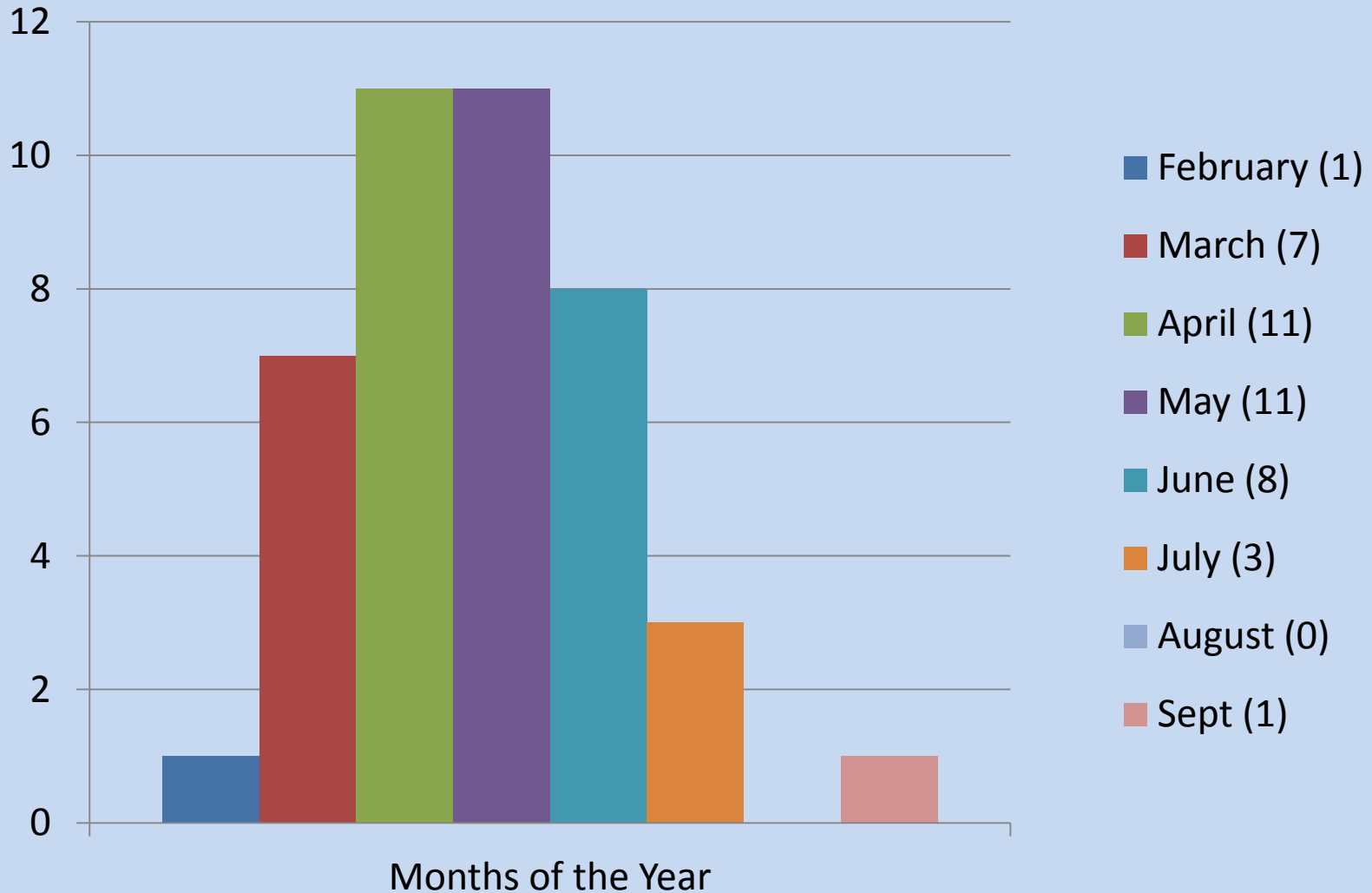
- Not all states have a law revision commission
- State Law Revision Commissions (LRCs)
 - Not all are staffed
 - Not all operate the same way
 - Not all have similar budgets
 - LRC reports not self-executing
 - Legislative action required for enactment – legislative schedules can be a factor

Legislative Schedules

- Thirty-eight state legislatures have regularly scheduled sessions ⁽¹⁾
 - Start in January or February
 - Meet for a set number of months (dates vary)
- Eight meet throughout the year each year ⁽²⁾
- Four meet biennially – odd years (Montana, Nevada, North Dakota, Texas) ⁽³⁾



Legislative Schedules – Ending Months ⁽⁴⁾

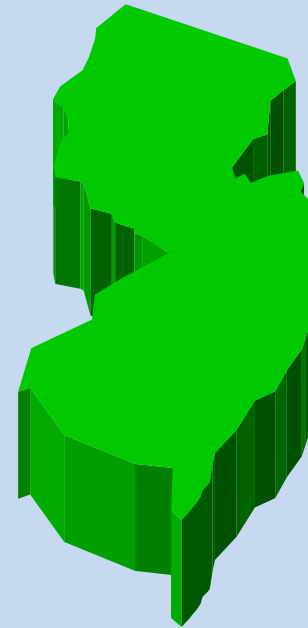


Law Revision Commissions Generally

- 8 Commissions in US – 7 are LRCs
 - Seven law revision commissions
 - California Michigan New Jersey
 - New York Oregon Rhode Island
 - Washington
 - One is a constitution revision commission (Florida)
 - Connecticut and Louisiana LRCs were eliminated in 2012

New Jersey's Law Revision Commission

- Staffed
 - 2 full-time staff
 - Executive Director
 - Counsel
 - 5 part-time staff
 - 2 Counsel
 - 2 Legislative Law Clerks
 - Administrative Assistant
 - Interns – 2 for Spring 2013 semester



New Jersey's Law Revision Commission

- 9 commissioners
 - 3 Deans of NJ law schools
 - 4 Practicing attorneys
 - 2 Chairs of the Judiciary Committees
- Attorneys - deliberately non-partisan
 - Two appointed by the President of the Senate, not more than one from same political party, and
 - Two appointed by the Speaker of Assembly, not more than one from same political party (1:12A-2)

New Jersey's Law Revision Commission

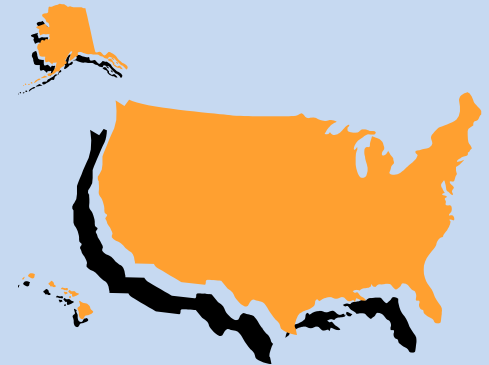
- Works year-round
 - Meets once a month every month (third Thursday) except August



- Schedule and operation differs from some LRCs in other states

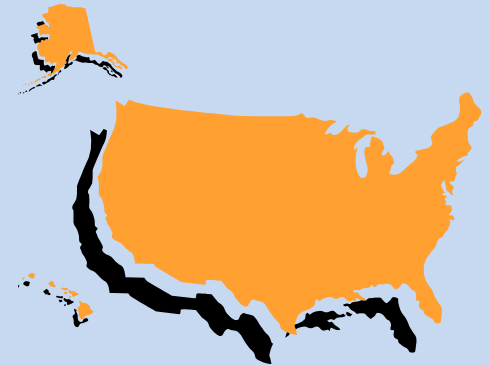
LRCs In Other States

- Florida (last met in 1997-1998)
 - Constitutional revision commission
 - 37 members
 - Created once every 20 years, meets for a year
- California (created 1953)
 - Staffed
 - 6 staff (4 attorneys, two administrative staffers)
 - 7 commissioners (plus Senator, Assembly member, Legislative Counsel)
 - Meets 6 times per year – every other month
 - Function similar to NJLRC



LRCs In Other States

- Michigan (created 1965)
 - Staffed
 - 1 or 2 staff
 - 8 commissioners
 - Function similar to that of NJLRC
- New York (created 1934)
 - Staffed
 - 3 staff
 - 7 commissioners
 - No meetings listed for 2012 or 2013, met twice in 2011



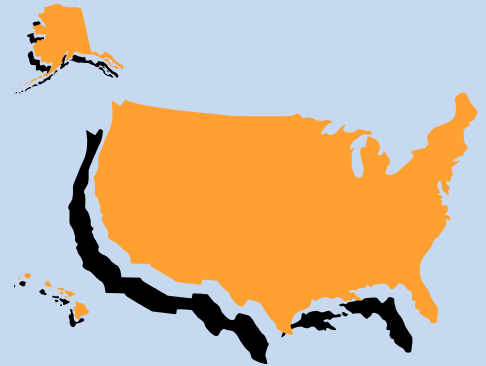
LRCs In Other States

- Oregon (created 1997)
 - Staffed
 - 5 staff
 - 15 commissioners
 - Meet 3 times in 2011, no indication of meetings in 2012 or for 2013
- Rhode Island
 - Not clear if remains operational



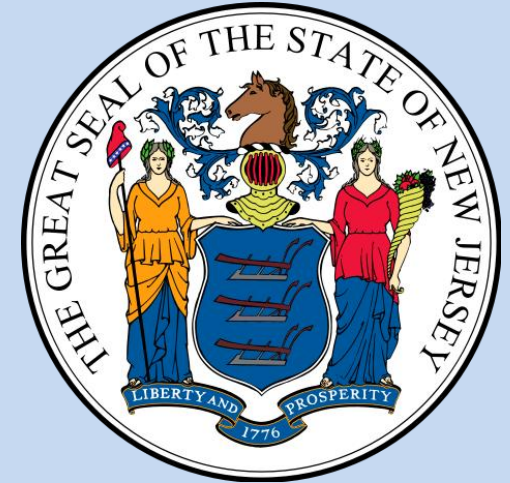
LRCs In Other States

- Washington (created 1992)
 - Staffed
 - 2 staff
 - 13 commissioners
 - Scheduled to meet four months out of the year (March, June, Sept, Dec)
 - Not clear if operational



History Of Law Revision In New Jersey

- A tradition of law revision
- First Law Revision Commission
 - Established in 1925
 - Produced the Revised Statutes of 1937



History Of Law Revision In New Jersey

- Legislature intended that revision and codification continue after 1937
 - First Law Revision Commission continued in operation until 1939
- Commission functions transferred to successor agencies, including:
 - Advisory Commission on Revision of Statutes
 - Legislative Commission on Statute Revision
 - Office of Legislative Services

History Of Law Revision In New Jersey

- Introductory statement to 1:12A-1 explains:
 - Previously, law revision conducted under auspices of Legislative Services Commission through OLS
 - On as-needed basis – not a continuous review
 - No general revision and consolidation since 1937
 - Commission - members of the legal community, responsible for and users of statutory law – to oversee general revision and continuous review

History Of Law Revision In New Jersey

- Current New Jersey Law Revision Commission created by statute in 1985 (*N.J.S. 1:12A-1*)
- Statute effective January 1986
- Commission began work in 1987

How Does The NJLRC Operate Today?

- What are the responsibilities of the Commission?
- Where do its projects come from?
- How many projects does it work on and how many are ultimately enacted?

NJLRC

Mandate: “promote and encourage the clarification and simplification of the law...and its better adaptation to present social needs, secure the better administration of justice and carry on scholarly legal research and work.”



NJLRC

- Duty of Commission, per 1:12A-8, is to
 - Conduct continuous examination of the law *and* the judicial decisions construing it
 - Discover defects and anachronisms
 - Prepare and submit to legislature bills to:
 - Remedy defects
 - Reconcile conflicting provisions
 - Clarify confusing language and excise redundancies

NJLRC

- Carry on continuous revision of statutes to maintain in
 - Revised;
 - Consolidated; and
 - Simplified form

NJLRC

- Receive and consider suggestions and recommendations from:
 - American Law Institute
 - Uniform Law Commission
 - Other learned bodies
 - Judges
 - Public officials
 - Bar associations
 - Attorneys
 - Members of the public

NJLRC

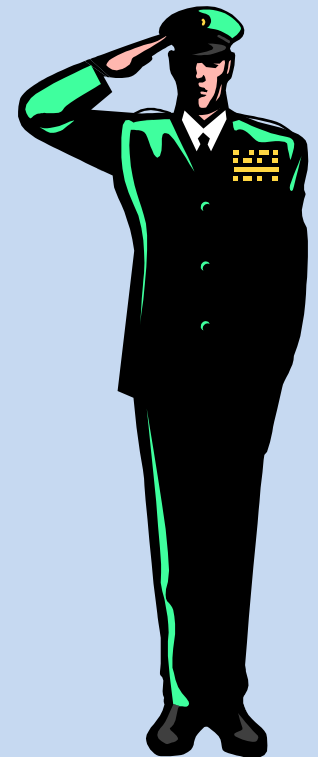
- Work of the NJLRC varies
 - Generally civil, but some criminal law projects
 - Size of projects varies:
 - single word or phrase (subpoena power of Commissioner of Department of Community Affairs, penalty for failure to comply: \$100,000 vs. \$100)
 - entire title (Title 39, Landlord-Tenant)
 - Duration: 1-2 months to 1-2 years or more

NJLRC

- Frequent sources of projects:
 - ULC (2012 - 11; 2011 – 11)
 - Case law in which court calls issue to attention of legislature (ambiguity, “legislature may wish to revisit”, etc.) (2012 - 8; 2011 – 9)
 - Staff and members of public (2012 - 9; 2011 – 8)
- Through end of 2012, 118 projects filed with the Legislature, 42 enacted

NJLRC Work In 2012

- Commission projects for 2012 (FRR, TR, WIP)
- Final Reports and Recommendations (13), incl:
 - Landlord – Tenant
 - NJ Debt-Management Services Act
 - General Repealer
 - Uniform Military and Overseas Voters Act
 - Uninsured Motorists
 - Title 39 - DWI



NJLRC Work In 2012

- Tentative Reports (6), incl:
 - NJ Collaborative Law Act
 - Uniform Principal and Income Act
 - Sexual Offenses
 - Uniform Certificate of Title for Vessels Act
 - Uniform Interstate Deposition and Discovery Act
 - Equine Activities Liability Act

NJLRC Work In 2012

- Works in Progress (9):
 - Collateral Consequences of Criminal Convictions
 - Recording Mortgage Assignments
 - Uniform Electronic Legal Materials Act
 - Pejorative Terms (Physical disabilities)
 - Filial Responsibility
 - Multiple Extended Term Sentences

NJLRC Projects Enacted In 2012

- Revised Limited Liability Company Act
 - Provides comprehensive guidelines for LLCs and streamlines patchwork provisions
- New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act
 - Provides a uniform mechanism for addressing multi-jurisdictional adult guardianship issues

NJLRC Projects Enacted In 2011

- Married Women's Property
 - Recommended repeal of mid-19th and early-20th century statutes allowing married women to own, control and dispose of property
- New Jersey Trade Secrets Act
 - Uniform Act adapted to reflect NJ common law re: trade secrets
- Title Recordation
 - Electronic recording – balanced need to use new technology with recognition that mandating immediate implementation inappropriate

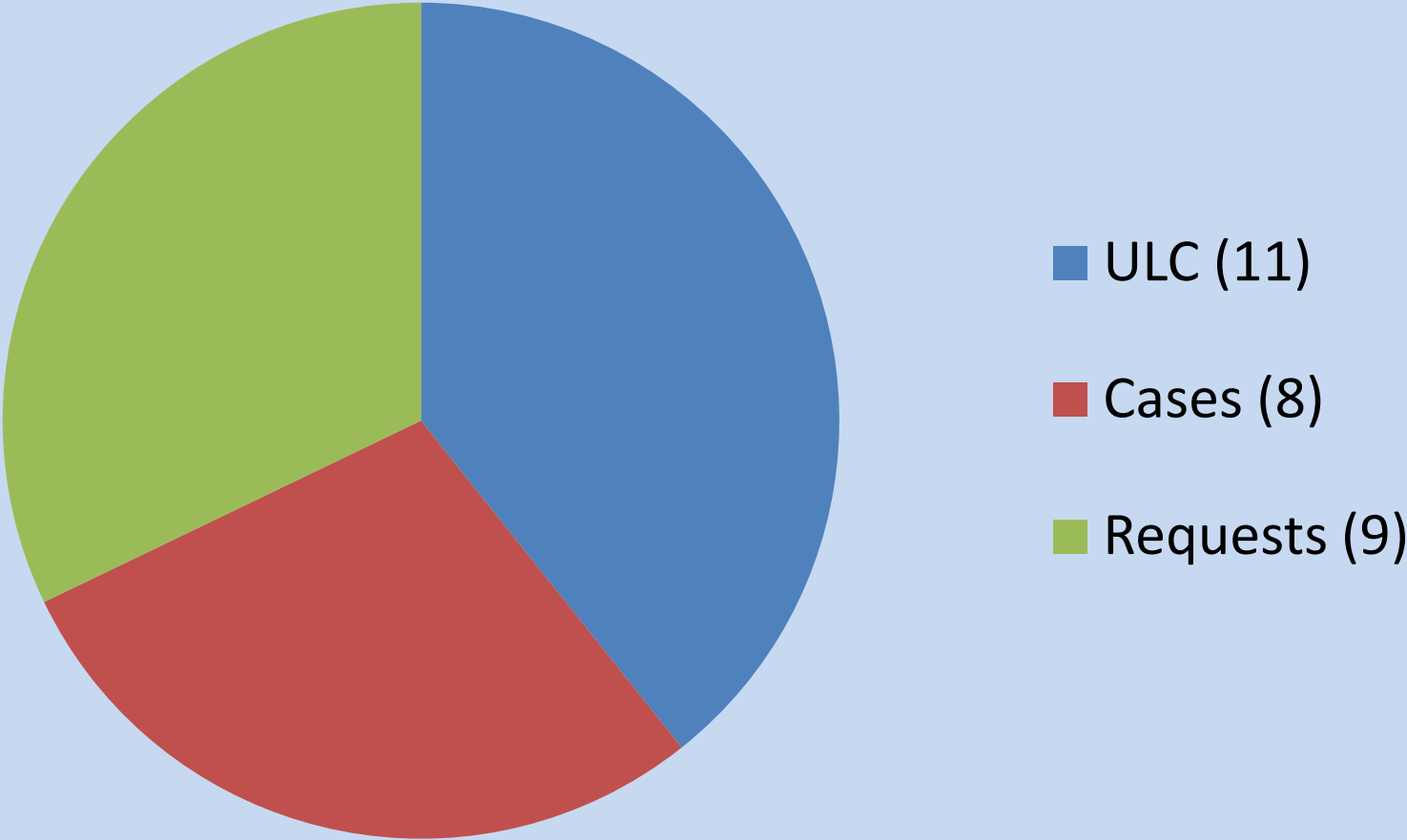


NJLRC As Compared To NJOLS

- Speed
 - LRC turn-around time varies by project
 - OLS pressure of Legislator wanting to drop in bill
- Input
 - LRC seeks comment throughout process
 - OLS required to regard requests for assistance by Legislators or others as confidential
 - No information may be given to any person other than the person who made the initial request (unless requestor consents or subject matter is made public) *[N.J.S. 52:11-70]*

Most Common Sources of Projects

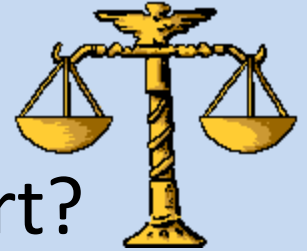
Projects - 2012



ULC

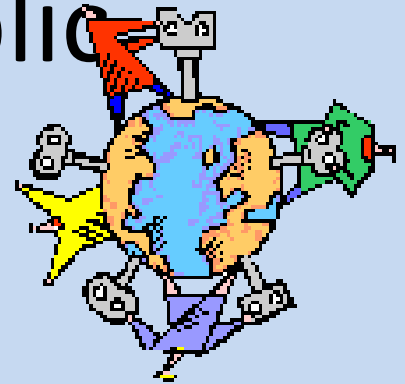
- What is the problem to be solved?
- Does the problem exist in NJ?
- Does the uniform act adequately address the problem?
- Is modification appropriate to tailor act to NJ or is nationwide uniformity critical?

Cases



- What is the issue identified by the court?
- Can the issue be addressed with statutory language?
- Which court decided the case?
- Is the decision reported or unreported?
- Is the issue appropriate for Commission action?

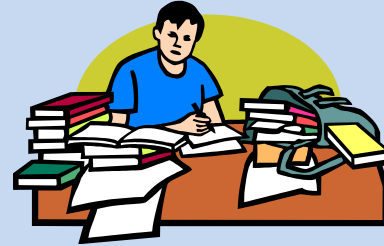
Requests from the Public



- What is the issue?
- Does it fall within the scope of the NJLRC's statutory mandate?
 - Not a request for an alternate forum
 - Not a request for legal advice
- Is it an area the Legislature recently worked in?
- Is it a policy issue?

NJLRC Process

- Regardless of source:
 - Research
 - Preparation of introductory Memo – presenting issue to Commission
 - Problem to be solved
 - Potential solution
- Presentation to Commission



NJLRC Process

- Commission determinations made at monthly public meetings
- Agenda for each meeting includes links to material to be considered
- Decisions made at Commission meetings recorded in Minutes

NJLRC Process

- If authorized to proceed:
 - Research
 - Identify constituencies
 - Draft
 - Seek comments
- At each step in the process, information available to public on Commission's website

NJLRC Process

- Tentative Report
 - Released on website
 - Provided to commenters
 - Comments sought to revise and refine
 - Consensus of commenters not always possible
 - Consensus re: need for change? Specific language?
 - Prepare consensus draft when possible
 - Alert legislators of potential issues and positions in advance

NJLRC Process

- Final Report and Recommendation
 - Concludes Commission work on the project
 - Contains recommendation:
 - Generally contains proposed statutory language
 - Occasionally, recommends no action be taken
 - Contains comments following each statutory section with explanatory material



NJLRC Process

– Standard distribution

- Chairs of Senate and Assembly Judiciary Committees
- Majority and Minority leadership of both houses
- OLS
- Partisan Staff (4 offices)
- NJSBA
- Governor's Counsel
- Legal Services
- State Library
- Other recipients on request



NJLRC Process

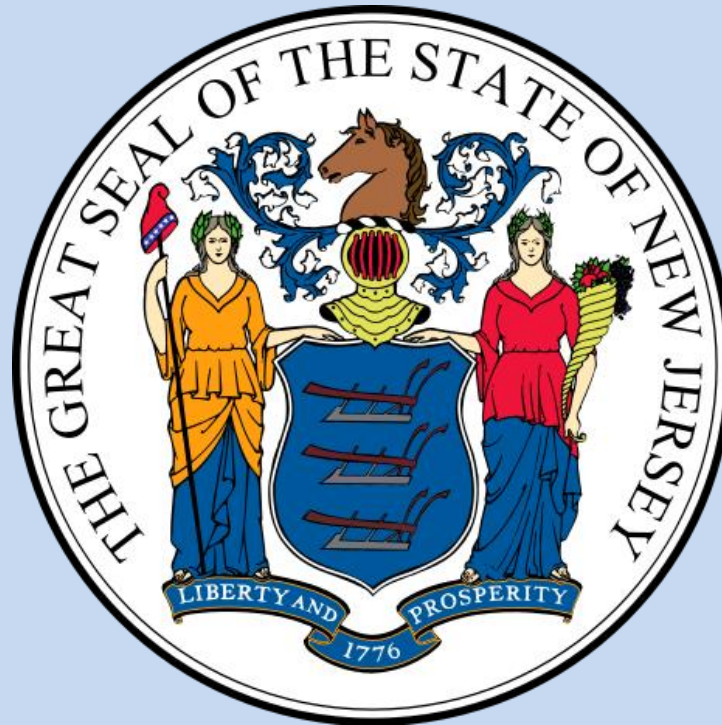
- Identify potential legislative sponsor
 - Demonstrated interest in area of project
 - Chair of relevant committee
 - Recommended during NJLRC process
- Annual updating
 - Not every report considered immediately after release
 - Reports with continuing viability updated annually
 - Periodic distribution



References

- (1) National Conference of State Legislatures, *2013 Legislative Session Calendar*, www.ncsl.org/legislatures-elections/legislatures/2013-legislative-session-calendar.aspx
- (2) *Id.*
- (3) *Id.*
- (4) *Id.*

New Jersey Law Revision Commission



Effect of Abstentions

- When a member of a local public body abstains from voting – does the abstention count as a “yes” or a “no” vote?
- The answer is “it depends” and the ultimate determination is based on a number of factors



Effect of Abstentions

- Project recommended to the NJLRC
 - Member of the public (former Commissioner)
 - Described as an area of the law that causes periodic, considerable confusion
- Commission elected to pursue project
- Final Report and Recommendation released in April 2011
- No legislative action taken yet
- Remains an issue throughout the State

Effect of Abstentions

- No statutory guidance – case law only
- Basic common law rule: if a member abstains, he is counted as voting “yes” unless he expressed opposition, in which case he is counted as voting “no”
- Sometimes, however, an abstention does not count as a vote at all

Effect of Abstentions

- What does it mean to have expressed opposition so as to count the abstention as a “no” vote?
 - Not clear
 - No real case law guidance on that issue



Effect of Abstentions

- While generally, an abstention counts as a “yes” vote – there are exceptions to the rule:
 - If member not entitled to vote (vote does not count and member not counted toward quorum);
 - If member recuses and does not participate (member not counted toward quorum)
 - If statute requires a certain number or a certain percentage of affirmative votes before action may be taken



Effect of Abstentions

- Problems:
 - Rule is complex
 - General rule applies to a minority of cases
 - Can be hard to determine if member fully recused (vote does not count) or merely abstained (counts as an affirmative vote)
 - Rule may not meet expectations of member who chooses to abstain

Effect of Abstentions

- Solution proposed by NJLRC:
 - New statutory section
 - Recommended for inclusion in multiple titles
 - Statute proposes that when a member of a public body (as defined in Open Public Meetings Act) participating in a public meeting abstains or fails to vote, certain provisions apply

Effect of Abstentions

- Member shall not be counted as voting either for or against the matter
- If member legally entitled to vote and has not recused, member's presence shall count toward a quorum
- If member is not legally entitled to vote (conflict, etc.), or has recused, the member shall not be counted as present for purposes of a quorum

NJLRC – Process And Projects

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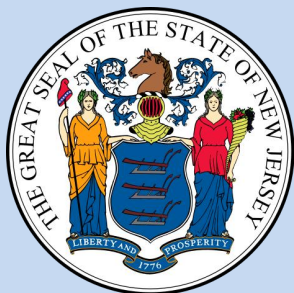
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L. Tharney Speaker Bio

- Laura C. Tharney has been the Executive Director of the New Jersey Law Revision Commission since October 1, 2012. Prior to that time she was the Deputy Director beginning in January 2008 and a Staff Attorney with the Commission beginning in February 2002. The Law Revision Commission works on projects in many different areas of the law. Ms. Tharney has recently done research and drafting for a New Jersey Debt-Management Services Act, revisions to New Jersey's driving while intoxicated law, work on a project addressing the collateral consequences of a criminal conviction, a Uniform Principal and Income Act, and a Uniform Electronic Legal Materials Act.
- Ms. Tharney has been a licensed attorney since 1991 and is admitted to practice in New Jersey and New York. Before she began her work with the Commission, Ms. Tharney practiced law at her central-New Jersey law firm. Initially, her firm represented individuals and small businesses in litigation and transactional matters before transitioning to focus on civil and criminal appeals in both New Jersey and New York. Her appellate practice encompassed appeals to the Supreme Court of the United States, New Jersey Supreme Court, New Jersey Appellate Division, New York appellate courts, administrative agencies and municipal boards and bodies.