Drafting Bills

for the

Minnesota Legislature

By

Duncan L. Kennedy

Assistant State Revisor of Statutes

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Suggestions for Draftsmen
in Preparing Bills for Introduction
in the Minnesota Legislature

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PREPARATION

When the draftsman is requested to draft a legislative bill, he should secure sufficient instruction so as to inform himself of the purpose and intent of its sponsor and of the principle upon which the proposal is to rest. Determination of this principle is most important. If the bill becomes a law, it should be a consistent, logical, and harmonious one. Confused philosophies and principles make for confused and inconsistent legislation.

In most cases the draftsman will receive limited instructions. This imposes on him a heavy responsibility, that of exercising a large discretion and an obligation to discharge that obligation impartially.

There are five important things a draftsman must do before he can intelligently proceed with the drafting of a bill.

1. He must master the subject matter; that is, acquire a thorough knowledge of the statutes and court decisions on the subject. If the bill passes it will take its place in the body of the law, and there must be certainty that it will not create conflicts nor produce unintended results.

2. He must consider whether the changes proposed may be adequately dealt with by amendment to existing law or are so broad and comprehensive as to call for a new act. If a new act is decided upon, the question arises should it be limited to certain phases or should it replace or consolidate all existing law on the subject. If it is decided to use an amending act, the utmost care and skill will be required to avoid creating inconsistencies and conflicts with unamended portions of the law.

3. He must studiously examine administrative precedents and methods of enforcement, as disclosed by the statutes of other jurisdictions, or as reported or discussed by successful administrators or recognized experts.

4. He must consider whether the proposed bill is of limited or special application, concerning comparatively few persons or regulating an inconsiderable number of transactions, or is of general application. If it touches statutes deeply rooted, unexpected consequences must be guarded against with the greatest caution. Not only must the law to be amended be considered, but also whether any other principle of law will be affected.

5. He must carefully consider formal constitutional requirements, such as whether the proposed act embraces more than one subject (Constitution of Minnesota, art. 4, s. 27).

The significance of substantive constitutional requirements must not be overlooked by the careful draftsman, but inquiry in this field is not particularly the function of the official draftsman, although it is his duty to bring any constitutional issue to the attention of the legislator for whom the bill is being drawn. It is the legislator's decision, not the draftsman's.

MAKING THE BILL

Among leading draftsmen there exists some difference of view as to which phase of the technique of bill drafting demands the most particular attention, the substance of the measure or regard for matters of form. One argues, since it is the substance upon which dependence must be had for the achievement of a law's objectives, that must be the first consideration. Another urges, if care is taken to see that each detail is in correct form, the substance is likely, and not otherwise, to be correct.

It appears to the writer that there is no irreconcilable difference between the two viewpoints. Their requirements are interdependent. Both are inescapable. There can be no really good bill drafting which ignores or under emphasizes either essential. Substance may be said to be everything, but without intelligibility there is no substance. Without understanding intelligibility is absent, and form includes aids to the understanding.

For the purposes of a guide to legislative drafting, the order in which the factors involved should be presented is a matter for consideration. This is another question upon which there is a lack of uniformity among writers on the subject. Form, in the sense of style, division, and arrangement, makes the first impression, for it first appeals to the eye. Perhaps this aspect of form should receive first attention.

However, neither style, division, nor arrangement can be followed, nor any part of a bill, from title to final clause, can be created or become visible to the eye without the use of words and combination of words, which constitute language, therefore it would seem that language should logically take precedence in any comprehensive discussion of the technique of legislative drafting.

LANGUAGE

Sir Alison Russell, author of the leading modern English textbook on bill drafting, says "The simplest English is the best for legislation. * * * The draftsman should bear in mind that his Act is supposed to be read and understood." This view is confirmed in the words of James Bryce: "In point of form, the merit of law consists in brevity, simplicity, intelligibility, and certainty, so that its provisions may be easily found, easily comprehended, and promptly applied." DeWitt Billman, of the Illinois Legislative Reference Bureau, emphasizes this when he says: "Indeed, the virtues of good English, brevity, simplicity, clarity, and preciseness are even more important in legislation than in other writing, since by legislation must be regulated and controlled all the various rights and duties of human relationship."

The kind of language that should be avoided is disclosed by Frank E. Horack, in "Cases and Materials on Legislation," when he says: "It is traditional that statutes are unreadable, indefinite, confusing, and misleading." Other critics complain of obscurity, ambiguity, indirectness, prolixity, artificiality, long involved sentences, and archaic and stilted language.

Legislative drafting requires more definite, more exacting qualities of language, and demands greater skill in composition than other writing. There is no language of sonorous phrases or rhetorical flourishes; it is the language of the exact word and clear sentences, driven home with swift, direct, accurate, inescapable, incisive strokes. Simple English, but exact simple English; certain English, but powerful or delicate as occasion requires; common words, but precise common words; brevity, but the brevity of completeness, definiteness, and clarity. Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and the consistency of architecture, for it is law architecture.

Skill in the use of language appropriate to legislative drafting is something for every person so inclined to strive for. As a literary art it ranks high. Unfortunately, it is not a thing all may achieve. Not every writer has the faculty of combining words into simple, di-

rect, accurate, forceful English. This style of language inevitably runs afoul of complex conceptions, situations, and objectives which are difficult to express or to define in words in common use or to cope with in other than technical language. Accuracy of expression is not always easy even for the most adept. Words are but symbols, often indefinite, inexact, and inadequate symbols, and there can be no valid guarantee that a given combination of words will in each instance convey to every reader an identical meaning.

Precision is necessary even though the subject matter taxes the ingenuity of the expert. The conscientious draftsman will make use of every opportunity to improve the true expression of laws.

Every proposition should be stated without unnecessary verbiage, each word made to justify its use. When it means incompleteness brevity is not a virtue. Necessary length is not a fault. Conciseness is a most excellent quality, but inadequate treatment of a complex subject should never be committed in its name.

The rule should be: brevity with completeness, clarity, exactness, directness, force. This is the language of legislative drafting.

DIVISIONS

In order that its meaning may be easier of ascertainment the modern bill, is divided, according to Minnesota practice, into parts, called articles, sections, subdivisions, paragraphs or clauses, items, and subitems.

Articles. A bill is divided into articles when the laws of a broad class of subjects are being codified (for instance, election laws, highway laws, or banking laws), or when the subjects of the articles are so distinct, though embraced within one general subject, that they might without impropriety be embodied in separate acts. This grouping brings together the sections which are more closely related to each other and less closely connected with the balance of the bill. When a bill is divided into articles each article is given a heading and numbered.

Only in such exceptional cases as those referred to should a bill be divided into articles.

Sections. By far the most important division of a bill is the section. It serves several purposes. It is a visual aid, by making each proposition stand out separately and clearly, and by permitting the scope of the act to be clearly perceived by a review of the section captions. It enables the sense of the statute to be more easily grasped, if it is made to proceed step by step. It aids the draftsman to seg-

regate and lay out his ideas and finish up one thing at a time. It permits parts of the statute to be referred to in discussion or trial, and more easily indexed. It affords flexibility for compromise in enactment, for code revision, and for purposes of amendment.

The chief virtue of the section, when properly used, is as an aid to the understanding. Jeremy Bentham, more than a century ago, recognized this.

The length of sections necessarily depends to some extent on the treatment of the subject. There is no rule governing length better than that of Bentham's—the shorter the better—plus the admonition to limit each section to a single separable proposition. A practical test of this latter limitation is to write a section caption, expressing in a single clause of not to exceed ten words, which expresses adequately the subject matter. If the caption cannot be made short without being vague, or descriptive without being long, it is an indication that the matter should not be confined to one section.

Sections should be numbered consecutively from beginning to end of the act. This applies to an act which is divided into articles, for the reason that where each section is identified by its individual number without referring to the article there is no danger of confusing sections of different articles.

A section should contain only one paragraph, except designated subdivisions or paragraphs.

Subdivisions. Sometimes contingencies, conditions, requirements, or alternatives, best expressed by separate statements, are so closely connected with a general rule that it is desirable to place them in the same section. In such cases it will contribute to clearness of thought and expression to divide the section into subdivisions. The subdivision may be used for exceptions, limitations, or provisos which are too complicated to be embraced in the rule without confusing its language. A subdivision should contain only one proposition and should be complete in itself.

Clauses. Sections or subdivisions may include clauses. The clause is a visual aid, and its particular function is to break down, for emphasis, distinctiveness, and accuracy of interpretation, a series of somewhat lengthy items or specifications supplementing an antecedent or introductory clause and dependent upon it for completeness. Clauses should be distinguished by Arabic numerals within parentheses, thus: (1), the clauses of each section or subdivision constituting a separate series.

Items. Items serve the same purpose as clauses, but are used only when the constituent specifications may each be expressed in a few

words. Items may be embodied in sections, subdivisions, or clauses, and are designated by small letters within parentheses, thus: (a). The first word of an item does not thereby become subject to capitalization.

CONTENT

As to particulars to be considered by the draftsman—such as designation, constitutional requirements, purpose, and form—the contents or matter entering into a bill will be discussed as nearly as may be in the order in which the several matters usually should appear in a bill.

The location of purely formal matters such as the title and the enacting clause, which are common to all acts, and the repeal and emergency clauses, which are found in many, presents no problem. Their positions, if not fixed by law, are determined by obvious logic and universal custom. On the question of the proper place for less universal quasi-formal provisions more or less commonly employed, including short title, definitions, saving, liberal interpretation, severability, and limited duration clauses, most draftsmen are in substantial agreement. The placing of those provisions which constitute the real substance of an act affords opportunity for thought. Bills vary in nature and scope and therefore present different functional and drafting problems, and no uniform rule covering all cases can be laid down. However, one rule is universally applicable: the substance of all bills should be presented in a logical and orderly arrangement, beginning with the main principle or rule, in that arrangement which is clearest and easiest to the understanding.

Certain classes of bills, perhaps a majority, lend themselves to a fairly definite arrangement of contents. These are bills which seek to establish rules of law, procedural methods, standards for administration, and the creation of an administrative agency.

ARRANGEMENT

Title
Preamble (almost obsolete)
Enacting clause
Short title
Policy section (rare)

Substance of bill:
- Main principle or purpose
- Subordinate principles
- Procedural provisions
- Temporary provisions
- Creation of agency
- Details (tenure, removal, salaries, expenses, bonds, etc.)
- Powers and duties (rules and regulations, reports, etc.)
- Penalties

Saving clause
Appropriation
Liberal interpretation clause
Severability clause
Duration, if limited
Repeal clause
Emergency clause

DISCUSSION OF PARTS

Title. The best title is a brief title, which announces in good English and concise expression the general purpose of the bill. Barring meaningless titles, such as "An act to promote the general welfare of the state," the briefer a title the better.

The Minnesota Constitution, art. 4, s. 27, prescribes: "No law shall embrace more than one subject, which shall be expressed in its title." In a long line of decisions the Supreme Court has declared that the title need merely put the Legislature and others interested on notice as to what might reasonably be expected in the act, and need not recite details or provisions reasonably adapted to make effectual the principal object as controlled by the title. This should dispose of the practice, still adhered to by some draftsmen, of attempting to summarize the contents of a bill in the title—a practice at once cumbersome, unpopular with the courts, and fraught with the peril that in saying too much it may say too little.

There are draftsmen who take the view that the emergency clause, when attached to a bill, should be referred to in the title. This is erroneous. The emergency clause refers only to the time the bill takes

effect and does not affect the substance of the act. The time of taking effect being merely a detail, which may be ascertained by reference to the act, need not be referred to in the title. The same may be said of an appropriation clause embodied in a bill the principal purpose of which is to establish the law and create administrative machinery. The appropriation being incidental, and designed merely to carry out the purpose of the act, need not be mentioned in the title.

Under Minnesota practice the title should first state the general subject. If the bill is broad and comprehensive, this broad, general definition is sufficient. If it applies to a specific object within the general subject, that object should be stated in a general phrase. If in addition it amends or repeals any existing laws notice thereof should be given in a third phrase. Thus a complete title to a bill might read:

A BILL

For an act relating to game and fish; providing for the taking of rough fish; amending Minnesota Statutes 1945, Section 101.04.

Preamble. The preamble, which precedes the enacting clause, is obsolescent. It serves no useful purpose. Still, there is no constitutional or statutory prohibition against it.

Enacting clause. The enacting clause of all laws of this state is: "Be it enacted by the Legislature of the State of Minnesota." Constitution, art. 4, s. 13.

Short title. The short title is useful in statutes of considerable length and of major significance, particularly so when the official title is complex. It affords an easy and popular reference. Use of the short title should be limited to the most important measures, and where used should be true to name and true to the fundamental bill drafting principle of simplicity.

Policy section. Placed in the body of an act, a statement of the public policy motivating the enactment of major legislation, dependent for its usefulness upon a proper appreciation of the legislative intent, compels greater judicial respect than a preamble preceding the enactment clause. It is rarely justified, for most legislation is adequately self-explanatory.

Definitions. When carefully used definitions are of great convenience to the draftsman in keeping his draft concise and clear. They are serviceable in a variety of ways: as a general term, to save the repetition of a recurring series of words; for translating technical words having no popular meaning into commonly understood lan-

guage; as a guard against the danger of using different words to express the same thing; for including or excluding matter from the general meaning of a word, and to give it the exact shade of meaning desired; for simplicity of expression, classification of thought, and to reduce prolixity.

Definitions should be framed with the utmost care, in the fewest words possible, and employed only when a real need exists. Do not disturb words the meaning of which is clear. Superfluous definitions are more likely to confuse than to clarify.

For the purpose of guiding a correct judgment concerning the interpretation of the act the definitions section should precede the statement of the law.

If it is necessary to define an expression which is used in only one section, define it in that section, perhaps in a subdivision.

Where the name of an administrative agency is, for the sake of brevity, reduced to an abbreviated formula, and placed in the definitions section, the name should be written in full the first time it occurs in the body of the bill. This will assist the reader.

In a definitions section each definition should be in a separate subdivision. Each word or phrase should be enclosed in quotation marks, and, unless a proper noun, should begin with a small letter. If the definition is restrictive the conjunct should be "means"; if extensive, "includes"—never "means and includes." "Means" is explanatory, and means what the definition says it means; "includes" is extensive, and means what it would ordinarily mean, plus something which is declared to be included in it.

Main principle and substance. The heart of a bill is that part which holds its main objective or purpose, and discloses the legal principle upon which it depends. This most important part should come immediately after what may be termed the introductory sections.

There are two conceptions of what constitutes the main principle: one, statement of the law, followed by the authority by which it is to be administered and the means by which it is to be made effective; the other, to deal with the authority, and then state the law. The latter conception is based upon the chronological theory that the law cannot become effective without the means to administer it. The sounder view is that without the main purpose there would be no law, therefore nothing to administer. The law being the chief objective it is that which primarily interests the reader, and only incidentally the authority and means by which it is given force. Where procedural provisions relate to an administrative agency which does not exist, its existence may be presumed until that portion of the bill providing for its creation is reached. The chronological argument loses its va-

lidity when it is remembered that the entire act is passed by the legislature and takes effect simultaneously.

The correct rule with respect to the heart of the bill and the vital organs which attach to and complement it, is to state: 1. the main principle, concisely and clearly, in one or more sections, or, in the case of a complex bill, the several principles or leading motives; 2. procedural provisions; 3. temporary provisions, if any; 4. creation or assignment of the administrative agency, followed in separate sections by such necessary details as tenure, removal, salaries, expenses, vacancies, bonds, etc.; 5. powers and duties; 6. details of exercising powers; 7. review of administrative actions; and 8. penalties or sanctions.

Subordinate principles. Subordinate procedural, temporary, and administrative provisions, including assignment of an agency to administer the law, or if none exists, the creation of an agency, should be arranged in logical order, the material being so sifted as to afford a clear conception of the subject matter and the relation of the several parts to one another. Precedence should be given to the more important provisions—those of normal and general application first, and special, exceptional, and local provisions toward the end. No section depending on another section should precede the section on which it depends. Thus, issuance of a license should precede revocation. Never forget that each severable proposition is entitled to a separate section, but procedural and administrative provisions particularly, because of the usual necessity for frequent amendment, should be reduced in length and increased in number. The longer a section the greater the burden of amending it.

An exception to the rule placing provisions relating to the administrative agency last is when the specific and chief purpose of the bill is to create new machinery to administer an old law, not to change the law.

Creation of agency. This section should be limited to a description of the composition of the agency which is to administer the act. The hackneyed phrase, "There is hereby created," is unnecessary. Authority for creation of the agency is implicit in a statement of its composition, supported by the details of tenure, removal, bonds, organization, and powers and duties. These should follow in logical sequence, each distinct and divisible provision in a separate section.

Elements. As aspect of bill drafting which the draftsman should have clearly in mind is that of the elements which enter into the construction of each legal enactment, of which an act may contain one or many, and the order in which these elements should appear. In the case of an enactment of universal application, the elements are but

two: 1. the legal subject—that is, the person directed and empowered to do or abstain from doing a particular act, or, if in the passive form, the thing to be done or left undone, and, 2. the legal predicate, or legal action—that is, what the person is to do or leave undone, or if the passive form is used, what is enacted with respect to the thing to be done or left undone. When possible the legal subject should be stated affirmatively and the verb negatively. It is not the intention that "no person shall peddle without a license," but that "a person who peddles without a license shall be subject to certain penalties." The legal subject should appear at the beginning of the section or sentence, followed by the legal predicate. The legal subject may be personal or real, but if it is possible to do so the statute should be written in the personal form. It may be argued that it is illogical to direct a command to a "thing" which cannot have legal responsibility, but it is sound to insist that "statutes should be directed toward the persons who must sustain rights and obligations as the result of the legislative direction." It is the duty of the draftsman to exercise care in defining accurately those to whom the statute is to apply, as failure to do so might result in its rejection on constitutional grounds, for being discriminatory.

An enactment which is of less than universal application may contain one or both of two other elements—the "case" to which an action is confined, and the "condition" upon which it will operate. If both appear, the latter is in reality a condition upon a condition. If the case is susceptible of statement in a few words, it should precede the legal subject, otherwise an intimation of it should be given in the statement of the subject and the exception or exemption permitted to follow the rule, in a subdivision or a separate section. Wherever possible, abilities and disabilities, or the predicate, case, and condition, should be kept close to the subject—in the same sentence if possible, in order that there may be no room for doubt as to who is intended.

Penalties. Frequently laws are rendered impotent for lack of penalties for a violation of the right or for a breach of duty. The penalty section should follow the procedural provisions. It should provide that a violation of any provision of the act is a felony or a misdemeanor and punishable as prescribed by law for the class of offense in which the violation falls. If it is desirable to punish more severely certain violations, the extra penalties should be in addition to the general ones, and stated in subdivisions or as separate sections.

Saving clause. A saving clause has as its objective the exclusion of a class from the operation of the act. Its purpose is to save rights rather than create them. It should be expressed in a separate section.

Appropriation. If it is desired that a bill contain an appropriation to carry out the purposes of the act, it should be placed in a separate section following the administrative provisions, or the saving clause if there be one, and immediately preceding such formal provisions as liberal interpretation and severability clauses. Care should be taken to observe the requirements of an appropriation as defined by the courts, which are that it must be limited in amount, be for a definite purpose, and made to a definite agency.

Liberal interpretation. This general provision relating to construction is a statement to the effect that the act shall receive a liberal interpretation to carry out the purpose expressed therein. Inasmuch as it is a familiar rule of construction, applicable along with others which may govern in particular cases, to effectuate the intention of the legislature and secure the most beneficial operation, the provision for liberal interpretation is of doubtful value. As in the case of the severability clause, it may be referred to by the court in support of a decision which would have been the same without such a clause, but in a case where other principles of construction must control it is disregarded.

Severability. Despite its automatic character, and the fact that the rule of construction which it states is well recognized by the courts, the incorporation of a severability clause is common practice.

Limited duration. Where an act is to expire by limitation, care should be taken to provide that a right, obligation, or penalty accrued or incurred during the period of its operation shall not be affected, and that any investigation, legal proceeding, or remedy in respect thereof may be instituted, continued, or enforced, and such penalty imposed, as if the act had not expired.

Repeal. The statutes are unduly expanded with obsolete laws, and no opportunity should be overlooked for their express repeal.

For the purpose of express repeal, the following clause is desirable:

Sec. 13. Minnesota Statutes 1945, Section 423.15, is repealed.

Implied repeal. A common practice in the past, now less frequently followed, was to provide at the close of a bill, "all acts or parts of acts inconsistent with the provisions of this act are hereby repealed." This is both unnecessary and confusing. In legal effect it adds nothing, as without such provision all prior conflicting laws or parts of laws would be repealed by implication. Robert Luce states it thusly: "Why waste ink by so much as declaring that 'all acts and parts of acts inconsistent herewith are hereby repealed?' Of course they are. It is elementary that the last word goes." Do not permit to escape any opportunity for an express repeal.

Emergency. There is no need for an emergency clause in any bill introduced in the legislature in Minnesota. Our statutory provision relating to the effective date of laws is: "Each act, except one making appropriations, enacted finally at any session of the legislature takes effect at the beginning of the day next following its final enactment, unless a different date is specified in the act.

"An appropriation act or an act having appropriation items enacted finally at any session of the legislature takes effect at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act.

"Each act takes effect at 12.01 a.m. on the day it becomes effective, unless a different time is specified in the act."

Time of taking effect. Unless there is a necessity for having an act take effect at a time other than the time fixed by statute, there should not be such a clause.

HINTS FOR THE DRAFTSMAN

Emphasis has been placed throughout these remarks upon the principles of brevity, preciseness, clarity, simplicity, and orderliness as shining attributes of skillful bill drafting. Ambiguous, indirect, or verbose language is severely criticized. The absence of orderliness in arrangement of provisions is deplored. Unreadable, confusing, and misleading bills—the inevitable product of illfavored components—are condemned as forerunners of bad laws, discreditable to legislators, plaguing the courts, and injurious to the people.

Much of what has been said is general in character. It relates to principles rather than to particulars. The following more definite observations and specific examples of good and bad practices may prove helpful.

Provisos. There are a number of ways in which to express provisos, but the worst of all is to attach them, by means of the word "provided," or "provided, however," as awkward addenda at the end of the statement of law they are designed to limit. This form of proviso is a disfigurement, and likely to lead to ambiguity. The condition precedent to the law's operation should precede the legal subject and legal predicate, but if its statement requires so many words as to render that course impracticable, it should be placed either in a subdivision following the general rule, or in a separate section. Where there is more than one limitation it is best to place them in a separate section.

Tense. A statute is applied as of the date of application, not as of the date it is written. It should be drafted in the present tense: "It

is lawful." Not: "It shall be unlawful." Reserve "shall" for requirements or prohibitions.

Number. When possible use the singular number. The law usually applies to individuals, and the singular includes the plural.

Technical terms. It becomes necessary at times, in drafting a statute, to determine whether to use a technical term, a trade or commercial term, or a common term. A term with more than one meaning, or a term not generally understood, should be avoided. Popular terms with well understood meanings are to be preferred. Where it is necessary to use an unfamiliar technical term or a doubtful term, it should be accurately defined in the definitions section.

Legislation by reference. Draftsmen should avoid legislation by reference as much as possible. A law which includes by reference the provisions of another law is difficult to understand. Besides, discrepancies may later occur through amendment of the law to which reference is made. When reference is necessarily made to other sections or laws containing amounts, dates, or details most subject to amendment, avoid quoting details.

It is permissible to exempt from the operation of a law restrictive provisions embodied in another, by reference to the latter.

Sequence. Arrange the items of series of provisions, such as requirements, acts, rights, powers, or duties, logically and consistently in the sequence most natural to their character. If acts naturally occur in a given sequence as to time they should be arranged chronologically. If rights or obligations attach simultaneously they should be arranged in the order of importance or value.

Indefinite words. Words and expressions referring to a state of mind: knowingly, maliciously, willfully; words referring to what must be a matter of opinion: reasonable, serious, ample, seasonable, due, due cause, due diligence, due notice, proper, dangerous, favorable, necessary, needful; and words of degree or condition which do not permit of easy objective measurement: forthwith, immediate, nighttime, good standard, should generally be avoided, particularly in penal statutes.

Wasted words. A great many words common to legal expression are frequently unnecessary and add nothing by way of definiteness. Among them are: hereby, aforesaid, whatsoever, wheresoever, of any nature.

Two words where one will serve makes neither for economy nor clarity: "Authorize and empower," "Order and direct," "shall or may," "will and testament," "each and every," "any and all," "parts and portions," "do and perform," "acts and things," "full and com-

plete," "by and with," "full force and effect," are examples of dualities which should not be tolerated in careful legislation.

"Be and the same is hereby ratified" means only "is ratified."

The connecting word "That" at the beginning of sections has no value and should be omitted.

Reference to "this state" or "Minnesota" is usually surplusage. Example: "A person who (does so and so) in this state is guilty of a misdemeanor." Minnesota cannot legislate for another state. Why waste words admitting it?

When necessary to refer to another section of the same bill, another subdivision of the same section, or another clause of the same section or subdivision do not add "of this act," or "of this section." The reference cannot be understood to mean another act or section without saying so.

Avoid repetitions of provisions embodied in general laws. Do not multiply identical laws.

Do not waste words to clarify an obvious meaning or to make more definite an inevitable procedure. A department having been empowered to administer an act, it is not necessary to say that "a person desiring a license shall make application to the department of ———." No other agency could act on the application.

Example of a redundant phrase: "Any person who (does so and so) ~~shall be deemed to have committed an offense against the provisions of this act and~~ shall be liable ~~on conviction before a court of competent jurisdiction~~ to a fine not exceeding ———." Omitting the words with a line drawn through them, the same result is achieved and twenty-three words saved.

Correct titles. Carelessness in the use of titles of public offices, departments, and institutions discloses lack of attention to details, gives the bill a sloppy effect, is confusing to the reader, and could create complications in litigation. Be careful to use the exact title prescribed by law.

"Said" and "such". Overuse of these terms is an abuse. "The" or "that" is often better English, and the general use of "such" is liable to occasion confusion when it is desired to use the word in its correct meaning.

When use of either of the much abused words, "said" or "such," is regarded as unavoidable, "said" should be employed in referring to a particular person, object, or thing previously named or identified; "such" in referring to one of a general class.

"Shall" and "may". Never use "shall" to grant permission nor "may" to impose a duty. Where it is desired to authorize but not to command, and the provision is such that a court might consider that rights are involved which demand a mandatory enactment, the bill drafter should make his meaning clear by reinforcing "may." For example: "The applicant may, in his discretion."

"May," being a permissive word, is peculiarly applicable to the citizen, rather than to the administrative officer. In the case of the latter, where it is desirable to emphasize the optional feature of authority granted, use the phrase "shall have power to."

"And/or." Laxity in the use, in definitions and elsewhere, of the conjunctive "and" and the disjunctive "or," and lack of consistency in judicial solutions of the problems thus raised, have led some draftsmen to use the phrase "and/or." This remedy is worse than the disease. "And/or" adds to the confusion, leaves judicial determination unrestrained, and tends to conceal rather than disclose legislative intent. Where, in the drafting of a statute, more than one requirement occurs, if it is the legislative intent that all requirements be fulfilled, the conjunctive "and" covers the situation; if the fulfillment of any one requirement is sufficient, the disjunctive "or" makes it clear. Where more than one standard is to be met, the itemization of standards is the best practice.

Same words for the same meaning. A fundamental of fundamentals is that the same thing should always be expressed by identical words, and the same words should never be used to convey different meanings. If you mean and say "ship" in one place, do not say "vessel" in another. If you speak of "contributions" do not refer to them elsewhere as "payments." If you direct that notice be "served on" a party, do not in another section direct that it be "given" to him. Thus a word or a phrase, if it means but one thing, will definitely mean that one thing, and opportunities for misinterpretation or misconstruction, on the part of courts, administrators, or persons, are reduced to a minimum.

Preferred words and phrases. Words and phrases employed indiscriminately or carelessly lose much of their meaning, force, and effectiveness. It is an essential of good bill drafting to fit the exact word to the meaning intended. Accuracy and uniformity are bill drafting jewels.

Meetings other than regular are "special," not "extra."

Interest is "at the rate of six per cent," not "at six per cent."

In beginning a sentence to state a case or condition, "In the event" is to be preferred to "If."

Lists of schedule of qualifications, powers, rights, and duties are "enumerated"; persons, and offices or positions occupied by persons, are "named" or "specified".

Say "date," not "time," when referring to a specific date or a date which will become specific upon the occurrence of a specific act, as: "the date this act takes effect."

Do not use "prescribed" and "provided" as if they were interchangeable. A tax is "prescribed," as also are requirements and conditions. Ways and means are "provided".

Referring in a general way to the body in control of a political subdivision, say: "governing authority."

Do not say "in charge" when "under the charge" is meant.

Moneys appropriated are to be "expended," not "applied" nor "utilized".

Formulas. Certainty of the law will be advanced by reducing frequently employed provisions of the law to formulas. An example of the numerous opportunities for such treatment is the provision for staggering the terms of members of newly created boards or commissions: "One member shall be employed for a term ending on the first Monday in January, 1948, and one each for terms ending respectively one, two, three, and four years thereafter. Upon the expiration of any of the terms a successor shall be appointed for a full term of five years."

REVISION

When the first draft of a bill is complete it should be subjected to careful revision. However skillfully the work may have been done, it is safe to assume that it is susceptible of improvement. Once the mind is relieved of the labor of original composition defects are easier to detect. An inconsistency is discovered—correct it. A more logical arrangement is suggested—make it. Awkwardness is found in an expression—smooth it. A phrase may be shortened without injury, an unnecessary word eliminated—perform the operation. Good draftsmanship calls for plodding research, careful study of details, thorough preparation, judicious arrangement. But it calls for something more. The goal of the true draftsman is to achieve perfection as nearly as possible, and the price of that goal is indeed patient toil. But it cannot be said that the goal is not worth the price, for the bill which is the object of so great and earnest effort may become a law which will endure for ages, to the credit of the statesman conceiving it, the reputation of the legislature enacting it, the advantage and enjoyment of humankind, and the satisfaction of the draftsman. The careful drafts-

man will not leave a bill until he has revised it, and revised it again, and again, and again.

LEGISLATIVE MEASURES AND THEIR USES

According to Minnesota usage, formal expression of the legislative will or opinion is effected through the medium of Bills, Joint Resolutions, Concurrent Resolutions, Resolutions of either House (commonly known as simple resolutions), Joint Memorials, Concurrent Memorials, and Memorials of either House.

There is no direct constitutional authorization for resolutions of any kind, although indirect recognition is given to resolutions under the provisions of Article 4, Section 12, which prescribes that: "Every * * * resolution * * * requiring the concurrence of the two houses (except such as relate to the business or adjournment of the same) shall be presented to the governor for his signature, and, before the same shall take effect, shall be approved by him, or, being returned by him with his objections, shall be repassed by two-thirds of the members of the two houses, according to the rules and limitations prescribed in case of a bill." The statutes recognize resolutions by providing that each house may provide by rule or resolution what number of copies of its journal shall be printed, and by providing the manner in which bills, joint resolutions, and legislative acts may be engrossed or enrolled.

This lack of constitutional or legislative authorization and definition of resolutions and their various uses is common to most states. They are universally employed, in some jurisdictions rather indiscriminately, and their validity is recognized so long as they do not infringe upon the powers and functions reserved for bills.

Until recent years differentiation between the several types of resolutions, memorials as well, was very vague in Minnesota legislative practice, but there is at present being evolved an agreement upon the functional jurisdiction of each style of measure which is generally observed.

Bill. A bill is the highest form of legislative measure. It is a proposal for the enactment of a new law, the amendment of an existing one, the appropriation of public money, or proposing an amendment to the State Constitution.

Joint Resolution. A Joint Resolution is a high form of expression of the legislative will, the passage of which may be affected only by roll call, as in the case of a Bill, and approval by the Governor. A Joint Resolution is not, in itself, a law, but for a number of limited

purposes it has the force of law. It is often employed for purposes, short of law, in which it is expedient or necessary to express the joint will and action of the Legislature and the Governor. It may be and has been used for the ratification of amendments to the Federal Constitution, but the proper vehicle for the exercise of this purely legislative function is the Concurrent Resolution. It is frequently employed to express the state's attitude and recommendation with respect to matters of national or general concern.

Concurrent Resolution. A Concurrent Resolution is an expression of facts, principles, opinions, or the legislative will with respect to subjects or matters not requiring executive approval. It may be introduced in either House, but passage requires concurrence by the other. It is the proper vehicle for the ratification of proposed amendments to the Federal Constitution; for directing actions by State departments; for authorizing legislative investigations participated in by both Houses, where no appropriation of public funds is involved, and for any other procedure to which both Houses are parties. It is often employed to express sorrow over the death of a person who has served in both Houses of the Legislature.

Resolution. A Resolution (simple resolution) is an expression of the will, wish, view, or opinion of the House adopting it. Concurrent action is not required. It may be employed by the House which has acted last to request return of a measure from the other House or from the Governor, for correction, amendment, or reconsideration. It is the customary vehicle for expression with respect to the death of members of the body adopting it. For any purpose not requiring action by both Houses it may be used in the same manner as the Concurrent Resolution.

Memorial. A Memorial is a petition or prayer, usually addressed to the President, the Congress, or some official or department of the United States government, requesting an action which is within the jurisdiction of the official or body addressed. The procedure with respect to the passage of Joint, Concurrent, and simple Memorials is the same as for resolutions, except that a roll call is not required for the adoption of any memorial. A Joint Memorial calls for the Governor's signature, and therefore becomes an expression of the mutual or joint desire of the legislative and executive authorities.

TYPOGRAPHICAL STYLE

Uniformity in typographical style is pleasing to the eye, a visual aid to the understanding, and makes for accuracy. Carelessness in

respect to typographical style is a sign of slovenly bill drafting. For examples of styles indicated, see "Legislative Forms."

Capitalization. Follow the "down" style. Capitalize proper names, but not the names of offices, departments, or institutions. Be sparing in the use of capitals, as their too frequent use produces a confusing effect.

Do not capitalize words defined in a definitions section, unless the word is to be capitalized in the act.

Punctuation. Observe grammatical rules in punctuation. Punctuate where it will clearly aid the understanding, but avoid over punctuation.

Spelling. Adopt uniform spelling and stick to it. If a word has two spellings, decide which to use and do not depart from it. Consult a dictionary when in doubt.

Numbers. Use numerals only for reference to things which by common usage are identified by numbers, such as divisions of the law or of books, dates, public highways, etc. State sums of money, when less than a dollar, in full: "twenty-five cents", "fifty cents"; when a dollar but less than a hundred dollars, "$1.00," "$99.00"; when a hundred dollars or more, "$100," "$1,000," "$1,000,000." When indicating dates, place the numerals after the month, thus: May 1, 1946.

Citations. Cite or refer to session laws thus: "Laws ——, Chapter ——, Section ——"; compilations of the laws, "Minnesota Statutes 1945, Section ——."

Amending Bills. To conform to the rules of both Houses, a bill by which it is proposed to amend an existing law must indicate by the use of a line drawn through them the words to be deleted, and the words to be inserted must be typed with a line under them. Example:

295.32 Every telegraph company ~~as defined in section 295.01~~ shall pay into the state treasury ~~seven~~ *five* per cent of its gross etc.

Section Designations. Designation of the first section should be thus: "Section 1." Subsequent sections thus: "Sec. 2." with the word abbreviated. This shortens the word while maintaining a distinction, in amending bills, between sections of the bill itself and the sections being amended, which are designated by the proper number only, without the word "Section" or "Sec.", thus "295.32." In the body of the text spell "section" in full.

SPECIFICATIONS OF MEASURES FOR INTRODUCTION

Number of Copies. For introduction in the House, ~~six~~ 4 copies are required of each bill or other measure; for the Senate, ~~six~~ 4 copies.

Paper. Measures must be typed on 8½ x 13 bond paper, light weight.

Margin. Left-hand margin, three-quarters of an inch; right-hand, one inch; top, one and one-half inches; bottom, one and one-half inches.

Numbering Sheets. Number each sheet at the bottom.

Spacing. Single space title and double space text.

Binding. Cover original and each copy with a good quality manuscript cover, and bind with wire staples. For the cover of House and Senate bills, use white.

Title on Cover. Fold covers twice, from bottom toward the top. On the back of the second fold, above the heading, H.F.—— or S.F.——, as the case may be, on the original type "ORIGINAL", on each copy type "COPY". On the back of the second fold, under the heading, H.F.—— or S.F.——, as the case may be, type the full title in capitals.

LEGISLATIVE FORMS

(Bill for new law)

A BILL

For an act relating to tree planting for conservation purposes, providing for the distribution thereof, and repealing Laws 1945, Chapter 213.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. This act may be cited as the Tree Planting Law of 1947.

Section 2. Subdivision 1. In this act, unless the context otherwise requires, the words and terms defined in this section shall have the meanings given them.

Subd. 2. "———" means ————————.

Subd. 3. "———" includes ————————.

Sec. 3. Trees may be procured etc.

Sec. 4. For the purposes authorized in this act, the commissioner may etc.

Sec. 5. Laws 1945, Chapter 213, is repealed.

(Bill for amendment)

A BILL

For an act relating to gross earnings tax on telegraph companies; amending Minnesota Statutes 1945, Section 295.32.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1945, Section 295.32, is amended to read as follows:

295.32 Every telegraph company, as defined in Section 295.01, Subdivision 9, shall pay into the state treasury, on or before March first, ~~of~~ each year, beginning 1, ~~1945~~ *1947*, ~~five~~ *seven* per cent of its gross earnings derived etc.

A BILL

For an act relating to ————; *amending Laws 1945, Chapter 42, Section 1.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Laws 1945, Chapter 42, Section 1, is amended to read as follows:

All ~~resident~~ men and women in any of the military *or naval* forces etc.

(Claim bill)

A BILL

For an act appropriating money to ———— *as reimbursement for* ————

Be it enacted by the Legislature of the State of Minnesota:

Section 1. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, the sum of $25.00 to ———— to reimburse etc.

A JOINT RESOLUTION

Requesting that deferment be granted and extended to farm laborers under the Selective Service Act.

WHEREAS, Minnesota farmers, desiring to render the fullest measure of patriotic service to the nation, have ————; and

WHEREAS, in addition to ————; and

WHEREAS, the growing shortage ————; and

WHEREAS, successful prosecution ————; and

WHEREAS, Congress, ————.

NOW, THEREFORE, BE IT RESOLVED by the Legislature of the State of Minnesota, in regular session assembled, that we ask ————.

BE IT FURTHER RESOLVED that the Secretary of State transmit a copy of this resolution to ————.

A CONCURRENT RESOLUTION

Relating to Legislation affecting aeronautics now before the Congress of the United States.

WHEREAS, the Congress of the United States has under consideration certain bills ————; and

---

NOW, THEREFORE, BE IT RESOLVED by the House of Representatives, the Senate concurring, that ————.

BE IT FURTHER RESOLVED that the Secretary of State transmit a copy of this resolution to ————.

RESOLUTION

WHEREAS, there exists a great difference of opinion as to the effect of ————; and

---

NOW, THEREFORE, BE IT RESOLVED by the House of Representatives that the application of ————.

BE IT FURTHER RESOLVED that a committee ————.

A JOINT MEMORIAL

Relating to the absence of water in the bed of the Minnesota River and the dearth of fish therein.

TO THE SECRETARY OF THE INTERIOR:

Your memorialist respectfully represents:

_____

_____

_____

WHEREFORE your memorialist, the Legislature of the State of Minnesota, urgently requests:

1. _____

2. That the Secretary of the Interior recommend the actions suggested to the President and the Congress respectively.

A CONCURRENT MEMORIAL

Requesting the establishment of a national cemetery in Minnesota.

TO THE SECRETARY OF WAR:

Your memorialist respectfully represents:

_____

_____

_____

WHEREFORE your memorialist, the Senate of the State of Minnesota, the House of Representatives concurring, requests:

1. _____

2. _____

A MEMORIAL

Requesting the establishment of a government general hospital at the City of Minneapolis.

TO THE SECRETARY OF WAR:

Your memorialist respectfully represents:

_____

_____

_____

WHEREFORE your memorialist, the House of Representatives of the State of Minnesota, urgently requests:

1. That the Secretary of War give ————————
2. ————————

†