BILL DRAFTING MANUAL

Prepared primarily for use of the staff of the Revisor of Statutes office in conjunction with the Styles and Forms booklet.

NOTE

The rules of the Senate and House concerning bill drafting and the form and style of legislative measures should be examined closely inasmuch as they control when in conflict with this manual.

Prepared by the

REVISOR OF STATUTES

G3 State Capitol Building
St. Paul, Minnesota 55155

Rev. 1973

TABLE OF CONTENTS

page

GRAMMAR AND STYLE (continued)

FOREWARD

One of the duties of the Revisor of Statutes office is the preparation of bills, resolutions and memorials, and amendments thereto, for legislators, legislative committees, and departments and agencies of the state.

This manual is primarily designed for use of the staff of this office. It is not a style and form manual although the style and form of bills is mentioned in many instances.

This manual discusses bill drafting in its broadest sense with an outline of the parts that make up a bill with a discussion of Supreme Court decisions concerning acts of the Legislature and the various parts of such acts.

A good bill drafter should be thoroughly familiar with the legal subject matter, both statutory and judge-made. He must have the skill to embody in the bill language expressed and arranged so articulately that the purpose and method of the legislation is clearly understood - not only by those who are to be affected by it, but also by those who are to administer it. Care in the drafting stage will help minimize time-consuming conflicts over legislative "intention."

It is well stated in the bill drafting manual for the state of Oregon as follows:

> "This manual is not guaranteed to make you an expert bill drafter in ten easy lessons. Bill drafting is a skill that you can acquire only with experience. However, with experience, you should be able to produce well drafted bills if you use this manual as a guide. Even so, your task as a bill drafter is, in a sense, impossible of fulfillment. The perfect bill has never been written and never will be. The most you can do as a draftsman is to try to reduce doubt, ambiguity and foreseeable problems to a workable minimum. Your success will depend upon the extent to which you achieve this end."

INSTRUCTIONS TO DRAFTSMEN

STATUTORY PROVISIONS

"482.09 [DUTIES.] In addition to the duties now imposed upon him, the revisor of statutes, to the extent that personnel and availability of appropriations permit, shall:

"(1) Maintain and conduct within his office a bill drafting department and, upon request, draft or aid in drafting bills, resolutions, and memorials, and amendments thereto, for any member of the legislature, the governor, or any department or agency of the state. Any drafts thereof may contain headnotes, if not prohibited by the rules of the legislature or either house thereof, and headnotes shall be subject to the provisions of section 648.36;

"* * *

"(6) Upon request of any committee or commission created by the legislature or appointed by the governor to make a study of or to revise the laws pertaining to any subject, prepare and advise in the preparation of any bill;

"* * *"

"482.11 [REQUEST FOR BILL DRAFTING SERVICE.] A request for the drafting of a bill, resolution, or memorial, or an amendment thereto, shall contain a general statement respecting the policy thereof and the purpose designed to be accomplished, and shall be signed by the person who submits it. Each bill, resolution, or memorial, or amendment thereto, shall be drafted so as to conform to the instructions so given."

"482.12 [PROHIBITIONS; LIMITATIONS.] Subdivision 1. Neither the revisor of statutes nor any employee of his office shall reveal to any person not an employee of the office the contents or nature of any request or statement for the drafting of a bill, resolution, memorial, or amendment thereto, except with the consent of the person making the request or statement.

STATUTORY PROVISIONS - continued

"Subd. 2. Neither the revisor of statutes nor any employee of his office shall urge or oppose any legislation.

"Subd. 3. Neither the revisor of statutes nor any employee of his office shall give any member of the legislature advice concerning the legal, economic, or social effect of any bill or proposed bill, except upon the request of the member.

"Subd. 4. Neither the revisor of statutes nor any employee of his office shall engage in the general practice of law. This subdivision shall not be applicable to an attorney at law assisting the revisor of statutes as either a part-time employee or as an independent contractor. Such a person, however, with reference to any work submitted to him by the revisor of statutes shall be subject to the prohibitions and limitations applicable to the employees of the revisor of statutes as contained in subdivisions 1, 2, and 3."

"482.13 [BUSINESS HOURS.] The office of the revisor of statutes shall be kept open during the time provided by law for other state offices; and when the legislature is in session the office shall be kept open at such hours as are most convenient to the members of the legislature."

GENERAL DRAFTING RULES

a. Nonpartisan attitude

The revisor of statutes will serve all parties, factions, and members of the legislature alike regardless of party affiliations, seniority, or other considerations. A nonpartisan attitude shall be maintained in dealing with the public generally. Avoid letting personal convictions or opinions influence your work and avoid making statements to anyone which might be construed as partisan.

b. The drafting service

Bills, resolutions, and other legislative proposals may be drafted for legislators, legislative committees, state departments and agencies, and the governor. Others who may request bill drafting services should be politely informed that the request for such services must come from some member of the legislature.

c. Confidential nature of work

All contacts with members of the legislature and others who are entitled to the bill drafting service shall be kept strictly confidential. The entire drafting file as well as the proposal which has been drafted is confidential until the proposal has been introduced on the floor. Information concerning a bill or resolution which is in the drafting process shall not be revealed to anyone other than the original requester except upon his written authorization. Under no circumstances will any of the material in the bill drafting file be loaned to anyone except with the express permission of the revisor, and then only after the proposal has been introduced on the floor. If a request for drafting of a bill or resolution comes into the office while a similar request is being filled for someone else, the bill or resolution will be redone for the second requester. The second requester shall not be informed that a similar request is being considered in the office. The confidential relationship between the requester and the revisor's office must be maintained at all times.

d. Tailor-made drafts

Each proposal is drafted strictly in accordance with the request and wishes of the requester. When there is a difference of opinion between the draftsman and the requester as to the form of a proposal, the wishes of the requester shall be followed unless the form is not in conformity with legislative rules. In the later case, it should be suggested that the matter be discussed with the revisor or his assistant. Each draftsman is admonished to draft in accordance with the revisor's approved form and in accordance with this manual unless instructed otherwise. If the requester does not give the draftsman sufficient time to do a good workmanlike job, the file should show the fact clearly. If the requester furnishes material to the draftsman which he desires to have returned, the material so furnished shall have a notation thereon indicating that it is to be returned, and under what circumstances.

e. Procedure for taking drafting requests

(1) The request Write the instructions for preparing the measure on the bill drafting request form while talking with the requester. Such instructions must contain a general statement respecting the policy, the purpose designed to be accomplished, and such detail as the draftsman may require. The completed request form shall be signed by the requester at that conference. When instructions are received by telephone or under circumstances where it is not possible to immediately obtain the signature, the draftsman will proceed with the request. The draftsman assigned to draw the bill will have the request signed as soon as he can, and always before the proposal is delivered to the requester.

The request form should show the subject matter of the requested measure so that it may be properly indexed by the bill drafting clerk. The draftsman who takes the request is responsible for the initial classification of each request he takes, but it is subject to review and change by the revisor or his assistant. A subject matter list is available in the office and, whenever possible, the subject matter shown on the request form should correspond to one of the subjects contained in that list.

(2) Pertinent data All pertinent data should be obtained from the requester. If it appears that it may be necessary to consult others for pertinent information, the requester's permission should be obtained on the bill drafting request in the place provided therefor. The signed request is a memorandum of the first conference between the draftsman and the requester. A record shall be made of all other conferences with the requester or with any other persons in connection with the proposal. The draftsman shall carefully explore with the requester exactly what the request entails, exercising care, however, to avoid giving the requester any legal advice whatsoever unless he specifically requests it.

(3) Sections affected When taking a request, obtain as much information as possible and check the statutes which are affected with the requester so that both the requester and the draftsman will clearly understand what is wanted. Also check the statutory cross reference tables maintained in this office so as to ascertain whether or not other sections of the statutes are affected by the requester's proposal. (See "12. REPEAL CLAUSE,"

beginning on page 34.) If as a result of such a check it is necessary to amend other sections or subdivisions, the request should clearly so indicate.

(4) Preliminary drafts submitted, drawn elsewhere If the requester presents his request in the form of a preliminary draft of the bill that he has in mind, try to obtain from him the source of the drafting, and his permission to consult the original draftsman. Also obtain from the requester a clear statement of the purpose of the bill. No issue, however, should be made concerning the source of the original draft. The main purpose of obtaining this background information is to enable the draftsman to check sources and thereby do the best possible job.

The requester should be informed that it may be necessary to make changes in the form of the bill so as to meet the requirements for approval set forth on pages 68 and 69 of this manual.

(5) Contacting outsiders The revisor's office is not equipped to do factual research for the requester. It does not maintain legislative reference facilities for the use of the draftsman or the requester. On many occasions, however, the request for the bill or resolution may involve complex administrative problems. Where an administrative problem is involved, sometimes it is very desirable to talk over the procedural aspects of the problem with the state department or agency involved or even with another branch or subdivision of the government. However, unless the requester does grant permission to discuss the problem with an outsider, draftsmen shall not contact others. If the requester grants such permission, a notation to that effect should appear on the original request.

(6) Additional information If during the process of drafting a measure the assigned draftsman feels that he is unable to comply with the original instructions, or that insufficient instructions were obtained, he shall first discuss the difficulty with the draftsman who took the request; then, if necessary, he should contact the requester for the necessary instructions. Any additional instructions thus obtained must be recorded completely, with date and circumstances under which obtained. This record may be inserted at the bottom of the request form or on another sheet stapled to it, but with such notation that it won't be overlooked.

(7) Redrafts A simple measure usually can be drafted in final form at its first writing. More complex measures may seem to require preliminary drafts, to be submitted to the requester for his approval. A draftsman may feel free to submit successive preliminary drafts; it is more important to satisfy the requester's wishes than to prepare a final draft with which he will be dissatisfied. (For very complex matters, "rough drafts" might even seem necessary, but these should be for the draftsman's use and should not be submitted to the requester, except at a personal conference.) Whenever a preliminary draft, whether first or fifth is sent to a requester for his approval, a record of its number and date of delivery must be made on the file. Drafts returned as unsatisfactory, if replaced by revisions, should be retained. However, only the latest master copy in the master envelope should be in the bill drafting file.

(8) Request for identical bills Unless the requester otherwise indicates, a bill or memorial resolution will be drafted for introduction in both the senate and the house. Minnesota has long followed the practice of introducing companion bills (identical bills introduced in each house). If, however, after a bill has been drafted and delivered to the requester, another request for the same bill is received, the second request shall be treated as though it were a request for an original bill. The bill will be redone, and the second requester will not be notified that such a bill has been drawn for another requester. When a second bill is drawn on the same subject matter as an earlier bill, it has been found most practical to have it identical to the first (that is, without artificial variation in language).

(9) Amendments and conference committee reports The foregoing instructions concerning requests for bills or memorial resolutions apply also to requests for amendments to bills or memorial resolutions, except as follows:

Experience demonstrates that requests for amendments to bills, whether from the original requester or otherwise, cannot be treated the same as requests for original bills. Time does not permit. If the original requester, however, requests that an amendment be prepared for his bill, a notation or record thereof should be placed in the original bill drafting file, if possible. A separate bill drafting file is rarely prepared for amendments.

f. Processing bill drafting requests

Because the revisor is required to maintain certain bill drafting records, the following instructions shall be strictly followed:

(1) When a bill drafting request has been completed by the draftsman and signed by the requester it shall be given to the bill drafting clerk.

(2) The bill drafting clerk will prepare a file. Files are numbered consecutively in the order in which the bill drafting requests are received by the clerk. She will also prepare two cards, the first listing the subject matter of the request, and the second listing the name of the requester. All drafting requests of a single requester are listed on a single card, chronologically in order.

(3) If the draftsman has some special reason for handling a particular drafting request, he will so notify the assistant revisor, so that after the request has been properly docketed and recorded the file may be assigned to him. Normally, however, the bill requests are distributed by the assistant revisor to the draftsmen in the order in which the requests are numbered. No request shall be handled out of turn except upon express permission of the revisor.

(4) If the draftsman is unable to prepare his draft within a reasonable time, the drafting clerk shall be notified of his reasons.

(5) The drafting clerk will maintain a tickler file showing the number of bill requests that each draftsman has under consideration, and the name of the requester and subject matter of the request. Reasons for delay in complying with the request will be noted in this tickler file.

(6) Draftsmen are requested to cooperate with the drafting clerk at all times in order that adequate and accurate files may be maintained and the requester may be advised of the status of his request at any time.

g. Bill drafting aids

(1) Xerox copies of statutes for amendments In order to draft a bill amending an existing statute the page

or pages containing the statutes to be amended can be used by the draftsman for indicating changes desired by using a xerox copy. This copy enables the typist to use a "Line-a-time" for copying unamended portions or for rapid identification on a CRT terminal. The copy used remains in the bill file.

(2) Lawyers' reference cards Immediately upon filing by the secretary of state of an act this office makes a copy, showing the chapter number assigned. From such copy, cards are prepared indicating all amendments and repeals of existing law (and, in the case of coded statutes, new additions). An individual card is prepared for each section or subdivision individually treated. The cards are filed numerically by section and subdivision of the existing law in separate groupings of statutes and session laws. (Cards for session laws are first arranged in larger groups by year of session, and chapter number.)

Be sure to check these cards before amending a statute or law. If earlier acts affect the same law they must be considered in later bills. The copies of the enrollments are arranged numerically by chapter number in groups of 50.

(3) Subject cards - bill requests for sessions of 1967 and subsequent sessions Subject cards for bill drafting requests for the regular and special sessions of 1967 and subsequent sessions are in the office and give the file number of the request. These may prove time-savers in finding a prior bill which may fulfill the requirement of the current request. You may also inquire of senior staff members as to prior bills. Such a bill should not be used without checking for amendments or other changes in the law since it was prepared. Any dates in the draft must be made current. Do not assume the bill is satisfactory, as it usually can be improved.

(4) Model and uniform acts Model and uniform acts and other miscellaneous material on a variety of subjects have been collected, indexed, and inserted in special files. Draftsmen should become familiar with these acts and material and use them for such ideas as they may contain in complying with a bill request. The legislative reference library also collects similar materials.

(5) Forms There may be some forms available which can be used for bill drafting purposes as time-savers. Check with the revisor or the assistant revisor.

(6) Manuals Each draftsman should become familiar with the following:

A. The rules of the house and the senate
B. The joint rules of the house and senate
C. Minnesota Statutes, Chapters 482, 645, and 648
D. Special instructions of the revisor's office relating to the form of bills, resolutions, etc.
E. The Styles and Forms booklet
F. This bill drafting manual
G. Revisor's instructions on approval of house bills

h. General procedure

(1) Legal advice The mandate of the statutes concerning bill drafting shall be carefully observed. Legal advice shall not be volunteered. If legal advice is desired by a requester, a notation of the request for advice and the information given shall be set forth in the file. In order to minimize requests for legal advice a requester should always be informed that we will draw his bill as he wants it. Language in the request should clearly specify what the requester has in mind. Except for constitutional questions, there should be little occasion to interpret the language of the bill. If the language casts any doubt, language that is free from doubt should be used.

(2) Docket and pool procedure When a draftsman has completed his draft, and before delivering it to the pool, he must note on the stamped assignment form on the file cover any special instructions to the pool. If he wishes it in preliminary form, he should so indicate. (During the session all measures will be drafted in final form unless a notation therefor appears on the file cover.) He should also indicate time desired, if other than "in the normal course of rush business"; special paragraphs, if any, to be inserted in the transmittal letter, or special instructions for delivery. If detailed special instructions are contained in the file, it would be wise to call attention to them on the cover stamping, or to papers which are to be returned to the requester or another person.

The draftsman then delivers the complete file, his drafting notes enclosed, to the pool supervisor for assignment of the work needed. The pool supervisor notifies the bill drafting clerk, who records the assignment. When the pool has completed its work, the supervisor delivers the file to the draftsman, again notifying

the bill drafting clerk, who records the fact in the docket.

The draftsman is responsible for completion of his bill in accordance with his instructions. If he is satisfied, he signs the transmittal letter and returns the file to the bill drafting clerk for delivery to the requester and recording such delivery. Draftsmen are not to deliver a draft directly to the requester; delivery must be made through the drafting clerk, so that proper records may be maintained.

(3) Check of reference cards Each draftsman, in complying with any request, shall carefully check to ascertain whether the subject matter of the bill has received legislative consideration during the current legislative session. This entails checking the lawyers' reference cards (see page 9, (2)) and the enrolled acts.

(4) Availability in office Draftsmen will be expected to work within the offices of the revisor of statutes. When a draftsman is required to leave the office, he shall advise the receptionist as to where he may be reached. Likewise, draftsmen will be expected to maintain and be on duty during the regular hours of the staff of the revisor's office. (M.S. 482.13)

(5) Headnotes When appropriate the draftsman will write the headnote of each section of a bill. The headnote shall be in full caps and enclosed in brackets as it is not a part of the enactment. If a bill contains a headnote the bill back should show that it is authorized in accordance with revisor's instructions.

(6) Approval of bills The rules of the house require the revisor's approval as to form of all bills introduced in that body. Approval as to form means that the bill has been drawn in conformity with rules of form appearing in the constitution, the statutes, and the printed rules of both bodies; that the grammar is correct, and that the form of the enactment is in accordance with legislative custom. No draftsman shall perfunctorily approve a bill drawn by someone else. If the bill submitted to him for approval is not satisfactory as to form (see the special instructions concerning approval as to form, which are on pages 68 to 69 of this booklet) a drafting request shall be prepared, a file made by the drafting clerk, and the bill will be processed as are other bills requested. In the case of a bill drawn in the revisor's office,

the draftsman who draws the bill will be responsible for endorsing the approvals before delivery of the bills to the requester if the instructions of the revisor so require.

Every request for approval of a bill drawn elsewhere shall be assigned to a draftsman. Under no circumstances shall a draftsman approve a bill for anyone unless such assignment is made.

(7) Coding On initial legislation, general in nature, it may be desirable to assign code numbers in conformity with the statutes. Special laws are not coded. Bills containing coding must be stamped with the "Coding Approved" stamp and be initialed by one of the staff unless revisor's instructions otherwise provide. Do not use more than three numbers beyond the decimal point. More about coding appears in the section on amendments.

- - - - - - - -

THE BILL AND ITS PARTS

The bill is the form used to propose a law. It is the only form which carries "An act" in its title and the enacting clause prescribed in the constitution. A bill is the highest form and most numerous of legislative measures. Its form and content depend upon its purpose, which may be any one or any combination of the following:

1. To create new law
2. To amend existing law
3. To repeal existing law
4. To appropriate public money
5. To propose a constitutional amendment

ARRANGEMENT

In its simplest form a bill is divided into the following essential parts:

1. The title
2. The enacting clause
3. The body of the bill

However, a bill may be made up of a number of parts. The arrangement outlined below is not mandatory but is suggested by custom and convenience. Some of the parts outlined are rarely used. In the following pages we will discuss the requirements for drafting each part in the order shown.

OUTLINE OF PARTS

1. Title
2. Preamble (Whereas clause) - Rarely necessary; avoid if possible
3. Enacting clause
4. Short title
5. Statement of purpose or policy
6. Definitions
7. Basic provisions
   a. Creation of agency
   b. Details (Powers, duties, tenure, salary, expenses, administration, personnel, etc.)
   c. Main provisions
   d. Subordinate provisions
   e. Procedural provisions
   f. Temporary provisions

OUTLINE OF PARTS - continued

8. Appropriations
9. Liberal interpretation
10. Severability clause
11. Saving clause
12. Repeal clause
13. Effective date

1.

TITLE

(and the one-subject rule)

Minnesota Constitution, Article IV, Section 27, provides:

> "Sec. 27. No law shall embrace more than one subject, which shall be expressed in its title."

We will discuss this constitutional requirement as to the title and one-subject rule under one heading as they are so closely related.

As to the title requirement, it was said in WESTERN STATES UTILITIES CO. v. CITY OF WASECA, 242 Minn. 302, 315, 65 N.W. (2d) 255:

> "The major object of the constitutional provision is to apprise the members of the legislature of the contents of the act, and if they are fairly apprised, that is sufficient."

It is generally recognized that the best title is one which is brief, clear, broad, and comprehensive, and sufficient to call attention to the subject dealt with by the act. It should be sufficiently general so that amendments, after introduction, will not leave the title inaccurate. If it is too specific in detail, there is always a chance that the bill may be so amended that, in final form, it will be something altogether different from that described in the title. It is a fatal defect in a bill for the title to state one subject and the body of the bill to enact something entirely different, or unrelated.

A broad and comprehensive title is more likely to run the gauntlet of the constitution than a restricted one. Under a restricted title an act may well contain provisions not fairly within such restricted title, and therefore fail under the constitutional provision. For instance, in WATKINS v. BIGELOW, 93 Minn. 210, 100 N.W. 1104, the

title of the act in question provided for the amendment of a section of the statutes and then added the clause "relating to express trusts"; the court said (93 Minn. 222):

> "The title is a restrictive one, for it gives no intimation that the act deals with the general subject of trusts, as might have been the case if it had simply read. 'An act relating to express trusts.' In construing this title the last clause thereof cannot be disconnected from that which precedes and limits it. The title cannot be construed as if it read 'An act relating to express trusts,' for the declared purpose of the act is to amend the sixth subdivision of a certain section relating to express trusts. Or, in other words, the title simply gives notice that the proposed amendment relates only to the subject-matter of such subdivision.
>
> "In determining whether the subject-matter of the act here in question is embraced in its title, the distinction between a general title to a statute and a restricted one and the rules applicable to each must be observed. The rule is that the title to a statute, if it be expressed in general terms, is sufficient if it is not a cloak for legislating upon dissimilar matters, and the subjects embraced in the enacting clause are naturally connected with the subject expressed in the title. General titles to statutes should be liberally construed in a common-sense way. STATE v. CASSIDY, 22 Minn. 312; WINTERS v. CITY OF DULUTH, 82 Minn. 127, 84 N.W. 788. But if the title to a statute be a restrictive one, carving out for consideration a part only of a general subject, legislation under such title must be confined within the same limits. All provisions of an act outside of such limits are unconstitutional, even though such provisions might have been included in the act under a broader title. ***"

Another case, which quotes from WATKINS v. BIGELOW, supra, is STATE ex rel. FINNEGAN v. BURT, 225 Minn. 86, 29 N.W. (2d) 655. The title to the act in question purported to establish a classification and salary system and created a commission for that purpose in counties of a certain population. Section 8 of the act related to the discharge or demotion of employees. The court held that section 8 was invalid as it covered a separate and distinct subject not declared or suggested in the title. The contention was made that the act was complete code or revision of existing laws relating to the subject. The court pointed out

that the title of the act is a restrictive one and does not purport to cover a complete code. See also STATE v. PALMQUIST, 173 Minn. 221, 217 N.W. 108; 17B Dunnell, Dig. (3 ed.) § 8909, and cases cited therein.

The title requirement and the one-subject rule as provided in the constitution have been given a liberal construction by the Minnesota supreme court. This was reiterated in the case of VISINA v. FREEMAN, 252 Minn. 177, 201, 89 N.W. (2d) 635, where the court said:

> "We have frequently held that this provision of our constitution should be given a liberal construction.
>
> "In JOHNSON v. HARRISON, 47 Minn. 575, 577, 50 N.W. 923, 924, 28 A.S.R. 382, 384, we established the applicable rule, since followed in construing this constitutional provision, where we said:
>
> "'***All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'
>
> "In STATE ex rel. PEARSON v. PROBATE COURT, 205 Minn. 545, 551, 287 N.W. 297, 300, we said:
>
> "'The objects of the constitutional provision have been often expressed in the decisions of this court. They are, first, to prevent 'log-rolling legislation' or 'omnibus bills,' by which a large number of different and disconnected subjects are united in one bill and then carried through by a combination of interests; and, secondly, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the proposed legislation, or of the interests affected.'"
>
> See also STATE v. BELL, 280 Minn. 55, 157 N.W. (2d) 760.

For a general statement of the law concerning the generality of a title and the one-subject rule, we refer to the following sections in 17B Dunnell, Dig. (3 ed.):

[8908.] "The generality of a title is no objection if it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The subject need not be specifically or exactly expressed. The title is not designed as an index of the law.

"All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

"The fact that a title is broader than the act itself is not fatal.

"A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the constitution.

"It is the 'subject' and not the 'object' of the law which must be expressed. It is unnecessary that the various objects or purposes of the act should appear in its title.

"It is the subject and not the effect of the law which is required to be expressed in the title. ***" (Underlining supplied.)

[8910.] "1. What constitutes -- In general -- Meaning of 'subject'.

"The subject of a statute is the matter to which it relates and with which it deals and may embrace all provisions which are germane to it, which may be parts of it, incident to it, or means auxiliary to the end in view, and though subject must be single, provisions by which object is accomplished may be multifarious, and the constitutional provision ought to be practically and liberally construed.

"The term 'subject' is to be given a broad and extended meaning so as to allow the legislature full scope to include in one act all matters having a logical, common, or natural connection. To constitute duplicity of subject an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate

> connection with or relation to each other. The connection or relationship between the subjects need not be logical -- it is sufficient, if they are connected in the public mind. Everything fairly germane to the general subject expressed in the title or appropriate to its accomplishment -- everything which might reasonably be expected to be found in a law of such a character -- may be included without specific reference in the title. ***"

For a comprehensive article on the one-subject rule, see 42 Minn. L. Rev., page 389.

Under the general practice, the title first states the general subject:

> A bill for an act
>
> relating to school districts.

This is sufficient if the bill is a broad and comprehensive one concerning school districts. If the bill applies to a specific object within the general subject, such object should be stated in a second clause:

> relating to school districts;
> authorizing school districts to
> provide teacherages.

If, in addition, the bill amends or repeals any existing laws, notice thereof should be given by additional clauses:

> relating to school districts;
> authorizing school districts to
> provide teacherages; amending
> Minnesota Statutes 1971, Section
> 122.12; and repealing Minnesota
> Statutes 1971, Section 122.34.

The title of a bill which merely amends or repeals should briefly express the subject matter and contain a proper reference to each law affected.

Examples (See also Styles and Forms booklet):

> relating to [etc.]; amending [or
> repealing] Minnesota Statutes 1971,
> Section 12.34.

OUTLINE OF PARTS - continued

relating to [etc.]; amending [or repealing] Minnesota Statutes 1971, Section 456.78, Subdivision 3.

relating to [etc.]; amending Minnesota Statutes 1971, Sections 12.34; 12.35; 12.36; and 12.37.

relating to [etc.]; repealing Minnesota Statutes 1971, Sections 123.45; 123.452; 123.46; 123.47; and 123.48.
[Note: See M.S. 645.48.]

relating to [etc.]; amending [or repealing] Minnesota Statutes 1971, Section 234.56, as amended.
[Where amendment made since compilation of statutes.]

relating to [etc.]; amending [or repealing] Laws 1945, Chapter 123.

relating to [etc.]; amending [or repealing] Extra Session Laws 1957, Chapter 456, Section 7.

relating to [etc.]; amending Minnesota Statutes 1971, Section 78.91, by adding a subdivision.

relating to [etc.]; amending Minnesota Statutes 1971, Chapter 169, by adding a section.

Note: For a simple repealer do not say "A bill for an act providing for [etc.]; repealing [etc.]." The act is not providing for the subject -- it is repealing it; therefore the words "relating to" the subject are more accurate.

Whenever there is an appropriation in a bill (even though it is merely incidental to the main subject) the title should carry a reference thereto such as "and appropriating money therefor."

If the bill provides a penalty it should be referred to in the title.

Recommended practice would be to draft the title last, or after writing the bill, reviewing the bill and the title to make sure that everything in the bill is covered by the title.

Although the title of a bill does not become, strictly speaking, part of the law, it may be considered by the courts in aid of construction of the law. Therefore it is also important from this standpoint.

2.

PREAMBLE
("Whereas" clause)

The preamble phrased in one or more "Whereas" clauses preceding the enacting clause is rarely used. Do not use, unless the requester insists, as a substitute for a statement of purpose or policy (see 5. STATEMENT OF PURPOSE OR POLICY). It forms no part of the law. It is not given a section number. The tendency is to omit preambles from laws. It is doubtful that the preamble can be resorted to for the purpose of interpretation of a law, particularly where the law itself is unambiguous. Unusual or emergency legislation sometimes carries a preamble, where the facts recited may be of considerable use. The "Mortgage Moratorium Law" (Laws 1933, Chapter 339) setting forth the facts of the then emergency and the effect of mortgage foreclosures on the economy is a good example. The courts in upholding that law took judicial notice of the facts recited in the preamble. See BLAISDELL v. HOME BUILDING AND LOAN, 189 Minn. 422, affirmed 290 U.S. 398.

For a discussion of the use of preambles in law, and their effect, see 25 Minn. L. Rev. 924.

3.

ENACTING CLAUSE

The style of the enacting clause is fixed by the constitution, article 4, section 13. It is required in every bill. Its wording is:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

4.

SHORT TITLE

Occasionally a lengthy bill of general importance covering a subject in a comprehensive manner requires a short title, or label. Short titles are always used in uniform state laws. When used, the short title should be contained in a separate section immediately following the enacting clause. For example:

"Section 1. Sections 1 to 20 may be cited as the 'Minnesota Nonprofit Corporation Act.'"

Note that instead of saying "This act" we recommend the use of reference to sections of the bill. (See THIS ACT - USE OF, page 47.)

5.

STATEMENT OF PURPOSE OR POLICY

Sometimes the requester asks that the bill contain a statement of policy or purpose. It is rarely used, as most legislation is self-explanatory. It should be made a separate section. For examples, see the "Minnesota Tree Growth Tax Law," Laws 1957, Chapter 639, Section 2, coded Minnesota Statutes, Section 270.32; and the "Dairy Industry Unfair Trade Practices Act," Laws 1957, Chapter 821, Section 2, coded Minnesota Statutes, Section 32A.02.

6.

DEFINITIONS

A definition section should be used only in a bill that is lengthy and complicated, and then only if the words defined need defining, or if it is desired to substitute a single word for a long phrase which has to be used many times. Its principal purpose may be to shorten sections and simplify their meanings.

The definition section is valuable in reducing technical terms to ordinary language. It is commonly used to avoid repetition of a phrase or the full title of a public officer, board, or agency.

If a bill contains but one definition which applies to only one section, it should be placed in the section where the defined word or phrase is used.

If a separate definition section seems necessary, it should be one of the first sections of the bill, preceding the main provisions.

If the definition is restrictive, use the word "means." If it is extensive, use "includes." Never use "means and includes."

Do not write substantive law in a definition.

In a definition section, each definition should comprise a separate subdivision, with the defined word or phrase in quotation marks. This permits future amendments of parts without rewriting all of a lengthy section.

Example:

"Section 1. Subdivision 1. As used in sections 1 to 20, the terms defined in this section have the meanings given them.

"Subd. 2. 'Registered abstractor' means [etc.]

"Subd. 3. 'Board' means [etc.]"

For a good example of the use of definitions see M.S. 475.51.

The draftsman should keep in mind always that certain words and phrases as used in the statutes are already defined. See Minnesota Statutes, Chapter 645. Note particularly section 645.08, stating, as a rule of construction:

"645.08 [CANONS OF CONSTRUCTION.] In construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

"(1) Words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition;

"(2) The singular includes the plural; and the plural, the singular; words in the masculine gender include the feminine and neuter; words used in the past or present tense include the future;

"(3) General words are construed to be restricted in their meaning by preceding particular words;

"(4) Words in a law conferring a joint authority upon three or more public officers or other persons are construed to confer authority upon a majority of such officers or persons; and

"(5) A majority of the qualified members of any board or commission constitutes a quorum."

Frequently laws contain a definition for the word "person" where the definition is unnecessary. Section 645.44, subdivision 7, provides:

"Subd. 7. [PERSON.] 'Person' may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations."

If a bill applies to a person, meaning a human being, it is unnecessary to use a definition, as was done in the "Shoplifting Law," section 629.365. However, if it is intended to extend the meaning of "person" to include bodies politic, etc., it should be so defined, if it is not otherwise clear.

In using definitions the draftsman should consider that the bill, if enacted into law, may be in pari materia with other statutes. The court in that event might construe a definition used in harmony with another law. For example, see McNEICE v. CITY OF MINNEAPOLIS, 250 Minn. 142, 84 N.W. (2d) 232, where the court held that the definition of "gambling devices" as then found in section 325.53, subdivision 2, also applies to that phrase as it was then used in sections 614.06 and 614.07.

In HAHN v. CITY OF ORTONVILLE, 238 Minn. 428, 57 N.W. (2d) 254, the issue was whether the Civil Damage Act (section 340.95), which imposes a liability in favor of a third party injured by the intoxication of a purchaser of liquor, applies to a municipality. The court used the definitions of "person" found in the liquor control acts of 1934 and 1943 to find that the Civil Damage Act did apply to municipalities, and stated (238 Minn. 437, 84 N.W. (2d) 261):

"*** Although enacted at different times there can be little doubt that the legislature has regarded all three acts as supplementary to one another and as integral parts of a unified plan for controlling

the sale and consumption of intoxicating liquor. When legislative acts involve a single subject or problem, there is an unusually strong reason for applying the rule of statutory construction that when statutes are in pari materia they are to be construed harmoniously and together.***"

A succinct statement on the object of interpretation and construction of laws is found in CHRISTENSEN v. STATE, DEPARTMENT OF CONSERVATION, 285 Minn. 493, 175 N.W. (2d) 433. The case arose out of a dispute involving the workmen's compensation act. The court stated on pages 494 and 495 of the Minnesota Reporter:

"We have previously, on many occasions, set forth the rules governing the construction of the Workmen's Compensation Act. These decisions make it clear that the act is remedial in character, seeks to accomplish a humane purpose, and should, therefore, be given a broad and liberal interpretation to attain its purposes; that the various provisions of the act are to be considered supplementary to each other and construed together; and that, while the act is to be construed broadly and liberally, the courts are not to interpret its various sections so as to defeat rights of the employer granted under the act and are not to legislate or depart from the clear and accepted meaning of the words used in the act. The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.***"

7.

BASIC PROVISIONS

The discussion here pertains to new legislation -- a bill for an original law and not for an amendment of existing law.

The sections and subdivisions should be arranged and subdivided in the manner used in Minnesota Statutes. The modern tendency is to divide a law into relatively short sections and when the subject matter permits to subdivide the sections. This makes for easier reading and, of particular importance, makes it easier for later amendments.

The arrangement of sections in a particular bill depends upon the individual case. Generally, the main provision or

principle precedes formal details. The reader can then ascertain the "heart" of the legislation -- understand the leading principle -- by the first section or sections, and then easily read on to the subordinate provisions: Details, procedures, exceptions, and special provisions.

Bill drafting manuals usually suggest the following order of the basic provisions:

a. Creation of agency
b. Details (powers, duties, tenure, salary, expenses, administration, personnel, etc.)
c. Main provisions
d. Subordinate provisions
e. Procedural provisions
f. Temporary provisions
g. Penalties

This order is merely suggestive. For example, Sutherland, on Statutory Construction, states that if an administrative agency is to be created it should precede the substantive provisions of the law. (See 2 Sutherland, § 4823.) Other authorities feel that the leading principle is the law to be observed and that the provisions creating the agency to administer the law should follow. Both methods are used in the statutes; examples are found in the laws regulating and licensing certain trades or professions. For an example of the first method, see Minnesota Statutes, Chapters 150A, 151, and 153. For the second, see chapters 154, 155, and 363. Examples of both methods are contained in chapters 148 and 326.

Where the creation of the agency is the leading principle and its duties and functions are set forth, of course the creation of the agency comes first. Note Minnesota Statutes, Chapter 362, creating the department of economic development; chapter 43, civil service; and chapter 84, conservation.

8.

APPROPRIATIONS

Minnesota Constitution, Article IV, Section 12, provides:

"Sec. 12. No money shall be appropriated except by bill.***"

Article IX, Section 9, provides:

> "Sec. 9. No money shall ever be paid out of the treasury of this State except in pursuance of an appropriation by law."

An appropriation is authority to spend. As distinguished from a bill providing for a tax, an appropriation bill may originate in either body of the legislature.

Appropriations, properly drawn, are made from money in the state treasury and may be made from earmarked money; i.e. "There is appropriated to the secretary of state from money in the state treasury credited to the trunk highway fund the sum of $_____ for carrying out the provisions of section 1."

An appropriation provision in a bill should be carried in a separate section, should be mentioned in the title, should specify the purpose for which made, the officer or department to whom made, the source of the appropriation, and the amount. Usual forms are: "There is appropriated to the department of administration from the general fund in the state treasury $_____ for operating the electronic data processing center established by section 1."

or

"$50,000 is appropriated to the department of administration from the general fund to operate the electronic data processing center established by section 1."

An act creating a liability on the part of the state, or promise of the state to pay money, is of no force in the absence of an appropriation of funds by which the liability can be discharged. See STATE ex rel. CHASE v. PREUS, 147 Minn. 125, 179 N.W. 725.

The effective date of an appropriation is provided by Minnesota Statutes, Section 645.02, the second paragraph of which reads:

> "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."

An appropriation enacted after July 1 at an extra session should have an effective date.

Appropriations (except for construction or permanent improvements derived wholly or partly from fees, special taxes, earnings, fines, etc.) will lapse at the end of the fiscal year (M.S. § 16.17). If it is desired that an appropriation shall not lapse the bill shall say so; e.g. "Notwithstanding Minnesota Statutes, Section 16.17, or any other law relating to the lapse of an appropriation, the appropriation made by this section shall not lapse but shall continue until fully expended."

It is permissible to leave the amount of an appropriation blank; i.e. "$_____ is appropriated, [etc.]" In some stage of the bill's passage, the blank will be filled by amendment.

Over the years the Minnesota legislature has frowned upon standing appropriations. (See M.S. § 3.23 and § 3.24.) Nonetheless the legislature continues to make them. Appropriate language to provide a standing appropriation is "There is appropriated annually from the general fund in the state treasury the sum of $_____ to the commissioner of taxation for travel expenses." The common device for standing appropriations is to provide for the automatic appropriation of the receipts; e.g. "All moneys deposited in the state treasury from cigarette license fees are annually appropriated to the commissioner of taxation for [etc.]" Standing appropriations should never be set forth in a bill unless the requester specifically directs.

To circumvent the legislature's aversion to standing appropriations the device of creating a revolving fund has frequently been used. A revolving fund is created; the receipts from a given source are deposited to the credit of the revolving fund; the annual appropriation for a given purpose is made from the revolving fund. If it becomes necessary to use this device the following form is suggested: "There is established within the state treasury a cigarette license account. All receipts from cigarette licenses shall be deposited in the state treasury and credited to the cigarette license account. All money in the state treasury credited to the cigarette license account is annually appropriated to the commissioner of taxation for travel purposes."

The foregoing device is suggested in lieu of creating a fund, and to facilitate accounting practices by the state treasurer. The draftsman is admonished to avoid creating funds and accounts from which appropriations are to be paid; in any case, he is directed to obtain the suggestions

of the state auditor and the public examiner, wherever possible, before so doing. He should have in mind that "State Accounting Procedures" by Tannery states, "Each fund should be broad but definite in scope and should be established only after all other possible means for controlling expenditures have been exhausted."

By all means avoid writing accounting into legislation.

The foregoing relates to appropriation provisions in general legislation. It does not relate to general appropriation acts. General appropriation acts, which are not coded, frequently contain sections that are permanent or substantive law, and which may be inconsistent with a statute on the same subject, repealing the statute by implication, as was held in STATE v. CITY OF DULUTH, 238 Minn. 128, 56 N.W. (2d) 416.

Writing permanent law in a general appropriation bill is not desirable. Such law can not be conveniently coded. It is particularly undesirable where it affects existing statutes and requires a court decision to determine the effect of the law, as in STATE v. CITY OF DULUTH, supra. Preferable, of course, is a separate bill either amending or expressly repealing the statute.

9.

LIBERAL INTERPRETATION

A liberal interpretation provision is of doubtful value. That statutes shall be so construed as to effectuate the intention of the legislature and secure the most beneficial operation is a familiar rule of construction. The statement of this principle is set forth in M.S. § 645.16.

Uniform acts always carry a provision as follows:

> "Sec. . [UNIFORMITY OF APPLICATION AND CONSTRUCTION.] This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it."

Section 645.22 contains practically the same language.

10.

SEVERABILITY CLAUSE

There is no need for a severability provision in a bill in view of decisions of the courts, (See STATE ex rel. FINNEGAN v. BURT, 225 Minn. 86, 29 N.W. (2d) 655) and M.S. § 645.20, which provides:

> "645.20 [CONSTRUCTION OF SEVERABLE PROVISIONS.] Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

In view of the first sentence of section 645.20, if it is desired that the entire act be invalidated if any part is declared unconstitutional, the bill should so provide. Language of such a provision might be as follows:

> "Section __. It is the intent that each provision of sections 1 to 20 shall not be severable and that each provision be considered to be essentially and inseparably connected with and dependent upon every other provision."

or

> "Sec. __. Notwithstanding Minnesota Statutes, Section 645.20, if any provision of sections 1 to 20 (or it might apply to only one section) is found to be unconstitutional and void the remaining provisions shall be of no effect."

11.

SAVING CLAUSE

The "saving clause" referred to herein is to be distinguished from "provisions" or "exceptions." Provisions and exceptions operate to restrict the generality of legislative language as does a "saving clause," but the true saving clause is designed to preserve from destruction certain rights, remedies, or privileges which would otherwise be destroyed by the general enactment, particularly repeals and amendments. It is used to preserve existing rights and duties that have already matured and proceedings that have already been commenced.

In MARQUARDT v. STARK, 239 Minn. 107, 114, 58 N.W. (2d) 272, the court said:

> "*** The general effect of a saving clause is to preserve the status quo of something existent at the time of its enactment. State v. Moore, 192 Ore. 39, 233 P. (2d) 253. It relates to accrued rights. Where the right under controversy has not accrued prior to the repeal, a saving clause cannot preserve the repealed statute until the right is acquired nor can it operate to hasten the acquisition of the right. 1 Sutherland, Statutory Construction (3 ed.) § 2049."

Ordinarily, it is unnecessary to have a saving clause because of Minnesota Statutes, Section 645.35, which reads:

> "645.35 [EFFECT OF REPEAL.] The repeal of any law shall not affect any right accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the law repealed. Any civil suit, action, or proceeding pending to enforce any right under the authority of the law repealed shall and may be proceeded with and concluded under the laws in existence when the suit, action, or proceeding was instituted, notwithstanding the repeal of such laws; or the same may be proceeded with and concluded under the provisions of the new law, if any, enacted."

As to amendatory laws, see Minnesota Statutes, Section 645.31. It is said in 17B Dunnell, Dig. (3 ed.) § 8923:

> "*** The statute provides a general saving clause to the effect that no right accrued, duty imposed, penalty incurred, or proceeding commenced, shall be affected by a repeal. This enters into every repealing statute and limits it, unless a contrary legislative intent plainly appears. General saving clause statutes pertaining to the effect of repealing acts are simply declaratory of statutory rule of

construction. Repealing statutes often include special saving clauses. When repealing statute is enacted with no special saving clause, the statutory general and permanent saving clause attaches to the repeal."

See TRAIL v. VILLAGE OF ELK RIVER, 286 Minn. 380, 175 N. W. (2d) 916.

In STATE v. CHICAGO GREAT WESTERN RAILWAY COMPANY, 222 Minn. 504, 25 N. W. (2d) 294, the court fully discusses the effect of the general saving statute, section 645.35, where the repealing act fails to contain a saving clause. In that case the repealing act expressly provided that section 645.35 did not apply to the act; the court held that therefore the common law rule governs and the action pending ended with the repealing act.

An amendatory act, Laws 1957, Chapter 275, expressly provided that the section of the statute as thus amended operates not only prospectively but retroactively; and further provided that "Minnesota Statutes, Sections 645.31 and 645.35, shall not be construed to apply to this act." The court, in HOLLEN v. M.A.C. 250 Minn. 130, 84 N.W. (2d) 282, reversed the judgment of the lower court entered before the 1957 amendment. Therein the court said, as to the quoted provision (250 Minn. 136):

"*** Any doubt that the legislature intended the amendment to be curative of any defect resulting from the failure to hold a public hearing is swept away by subd. 3 which expressly declares that §§ 645.31 and 645.35 (general saving clause statutes) shall not be construed to apply to the ammendatory act."

From the foregoing it is clear that if the intent of the proposed bill repealing or amending certain laws is to strike down pending actions or rights, the bill must say so clearly, or the general saving statute may apply.

On the other hand, the general saving statute or a saving clause in the act itself does not necessarily save all existing right or actions. Rights which are not substantive and private in nature are not protected. A general saving statute, for instance, will not save a rule of evidence or a mode of procedure. See 1 Sutherland, § 2047. See also, Id. § 2050, as to the effect of repeal on remedies.

In OGREN v. CITY OF DULUTH, 219 Minn. 555, 18 N.W. (2d) 535, a workmen's compensation case, the question was whether a 1943 statute was retroactive both as to substantive rights and as to procedure and evidence. It was held that the substantive right to compensation, having come into being under the prior law, was protected by the saving clause but that the provisions contained as to procedure and evidence were not. It was held that the repeal of the statute creating a presumption carried the presumption with it and that the saving clause or general saving statute did not save a rule of evidence. See also, EKSTROM v. HARMON (1959) 256 Minn. 166, 98 N.W. (2d) 241.

Study the general saving statute (M.S. 645.35) to determine whether it saves what the requester wants preserved. If it is not adequate, a specific saving clause must be drafted to fit the facts.

No hard and fast rule can be laid down as to the effect of a saving clause or the general saving statute. The courts are not consistent. See, for example, STATE ex rel. BENNETT v. BROWN, 216 Minn. 135, 12 N.W. (2d) 180, where the general saving statute was ignored entirely. See also STATE ex rel. BUTTERS v. RAILROAD AND WAREHOUSE COMMISSION, 209 Minn. 530, 296 N.W. 906, where trial was completed under the veterans preference law before its repeal as to state civil service, but the final decision and final judgment in such trial had not been entered. The court held that in that incomplete status, upon repeal the remedy as well as relator's rights under the former law were lost. The court considered the general saving statute, but held that the intent of the legislature in the repealing act must have been otherwise. (There was a strong dissent stating that the general statute should be read into the act as much as if specifically incorporated therein.)

Keep in mind that the present veterans preference law, sections 197.45 to 197.48, is still in effect, as modified or superseded by the state civil service act. Section 197.48, involved in the Butters case, supra, is peculiar in that it applies to <u>future acts</u> concerning veterans employment, etc., in government service. It is a "prospective saving clause." It reads:

> "197.48 [APPLICATION.] No provision of any subsequent act relating to any such appointment, employment, promotion, or removal shall be construed as inconsistent herewith or with any provision of sections 197.45 and 197.46 unless and except only so far as expressly provided in such subsequent act

> that the provisions of these sections shall not be applicable or shall be superseded, modified, amended, or repealed.***"

To supersede such a law requires special treatment. Examples: The state civil service act expressly supersedes the veterans preference law and expressly refers to section 197.48 (then coded as Mason's § 4369-2). Laws 1957, Chapter 741, applying to veterans employment in certain cities, specifically provides that the act supersedes sections 197.45 and 197.46 insofar as they may be inconsistent.

Attention is called to several laws (not saving clauses, but closely related to the kind of law above referred to) that apply to <u>future acts</u> requiring special treatment if the bill intends to treat the law differently.

For instance, the state civil service law, section 43.09, subdivision 4, provides in part:

> "Subd. 4. [CLASSIFIED SERVICE.] The classified service shall include the labor service and consist of all positions now existing or <u>hereafter</u> created and not included in the unclassified service.***" (Underlining supplied.)

If a bill creates a position and the intent is to have the position in the <u>unclassified service</u>, it should be expressly stated. For example:

> "The commissioner may also appoint a confidential secretary or employee who shall serve at his pleasure and be in the unclassified service of the state."

> "Any personnel so employed by the secretary shall be in the unclassified service of the state."

The law treating the taxation of homesteads provides by section 273.13, subdivisions 6 and 7, that the first $12,000 of the market value of homestead property shall be exempt from taxation for state purposes. If a bill levies a tax for state purposes and the intent is to include the <u>full</u> value of homestead property, the bill must so provide. An example of this was the veterans bonus property tax, Minnesota Statutes 1961, Section 273.131, which expressly includes homesteads notwithstanding subdivisions 6 and 7. Also see Laws 1963, Chapter 1, Section 4.

12.

REPEAL CLAUSE

In preparing a bill, check for provisions inconsistent with the existing law. If provisions conflict with or supersede existing statutes the latter should be expressly repealed. A separate section (usually the last) is used for this purpose and customarily is in the following form:

> "Sec. ___. Minnesota Statutes 1971, Sections 51.02 and 51.03, are repealed."

If a series of sections:

> "Sec. ___. Minnesota Statutes 1971, Sections 51.02, 51.03, 51.04, 51.05 and 51.06, are repealed." As a matter of form and for easy reference and better checking, the sections repealed in the repeal section are all enumerated rather than reading: "Sec. ___. Minnesota Statutes 1971, Sections 51.02 to 51.06, are repealed." (It is unnecessary to add "inclusive" because of § 645.48.)

If the repeal is of a session law not coded:

> "Sec. ___. Laws 1967, Chapter 411, is repealed."

Caution 1: Be sure that the title of the bill contains a reference to the repealed sections. See this manual, under TITLE (and the one-subject rule), pages 18 and 19, where there are suggested forms for the title.

Caution 2: The section proposed to be repealed may be referred to in other sections of the statutes. The latter sections will then have to be amended accordingly to adjust the reference, or otherwise changed as may be required. The revisor's office maintains an internal reference card file. Check that file.

Caution 3: Do not repeal sections of the statutes that are included in M.S.A. (West's publication) but are not in Minnesota Statutes. In these instances repeal by reference to the session law. M.S.A. is not the official publication and cannot be used for legislative drafting. (This is generally a problem only in those sessions which immediately precede a new compilation of the statutes.

The revisor's proposed coding for the previous session's acts are used by M.S.A. in pocket parts or a new volume. An act repealing a law not yet compiled should never refer to the proposed coding as though it were in the statutes, but should repeal by express reference to the chapter number of the act.)

Caution 4: Do not use a general repeal clause providing "all laws and parts of laws in conflict with this act are repealed." It is of no legal significance. It does not give the bill any effect it would not otherwise have. See 1 Sutherland, Statutory Construction (3 ed.) § 2013. The determination of which laws are repealed should be made by the legislature and not be left to the courts. The bill draftsman should determine whether the bill requires, or makes desirable, repeal of an earlier law; and, if so, provide a specific repeal.

Note that in some cases it may be necessary to use what is more or less a general repeal clause. Where the bill is general in scope and the intent is to supersede and repeal all special or local laws in its field, it is desirable, of course, to specifically repeal such laws; but this may be difficult in many cases, since 1893 special or local laws (not coded) have not been indexed. Repeals by implication are not favored and this is especially true where the prior statute or law is of a special or particular nature and the later statute is of a general nature. But see TRAIL v. VILLAGE OF ELK RIVER, 286 Minn. 380, 175 N.W. (2d) 916. See 17B Dunnell, Dig. § 8927, and cases cited under note 60. Section 8927 says in part:

> "***A general statute will not repeal a prior special statute on the same subject where it is clear that such was not the intention of the legislature. A special statute providing for a particular place, or applicable to a particular locality, is not repealed by a statute general in its terms and application, unless the intention of the legislature to repeal the special law is clear, though the terms of the general act would, taken strictly, and but for the special law, include the case or cases provided for by the latter.***"

Minnesota Statutes 1971, Section 645.39, reads:

> "When a law purports to be a revision of all laws upon a particular subject, or sets up a general or exclusive system covering the entire subject matter

of a former law and is intended as a substitute for such former law, such law shall be construed to repeal all former laws upon the same subject. When a general law purports to establish a uniform and mandatory system covering a class of subjects, such law shall be construed to repeal preexisting local or special laws on the same class of subjects. In all other cases, a later law shall not be construed to repeal an earlier law unless the two laws are irreconcilable."

An example of a general repeal section is Laws 1957, Chapter 701, Section 2, which reads:

"All laws now in force relating to the salary of district court reporters inconsistent herewith are hereby repealed and superseded."

This effectively takes care of any and all special acts relating to court reporters' salaries.

13.

EFFECTIVE DATE

Minnesota Statutes 1971, Section 645.02, provides:

"645.02 [EFFECTIVE DATE AND TIME OF LAWS.] Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act. A special law required to be approved by the local government unit affected before it goes into effect becomes effective as to the approving unit the day following the day on which the certificate of approval prescribed by section 645.021, subdivision 1, is filed with the secretary of state, unless a later date is specified in the act. When approval of such a special law is required by two or more local government units before it may become effective, the day after the day when the last of the required certificates is filed is the effective date, unless a later 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."

Do not use "on the date of enactment" or "on the date of final enactment" in any section of a bill except in the "effective date" section. If language to that effect is necessary, use instead, "on the effective date", etc. or specify a date. Use of the term "on the date of final enactment" in the substantive parts of a bill may result in conflict because, by general law or by a provision in the bill, the effective date is different from the date of final enactment. Bear in mind that a bill finally enacted at any session of the legislature, other than an appropriation bill takes effect on August 1 next following the final enactment unless a different date is specified.

Minnesota Statutes 1971, Sections 645.023 and 645.024, provide:

"645.023 [SPECIAL LAWS; ENACTMENT WITHOUT LOCAL APPROVAL; EFFECTIVE DATE.] Subdivision 1. A special law enacted pursuant to the provisions of the Constitution, Article XI, Section 2, shall become effective without the approval of any affected local government unit or group of such units in a single county or a number of contiguous counties.

"Subd. 2. A special law as to which local approval is not required shall become effective at 12:01 A.M. of the day next following its final enactment, unless a different date is specified in the special law.

"Subd. 3. Subdivisions 1 and 2 are applicable to all special laws enacted and to be enacted at the 1967 and all subsequent sessions of the legislature."

"645.024 [SPECIAL LAWS; LOCAL APPROVAL AS A REQUIREMENT OF THE ACT.] Section 645.023 does not apply to a special law which by its own terms becomes effective upon the approval of one or more affected local government units, expressed through the voters or the governing body and by such majority as the special law may direct."

See page 52 of this manual relating to special laws.

There is no need in the usual bill for the provision, too often inserted, that "This act is effective on its passage," because of these sections.

Quite frequently it is desired that the bill take effect before or after the statutory time. Following are suggested forms:

"Section ___. This act takes effect July 15, 1973."

or

"Section ___. This act applies to proceedings instituted on and after July 15, 1973."

It might be that upon occasion an appropriation bill, or a bill having appropriation items, requires an effective date earlier or later than the statutory date of July 1. In this case the required date should be specified.

In bills containing an appropriation item incidental to the main purpose of the bill, because of the layman's lack of knowledge that there is a different effective date it may be desirable to provide expressly that the act takes effect on July 1.

- - - - - - - -

AMENDMENTS AND REPEALS

(See also REPEAL CLAUSE, beginning on page 34.)

We include repeals with this discussion on amendments because of their close relationship. An amendment operates to repeal all of the law amended which is not embraced in the amendment. See 17B Dunnell, Dig. (3 ed.) § 8928.

In other words, anything omitted from an existing statutory section in the amendatory law is automatically repealed. If it is desired to amend only one part or paragraph of a section and only the one paragraph appears in the bill, the remainder of the section is repealed. Do not amend a clause, paragraph, or other subordinate part of a section without setting forth the entire section, unless the section is divided into subdivisions; in such case, one or more of the subdivisions may be amended, each in a separate section of the bill. (At the 1957 session, a section not broken into subdivisions, but broken into four numbered paragraphs, was amended by stating that "Minnesota Statutes 1953, Section ___, is amended to read:***" There followed the first clause of the section, ending in a colon, and the amended paragraph (4). This effectively removed from the section, or repealed, paragraphs (1), (2), and (3) of that section.)

Bear in mind, therefore, that no less than a subdivision of a section can be amended without repeating in the amendatory law the entire section or subdivision.

Subdivisions, of course, can also be repealed. Occasionally an act amends a section by running lines through entire subdivisions, in order to remove them from the law. A better practice would be to expressly repeal the unwanted subdivisions.

Where a section is divided into subdivisions, it is permissible to add a new subdivision by stating that the section "is amended by adding a subdivision to read:" For example:

> "Section 1. Minnesota Statutes 1971, Section 169.14, is amended by adding a subdivision to read:
>
> "Subd. . Where the commissioner [etc.]"

Note: Text and designation of the new subdivision must be underscored, as shown. It is desirable although not necessary to leave the subdivision unnumbered, as here, the number to be supplied by the revisor when compiling the statutes.

If it is desired to create a subdivision where the existing section is not subdivided, the section may be amended in the following way:

"Section 1. Minnesota Statutes 1971, Section 169.14, is amended to read:

"169.14 [HEADNOTE.] Subdivision 1. [Here insert the existing section, or such portion thereof as is desired in subdivision 1; amended or not, as desired.]

"Subd. 2. The department [Here insert the desired new text, entirely underlined, and such portions of the existing section as may be desired in subdivision 2; if a subdivision headnote is inserted, omit underlining under the headnote.]"

New subdivisions may be inserted in a section at any point (ahead of existing subdivisions, if this is necessary to continuity). In order to establish the desired location within the section, all existing subdivisions must be set forth even if they are not to be amended; the entire section must be amended in one bill section. (Note: This is contrary to the general rule of amending each subdivision in a separate bill section - see page 39 of this manual.) To insert new matter ahead of old, the following is a sample form:

A bill for an act

relating [etc.]; amending Minnesota Statutes 1971, Section 700.03, by adding subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1971, Section 700.03, is amended to read:

700.03 [HEADNOTE.] Subdivision 1. [Copy from existing law.]

Subd. 2. [Copy from existing law.]

Subd. 3. [Insert desired new subdivision, entirely underlined.]

Subd. 4. [Insert desired new subdivision, entirely underlined.]

~~Subd. 3.~~ Subd. 5. [Insert text of existing Subd. 3; do not underline text, unless there are specific amendments.]

~~Subd. 4.~~ Subd. 6. [Insert text of existing Subd. 4; do not underline text, unless there are specific amendments.]

An alternative method, particularly where the section is lengthy, may be used in adding a subdivision ahead of an existing one. Simply amend the section by adding a subdivision and insert the new subdivision by numbering it with a small "a". Example: You desire the new subdivision to be ahead of Subd. 5, give the new subdivision a number "Subd. 4a." For example, see Laws 1967, Chapter 250, and Laws 1971, Chapter 641.

It is obvious, of course, that such new subdivisions should be added to a section only when the subject is closely related to the section. See Laws 1957, Chapter 960, which erred in this respect.

One bill must not amend two or more statutes of unrelated subject matter. If the statutes deal with matters germane to a common subject, and might validly have been enacted in one bill under one title, they may be amended in a single bill. It is safer, when in doubt, to introduce separate bills.

An amendment is a merger with the law amended. 17B Dunnell, Dig. (3 ed.) § 8925, states:

> "***In the absence of a declaration of other legislative intent, where a statute amends a former statute by reenacting its terms with supplementary provisions, such an act is not a repeal of the previous act, but as to all future matters the amended statute is merged in the amending statute and repeal of the latter does not revive the first statute,***"

Minnesota Statutes 1971, Sections 645.31 and 645.32, states:

> "645.31 [CONSTRUCTION OF AMENDATORY AND REFERENCE LAWS.] Subdivision 1. [AMENDATORY LAWS.] When a section or part of a law is amended, the amendment shall be construed as merging into the original law, becoming a part thereof, and replacing the part amended, and the remainder of the original enactment and the amendment shall be read together and viewed as one act passed at one time; but the portions of the

law which were not altered by the amendment shall be construed as effective from the time of their first enactment, and the new provisions shall be construed as effective only from the date when the amendment became effective. When an act has been amended 'so as to read as follows,' or otherwise, a later reference to that act either by its original title or as it exists in any compilation of the laws of this state includes the act as amended.

"Subd. 2. [ADOPTION OF LAW BY REFERENCE.] When an act adopts the provisions of another law by reference it also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the contrary."

"645.32 [MERGER OF SUBSEQUENT AMENDMENTS.] When a law has been more than once amended, the latest amendment shall be read into the original law as previously amended and not into such law as originally enacted."

See also section 645.34.

Frequent errors occur by using the phrase "this act" in amendatory laws. Bear in mind that the rule of statutory construction is as set out in 1 Sutherland, Statutory Construction, (3 ed.) 1935: "The phrase 'this act' in a section as amended is generally held to refer to the whole act as amended and not merely to the amended act." As one illustration, note Laws 1953, Chapter 460, amending Minnesota Statutes 1949, Section 145.12, as amended by a 1951 act. The 1951 amendment carried as language "Under the provisions of section 1, subdivision 3 of this act" and the 1953 amendment, by subdivision 2, continued this same reference, although the 1953 amendment had no subdivision 3 in section 1. The error continued into the 1953 and 1957 statutes. The 1953 amendment should have referred to the proper section in the statutes or to the 1951 act. Another illustration is in Laws 1957, Chapter 646, relating to standard time. This amended section 645.07, concerning uniform standard time. The amendment added to section 645.07 the authority of the governor to establish daylight saving time; in section 3 it stated: "This act is effective on passage and shall continue in effect until July 1, 1959." All of section 645.07, therefore, and not merely the amendatory provisions, would have expired on July 1, 1959. (However, the section was repealed at the 1959 extra session.) See STATE v. COUNTY BOARD, 255 Minn. 413, 96 N.W. (2d) 580. See a more complete discussion on the use of "this act" under such subject head, beginning on page 47.

As was pointed out under the subject REPEAL CLAUSE, beginning on page 34, the section proposed to be amended may be referred to in other sections of the statutes, which then may also require amendment. Again, the internal reference cards should be checked, to see if the section is referred to elsewhere.

The temptation, where there are multiple changes proposed in an amendatory bill, is to repeal the entire section and reenact the old law as well as the new. In doing this the historical reference to the old section is lost, and the procedure definitely affects any other section of the statutes that refers to the repealed section. As an example, Laws 1957, Chapter 620, concerning fees of the clerk of district court, instead of amending the existing section, reenacted it, raising the fees in many of the cases itemized, and repealed the old section. The old section was referred to in another section concerning fees in the supreme court, which latter section was not amended in any manner. Repealing and reenacting therefore should be avoided where possible.

One device that can be used where it seems desirable to repeal and reenact is to provide for the repeal of the old section but, at the same time, reenact it with the major changes as contemplated in the bill, providing in the bill itself that the new enactment be given the same section number. The title in a case of this kind might state "An act relating to [general subject] and providing for the numbering of the provisions of the act; repealing [etc.]" Further, in the body of the bill, following the section number of any reenacted section, insert the coding, enclosed in brackets. (Note: In the past, the rules have required the revisor's approval of any bill containing such proposed coding.)

Bills amending or repealing statutes should refer in both the title and the body to the affected sections of the statutes, omitting any reference to the legislative act from which the statute was compiled. This is provided by sections 645.29 and 648.33. Therefore reference should be to "Minnesota Statutes 1971, Section ___." If the amendment or repeal pertains to a session law which is not contained in the statutes, the proper reference is to "Laws [year], Chapter ___, Section ___," or "Extra Session Laws [year], Chapter ___, Section ___." If the bill affects laws passed at the 1891, or prior session, reference is to "Special Laws [year], Chapter ___, Section ___," or "General Laws [year], Chapter ___, Section ___."

Prior to the 1958 amendment to article IV, section 33 of the constitution, none of the special or local laws enacted in 1891 or prior thereto could be amended, extended, or modified. They could only be repealed. (The exception to this was special laws relating to courts. See DAHLSTEN v. ANDERSON, 99 Minn. 340, 109 N.W. 697.) The present article IV, section 33, reads in part: "The legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as provided in Article XI." (Underlining supplied.) For drafting of special laws, see page 52 of this manual.

As was discussed under the heading REPEAL CLAUSE, beginning on page 34, do not attempt to amend a section that appears in Minnesota Statutes Annotated (M.S.A.), West's publication, but which does not appear in Minnesota Statutes 1971. M.S.A. is not the official publication and cannot be used for legislative drafting. An amendment in this case shall be to the session law itself.

A bill amending a section in Minnesota Statutes, amended in a session subsequent to the latest publication, should refer to the section of the statutes and to the amendment as follows: "Minnesota Statutes 1971, Section 722.06, as amended by Laws 1971, Chapter 456, Section 7, is amended to read:" The changes made should be based on the amendatory session law (Chapter 456, Section 7, in this instance) and not on the section as it appears in the 1971 statutes.

Where a section appearing in the 1971 statutes was not subdivided, but a subsequent amendment to the section created new subdivisions, a bill to amend one of the new subdivisions would refer to it as follows: "Minnesota Statutes 1971, Section 122.06, Subdivision 2, as added by Laws 1971, Chapter 60, Section 3, is amended to read:" The text to be amended, of course, would come from section 3 of chapter 60.

The title of an amendatory bill should contain proper reference to the law to be amended, in addition to its subject matter, briefly expressed. See TITLE (and the one-subject rule), beginning on page 14 of this manual, and particularly the suggested forms of titles found on pages 18 and 19.

A bill for the amendment of a statute must contain the full text of the section or subdivision to be amended. That is, if the section is not divided into subdivisions, the text of the entire section must appear; if the section is subdivided only the text of those subdivisions to be

amended need appear, but each subdivision must be amended in a separate section of the bill. Insert in the proper place in the text the words and characters constituting the amendatory matter. When the bill is prepared, the newly inserted matter shall be underscored, and the matter to be eliminated by the amendment shall be stricken. Note that if new matter is substituted for stricken matter, the stricken old matter appears first, followed by the underlined new. A simple amendatory bill might read:

> "Section 1. Minnesota Statutes 1971, Section 67.89, is amended to read:
>
> "67.89 [HEADNOTE.] ~~Upon the filing of the report the board of county commissioners and the city council shall consider the report and may either reject the same or ratify the action taken by the commission; and~~ In the event that either or both ~~of these~~ governing bodies shall reject the ~~report of the commission~~ contract for acquisition of a site the matter shall be re-submitted to the commission for further action."

As previously pointed out, in adding a new subdivision to an existing section, the text of the new subdivision shall be underscored.

(Bear in mind that headnotes are not part of the statutes. They do not have to appear in an amendatory section, although their insertion is desirable. Section 648.36 provides, "The headnotes of the sections of any edition of the Minnesota Statutes printed in black-face type are intended to be mere catch-words to indicate the contents of the section and are not any part of the statutes, nor shall they be so deemed when any of such sections, including the headnotes, are amended or reenacted, unless expressly so provided." See STATE v. BELL, 280 Minn. 55, 157 N.W. (2d) 760. Note: The headnotes in the Uniform Commercial Code are part of the statutes. See section 336.1-109.)

When substantively amending a section which contains questionable, outmoded, or superfluous terminology, an effort should be made to improve the terminology. An example is Laws 1955, Chapter 101, Section 1, which amended Minnesota Statutes 1953, Section 622.06, substantively, and also corrected certain verb tense. Section 622.06 originally provided, "***shall steal or unlawfully obtain or appropriate [etc.]" The amendatory act corrected this to read, "***steals or unlawfully obtains and appropriates."

Another instance of a desirable change is from "is authorized and empowered" to "may."

Where a bill transfers a function from one state department or agency to another, or changes the name of a state department or agency, to avoid a great number of amendments to sections throughout the statutes, the device of directing the revisor to make the necessary changes throughout the statutes should be used. The direction to the revisor is drafted in a separate section of the bill. For examples: Laws 1967, Chapter 6, Section 1, amended a statute and gave specific names to three state hospitals and section 2 reads, "The revisor of statutes is directed to correct the next edition of Minnesota Statutes to conform to name changes made in section 1."

Laws 1967, Chapter 16, made certain changes and section 2 provides:

> "Sec. 2. [REVISOR'S DUTIES.] In preparing the next edition of Minnesota Statutes, the revisor of statutes shall make the following substitutions wherever necessary in Minnesota Statutes: The words 'state soil and water conservation commission' for the words 'state soil conservation committee'; and the word 'commission' for 'committee' when it refers to the state soil and water conservation commission."

For further examples see the note following section 482.15.

- - - - - - - -

THIS ACT - USE OF

The draftsman should use the phrase "this act" only when it is clearly necessary in drafting either original legislation or amendatory bills.

New Mexico's drafting manual states:

> "In original legislation, the phrase 'this act' is a rather clear statement. If amendments were never made, or if all of the sections of a certain act were amended when it was amended, it would remain clear. Unfortunately, this is not the case. When amendments are made, then the meanings of 'this act' becomes uncertain. If the phrase is included in the original section which is to be amended, and is allowed to remain, it may refer to the amendatory act or to the entire original act, or to the entire original act as amended, or the entire original act as previously amended, but excluding the present amendment."

The supreme court of Iowa, in STATE v. McEWEN, 96 N.W. (2d) 189 (1959) had the problem of interpreting an amendatory act that used the terms "this act" and "this chapter." The court criticized the draftsman of the bill. The ultimate decision was contrary to the code editor's insertion of the act in the Iowa 1958 code. It held that the words "this act" as used in the amending statute referred to the original act amended and not merely to the amending act.

Several illustrations of errors in amendatory acts using "this act" are pointed out under the subject "AMENDMENTS AND REPEALS," beginning on page 39.

The promiscuous use of "this act" in a law of general and permanent nature creates a number of problems for the revisor when coding the act. The sections of the act may even be coded in a number of different chapters of the statutes. Section 648.34 authorizes the revisor to substitute the proper section or chapter numbers for the term "this act." This is not difficult when the act is comparatively brief and consists of only several sections; but, in a lengthy, involved act, problems of interpretation arise and the revisor can only guess at legislative intent. In those cases all he can do is either substitute the year and chapter of the session

law for the phrase or include the phrase in the statutes. Both solutions, of course, require reference to the actual session law and interpretation by the user of the statutes. This is not desirable from a statutory standpoint.

Keep in mind then that the bill may be incorporated into the statutes. This is particularly important when the separate sections of the bill may be coded in several different chapters. It is difficult to meaningfully code a single section that refers to "this act", or to all the sections in a bill, when the other sections will be coded in several chapters. How will it fit? Refer to the sections of the bill, when possible, rather than to "this act", and whenever possible refer to specific sections rather than to all the sections. Study the following examples:

(1) In using definitions, instead of stating "As used in this act the terms defined in this section have the meanings given them", state "As used in sections 2 to 20 the terms defined***."

(2) Instead of "as provided by this act" or "the provisions of this act shall not apply," use "as provided by sections 1 to 20" or "the provisions of sections 1 to 20 shall not apply".

(3) Refer to specific behavior prohibited; for example, "any person selling goods below cost" instead of "any person violating the provisions of this act".

(4) Penalty provisions may refer to specific sections; e.g. "any person violating the provisions of sections 2 and 3" or "any person violating the provisions of this section," rather than "any person violating the provisions of this act".

The use of "this act" is at times unavoidable. Attempt to use it only in those instances when its meaning is clear and unambiguous.

"This chapter," "this bill," "this article," and "this code" are subject to similar objections.

- - - - - - - -

ADOPTION OF STATUTES BY REFERENCE

Sutherland, Statutory Construction (3rd) §§ 5207 and 5208, states:

> [5207] "A statute may refer to another statute and incorporate part of it by reference. The constitutional provision that no law shall be revised or amended by mere reference to its title is sometimes used to attack these statutes. Reference statutes are not considered amendatory, however, but complete in themselves, so that the constitutional objection is met.
>
> "There are two general types of reference statutes; statutes of specific reference and statutes of general reference. A statute of specific reference, as its name implies, refers specifically to a particular statute by its title or section number. A general reference statute refers to the law on the subject generally. An example of this type of reference is a provision that contracts made under the statute are to be let 'in the manner now provided by law'."
>
> [5208] "A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments, unless the legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute. In the absence of such intention subsequent amendment of the referred statute will have no effect on the reference statute. Similarly, repeal of the statute referred to will have no effect on the reference statute unless the reference statute is repealed by implication with the referred statute. In a statute of specific reference only the appropriate parts of the statute referred to are taken. When the reference is made to a specific section of a statute, that part of the statute is taken as though written into the reference statute.
>
> "A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted."

The above is no longer the rule in Minnesota. The Minnesota rule as to the effect of later amendments to the adopted statutes is now governed by Minnesota Statutes, Section 645.31, Subdivision 2, which reads:

> "Subd. 2. [ADOPTION OF LAW BY REFERENCE.] When an act adopts the provisions of another law by reference it also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the contrary."

The advantages and disadvantages of referential legislation is discussed at length in 25 Minn. L. Rev. 261, 43 Minn. L. Rev. 89, and 38 Iowa L. Rev. 704. Also see Dickerson, Legislative Drafting, Section 8.2.

Generally, incorporation by reference is proper to laws relating to procedure. An example is a bill which, among other things, authorizes the acquisition of property by eminent domain. The bill may refer to Minnesota Statutes, Chapter 117, the procedural statute, rather than provide a similar, detailed procedure. Another example is a bill authorizing a municipality to issue and sell its obligations for a specified purpose. The bill may refer to the provisions of Minnesota Statutes, Chapter 475, for the procedure, if it is applicable. Still a third example is in providing for an appeal from district court to the supreme court, where reference can be made to Minnesota Statutes, Chapter 605.

Procedure of another statute can be adopted if it is workable. The supreme court in ALEXANDER v. McINNIS, 129 Minn. 165, 151 N.W. 809, called the Elwell Law as to state rural highways, Laws 1911, Chapter 254, "a crude piece of legislation" because it adopted the procedural provisions of the drainage law -- a statute having differences as well as likenesses -- resulting in difficulties of administration.

The conclusion of "Is Referential Legislation Worth While?" 25 Minn. L. Rev. 261, 296, aptly states:

> "A competent draftsman will first of all if the proposed reference is to adopt an act or portion of an act examine the whole of that act, its textual environment, construction, history and administrative application, to make sure that the adoption will neither heap up a series of statutes, be unsuitable, nor achieve unintended results. Having satisfied

himself that serious dangers of that sort are avoidable, he will employ at least the following safeguards: (a) Make the reference express and clear. (b) Use only specific reference when adopting statutory precepts with exact citation, never mere description. There is a saying that the strength of a statute lies in its general phrases. But Ernst Freund showed that to be a half truth, that in some statutes general phrases constitute weakness. The foregoing analysis has demonstrated that in most statutes general references usually do so. (c) Be explicit concerning the extent of the reference in quantity, and never affirmatively provide that the statutory provision referred to shall apply 'so far as applicable' or 'so far as practicable.' (d) When necessary to adapt the adopted precepts to the subject matter of the referential act, do so expressly in the new bill; do not leave the task to the courts and administrative officials. In case of administrative provisions special care in this respect should be taken with both rules and standards. ***"

Whether another statute should be adopted by reference in a certain bill is a question of judgment. The advantages and disadvantages in each case must be carefully weighed. Legislation by reference, within certain limits, is desirable; carried beyond those limits it deserves all the criticism it has had.

- - - - - - - -

SPECIAL LAWS

Minnesota Constitution, Article XI, Section 2, reads in part:

> "Sec. 2. Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties, to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct.***"

LOCAL GOVERNMENT UNITS

From the constitutional and statutory standpoint, it is no longer necessary in drafting a special law applicable to a local government unit or units to provide in the bill for approval by the voters or the governing body because a general law has been enacted pursuant to section 2 as above quoted. Minnesota Statutes, Sections 645.023 and 645.024, read as follows:

> "645.023 [SPECIAL LAWS; ENACTMENT WITHOUT LOCAL APPROVAL; EFFECTIVE DATE.] Subdivision 1. A special law enacted pursuant to the provisions of the Constitution, Article XI, Section 2, shall become effective without the approval of any affected local government unit or group of such units in a single county or a number of contiguous counties.
>
> "Subd. 2. A special law as to which local approval is not required shall become effective at 12:01 A.M. of the day next following its final enactment, unless a different date is specified in the special law.
>
> "Subd. 3. Subdivisions 1 and 2 are applicable to all special laws enacted and to be enacted at the 1967 and all subsequent sessions of the legislature."
>
> "645.024 [SPECIAL LAWS; LOCAL APPROVAL AS A REQUIREMENT OF THE ACT.] Section 645.023 does not apply to a special law which by its own terms becomes

effective upon the approval of one or more affected local government units, expressed through the voters or the governing body and by such majority as the special law may direct."

(See LEROY v. SPECIAL INDEPENDENT SCHOOL DISTRICT NO. 1, 285 Minn. 236, 172 N.W. (2d) 764.)

However, the legislature during the 1969 and 1971 sessions, requested that the draft of a bill for a special law have a local approval section. Therefore, unless legislative policy is changed or unless the requester asks that the local approval section be omitted from the draft, it should be drafted with the local approval section. If the bill pertains to a single local government unit, it should take substantially the following form:

A bill for an act

authorizing the village of Hibbing [etc.]

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [HIBBING, VILLAGE OF; [etc.]] The governing body of the village of Hibbing may [etc.]

Sec. 2. [EFFECTIVE DATE.] Section 1 is effective upon its approval by the governing body of the village of Hibbing and upon compliance with Minnesota Statutes, Section 645.021.

NOTE: For towns, the approval (effective date) section should refer to the "town board" or "board of supervisors," since "governing body" might be considered to refer to the town meeting. For example:

Sec. 2. [EFFECTIVE DATE.] This act is effective upon its approval by the town board of the town of _____ and upon compliance [etc.]

Where a special law pertains to two or more local government units named in the law and approval is requested in all of the units in order to be effective, the approval section should read substantially:

Sec. 2. [EFFECTIVE DATE.] Section 1 is effective only after its approval by the governing body of the city of _____ and by each of the town boards of the towns of _____, _____, and _____, and compliance [etc.]

If the intent is to have the law apply to each of the units, separately, who wish to come under the law, then the approval section should read substantially:

> Sec. 2. [EFFECTIVE DATE.] This act is effective as to a specific city, village, or town named herein when approved by the governing body of such specific city, village, or town, and upon compliance with the provisions of Minnesota Statutes, Section 645.021. For the purposes of this act the governing body of a town is the town board.

If the requester desires that a special law be subject to the approval of the voters of a local government unit, the approval section should read substantially:

> Sec. 2. [EFFECTIVE DATE.] Section 1 shall become effective only after its approval by a majority of the voters of the village of Hibbing voting on the question at an election therefor, and upon compliance [etc.]

Another example:

> Sec. 2. This act shall be in effect upon its approval by a majority of the electors of the town of _____ voting on the question at the annual town meeting or any special town meeting called for such purpose and upon compliance with Minnesota Statutes, Section 645.021.

If the requester wishes that, should the local governing body refuse or neglect to approve a law within a given time, the question be submitted to the voters, the approval section might read substantially:

> Sec. 5. [EFFECTIVE DATE.] Sections 1 to 4 shall become effective only after approval by the county board of the county of Ramsey and by the city council of the city of St. Paul. In the event that either body does not approve this act within 60 days after passage of this act the county board and the city council shall jointly submit the question of approval of the act to the voters of the county and city at the next general election in the county and city, and sections 1 to 4 shall then become effective only if approved by a majority of the voters voting on the question, and upon compliance [etc.]

If the local government unit does not have power to provide for an election the bill must provide the necessary authority and procedure. For examples, see Laws 1959, Chapter 456. Ordinarily cities, villages, school districts, and counties have the authority to call an election. As an example for counties, see Minnesota Statutes, Section 375.20.

If the requester insists that the bill contain the question to be submitted to the voters, the form of question shall not refer to the bill by chapter, but shall read substantially as follows:

> "Shall the 1971 legislative act authorizing the village of Hibbing to provide ambulance service be approved?
>
> Yes.....
> No ....."

[NOTE: Never say "shall this act, authorizing [etc.]" or "shall Laws ____, Chapter ___, authorizing [etc.]"]

The leadership of either house may also request that certain special laws be drafted so as to require the local governmental unit to hold a public hearing on the matter proposed before the governing body takes action either approving or disapproving the proposal. See Laws 1971, Chapter 553, Section 3, for an example of the public hearing section.

Prior to the adoption of Article XI of the Constitution, numerous laws pertaining to a single local government unit were enacted as general acts. In many cases there may be doubt as to the constitutionality of such laws. If it becomes necessary to amend any such law applicable to a local government unit it may be desirable to reenact the provisions pursuant to Article XI, and include the proposed changes in the reenactment.

A law, general in form and local in application, enacted prior to the adoption of Article XI of the Constitution should never be amended to include the name to which it applies unless great care is first exercised to accurately determine the place the law applied initially. Unless this matter can be determined with great accuracy a new special act should be drafted. The recommendation contained in this paragraph equally applies to the law to be amended whether reported in Minnesota Statutes or not.

COURTS

A law relating to a specific court, such as the municipal court of St. Paul or the probate court of St. Louis county, is a special law under authority of Article VI of the Constitution and not under the authority of Article XI. A court is not a local government unit.

A bill prepared pursuant to the authority of Article VI does not require the approval of any governmental unit under Article XI and should not be so prepared unless the requester insists.

Article VI embraces all activities of a court including administrative activity, clerical personnel, salaries, records, etc.

Under Article VI only the legislature may fix the salary of a judge. There is nothing in the article prohibiting the legislature from authorizing the county board or the city council to fix the salary of the clerk of the municipal court or the clerk of probate court. Even though the authority to fix salaries may be delegated, the approval of the governmental unit which pays the salary is not required. Bills should not so provide unless the requester insists.

The attorney general has held that a justice of the peace is not a court under Article VI.

- - - - - - - -

AMENDMENTS TO BILLS

After a bill has been introduced, the revisor's office may be called upon to draft proposed amendments to the bill.

Amendments to bills may be made by different legislative bodies and at different times. A bill may be amended in committee, on the floor of either house, or by conference committee, meeting to resolve the differences between the two houses.

Committee amendments are to the typewritten bill, either the unengrossed original or the last engrossment if the bill has been engrossed.

Floor amendments may be to the typewritten bill or to the printed bill. (Generally, they are to the printed bill, particularly if they are made in the house where the bill originated.) A bill is printed at the time it is given its second reading, and it may be printed again if amended thereafter.

Conference committee amendments are always to the typewritten bill which has attached to it the amendments previously made which are in controversy. A conference committee report is not prepared by the revisor's office unless the original typewritten bill, with the controversial amendments, is first delivered to the draftsman by the conference committee chairman who will provide the information as to what the conference committee has decided. In this way only can we be sure that we are preparing what the conference committee desires.

In drafting amendments to any bill, the draftsman must specify the bill he is amending by file number and also whether the amendment is to the typewritten or printed version thereof.

Amendments are made by referring to page and line of the bill.

For examples, see Styles and Forms for Computerized Bill Drafting and other Legislative Measures.

- - - - - - - -

MISCELLANEOUS

RESOLUTIONS - See Styles and Forms booklet

REGULATORY MEASURES - LICENSING - BONDS

When preparing a regulatory measure requiring licensing and also requiring the licensee to post a bond for the protection of the public, unless the requester otherwise directs, the amount of maximum liability of the bond shall be fixed. The substance of the bond provision fixing maximum liability shall read:

> "The aggregate liability of the surety to all persons for all losses shall, in no event, exceed the maximum amount of the bond."

TAX LEVY IN EXCESS OF LIMITATIONS

In any bill which requires that taxes be levied in excess of existing limitations, it is suggested that the substance of the following language be used:

> "The city may levy the taxes required by law for the payment of _____ without limitations as to rate or amount; the levy of such taxes shall not cause the amount of other taxes levied or to be levied by the city, which are subject to any such limitation, to be reduced in any amount whatsoever."

For another example, see Minnesota Statutes, Section 12.26, Subdivision 2.

TAX LEVY AUTHORITY GENERALLY

When it is desired to give a county (or other local government unit) authority to levy a tax for a stated purpose, substantially the following language is recommended (for a county):

> "The board of county commissioners of _____ county may annually levy a tax not to exceed _____ mills on the dollar of the assessed valuation of all taxable property in the county for [etc.]"
>
> or
>
> "The board of county commissioners of _____ county may annually levy a tax not to exceed $_____ on the taxable property in the county for [etc.]"

MISCELLANEOUS - continued

INTERIM COMMISSION BILLS - APPROPRIATION

Bills creating interim commissions should contain appropriation language as follows:

> "$10,000, or as much thereof as necessary, is appropriated from the general fund to pay the expenses incurred by the commission. Expenses of the commission shall be approved by the chairman or another member as the rules of the commission provide and paid in the same manner as other state expenses."

TRANSFER OF DUTIES OF DEPARTMENT OR AGENCY

A transfer of duties of a department or agency requires special treatment as to duties, records, employees, and funds. As examples see Laws 1959, Chapter 263; Laws 1953, Chapter 593; Extra Session Laws 1967, Chapter 1; and Laws 1969, Chapter 1129.

An effective date should usually be in such acts. It may be necessary to appropriate money before the effective date for expenses of making transfer.

RATIFICATION OF PROPOSED AMENDMENT TO U.S. CONSTITUTION

Ratification of a proposed amendment to the U.S. Constitution is not legislation. To accomplish such a ratification the Minnesota legislature adopts a resolution ratifying the proposed amendment. The resolution is in the form and style of a memorial resolution. The title may be:

> A resolution
>
> to ratify the proposed equal rights amendment to the United States Constitution.

The entire text of the proposed constitutional amendment is contained in the resolution. The requirements of Minnesota Statutes, Section 5.06, relating to notice of ratification are also complied with. Federal law makes the administrator of the General Service Administration the appropriate recipient of the resolution. United States Code Annotated, Title 1, Section 106b. A sample resolution is contained in Laws 1967, Resolution 1, and in Laws 1971, Resolution 3.

The rules of the house and the senate do not provide for this resolution. The foregoing, however, is in accord-

ance with the customs and usage of the Minnesota legislature. It should be remembered that the enrollment of this resolution does not provide for the signature of the governor, since the constitution of the United States provides for ratification by the legislature only.

If the governor desires to sign this resolution, however, and most governors do, his name may be added, provided neither the house or senate object.

BILLS PASSED OVER GOVERNOR'S VETO

Minnesota Constitution, Article IV, Section 11, provides for passage of a bill when the governor has refused to approve. In 1967 the legislature passed Extra Session Laws 1967, Chapter 32, (H.F. 27) over the governor's veto.

The following certificates, attached to the enrollment of the act were used to explain the facts as to the passage of the bill without the approval of the governor. Should such a situation arise again, they may be used as a guide in preparing similar certificates:

"The attached bill, Extra Session H.F. No. 27, consisting of 113 pages including a signature sheet, passed the House of Representatives and the Senate in conformity with the rules of each house and the joint rules of the two houses and was presented to the Governor of the state on June 1, 1967. He did not approve it, or sign it, but returned it on June 1, 1967 with his objections to the House of Representatives. Such objections were entered at large in the journal of the House of Representatives and the House proceeded to reconsider the bill. Upon such reconsideration, at least two-thirds of the House of Representatives agreed to pass the bill and it was repassed by a vote of at least two-thirds of the House of Representatives on June 1, 1967, the vote of the House of Representatives being determined by yeas and nays and the names of the persons voting for or against the bill being entered on the journal of the House of Representatives. Thereupon, the bill together with the objections of the Governor was sent to the Senate.

Edward A. Burdick
Chief Clerk, House of
Representatives

"The attached bill, consisting of 113 pages including a signature sheet, having passed the House of Representatives notwithstanding the veto of the Governor, was duly sent to the Senate by which it was likewise reconsidered and was approved and repassed by at least two-thirds of that house on the first day of June, 1967. The vote of the Senate was determined by yeas and nays and the names of the persons voting for or against the bill were entered on the journal of that house. The House of Representatives was thereby duly advised of the action of the Senate.

H. Y. Torrey
Secretary of the Senate

"The attached bill consisting of 113 pages including a signature sheet, having been duly passed by the House of Representatives and the Senate notwithstanding the objections of the Governor, has become law and is transmitted to the Secretary of State of the State of Minnesota to be by him deposited as a law of the State of Minnesota, the Governor's veto to the contrary notwithstanding.

"Dated the first day of June, nineteen hundred and sixty-seven.

L. L. Duxbury
Speaker of the House of Representatives

Edward A. Burdick
Chief Clerk, House of Representatives

James B. Goetz
President of the Senate

H. Y. Torrey
Secretary of the Senate

Filed June 1, 1967

Joseph L. Donovan
Secretary of State"

- - - - - - - -

GRAMMAR AND STYLE

CONSISTENCY

Every bill drafted is prospective law; therefore the draftsman should attempt to make his bill consistent with existing statutes. Each bill passed becomes a part of Minnesota's total statutory law and is construed with reference to every other part of that law and with reference to other laws. Foremost in the draftsman's mind in this respect should be consistency in the choice of words. Do not use different words to convey the same meaning. Do not use the same word to convey different meanings. An attempt at consistency in approach is also important. For example, when drafting legislation relating to the creation of a licensing board or an interim commission, a critical review of similar enactments of earlier sessions may prove of value.

TENSE

The law is considered as always speaking. The temptation is to regard the time of drafting or enactment as the present time and, therefore, to frame legislation in the future tense. Avoid that error. Use the present tense:

> "Any person who drinks intoxicating liquors or who uses profane language on any passenger railway car is guilty [etc.]"

rather than the future tense:

> "Any person who shall drink intoxicating liquors or who shall use profane language *** shall be guilty***"

Use the perfect tense:

> "When the officers who have canvassed the election returns have found [etc.]"

rather than the future perfect:

> "When the officers who shall have canvassed the election returns shall have found [etc.]"

GRAMMAR AND STYLE - continued

SHALL - MAY

Limit the use of the word "shall" to statutory directions and prohibitions. If a provision confers a right, power, or privilege, use "may". Section 645.44 states that "shall" is mandatory and "may" is permissive.

NUMBER; GENDER

When possible, use the singular instead of the plural and the masculine instead of the feminine. Section 645.08 (2) reads: "The singular includes the plural; and the plural, the singular; words in the masculine gender include the feminine and neuter;***."

PUNCTUATION

Legislation should be drafted, as far as possible, so that its meaning does not depend upon punctuation; or so that at least the punctuation does not create doubt as to the meaning. Use commas sparingly. Observe the "all or none" rule; i.e. do not use one comma in a parenthetical phrase or clause and omit the other comma. Do use the comma before a conjunctive or disjunctive word within a series of words, phrases, or clauses. The use of quotation marks is generally limited to definitions; e.g. "blighted area" means. Because parentheses in the printed bill indicate deleted material the draftsman will avoid them except in those very rare cases where they are necessary for clarity. Brackets are not used within the text; their use is reserved for headnotes and new (proposed) coding. In general, rely on proper arrangement of words rather than on punctuation. See Minnesota Statutes, Section 645.18, and State, Department of Highways v Ponthan, 290 Minn. 58, 186 N.W. (2d) 180.

CAPITALS

Use capitals sparingly. Follow the "down style". The title is no longer capitalized. The enacting clause is capitalized. Headnotes are also capitalized. Capitalize proper names; derivatives of proper names; the first word following a colon; and the first word of each item in a tabulated enumeration following a colon. Do not capitalize generic political subdivisions, whether used in conjunction with a proper name or not (district, state of Minnesota, Polk county); boards, commissions, and other bodies (boards of regents, legislature, department of public welfare, bureau of Indian affairs); or titles of officials, whether elective or appointive (president, governor, revisor of

statutes, director, senator). Do not capitalize "section" or "subdivision" unless part of a formal citation (section 1, subdivision 1, of the municipal court act). Do not capitalize "this act".

NUMBERS

House and senate rules read "all numbers in titles shall be expressed in figures. All numbers of sections or chapters of laws shall be in figures. In the body of a bill numbers in excess of ten shall be in figures, except for a special reason they may be written, but when written they should not be followed by numbers in parenthese." All numbers in connected groups should be in figures if any number in the group, standing alone, would be in figures. Numbers beginning a sentence should be expressed in words, except large dollar amounts and figures used at the beginning of tabulated items.

ABBREVIATIONS

Do not use abbreviations within the text of a bill.

SUCH, SAID, ANY, ETC.

Avoid using the words "such", "said", or "same" for "the", "a", "an", "that", "it", "them", and similar words. Do not use "any", "each", "every", "all", or "some", if "a", "an", and "the" can be used with the same result.

WHEN, IF, WHERE, ETC.

Use "when" or "if" not "where" to introduce a hypothetical situation. For example, "When the seller of goods has a voidable title thereto, but his title has not..." is correct, rather than "Where [etc.]..." See Minnesota Statutes 1961, Sections 512.01 to 512.79, the Uniform Sales Act, for a wealth of bad examples.

OBJECTIONABLE PHRASES

The phrase "this act" is especially troublesome and should be avoided wherever possible. When the phrase is unavoidable, it should be used with extreme caution and with understanding. See THIS ACT - USE OF, beginning on page 47 of this manual.

GRAMMAR AND STYLE - continued

AVOID	SUBSTITUTE
is directed to	shall
is hereby authorized and it shall be his duty to	shall
is authorized to	may
shall have the power to	may
means and includes	means (or includes, as required)
necessitate	require
forthwith	immediately
prior to	before
not later than	before
in cases in which	when, whenever
in the case of	when
in case	if
in the event that	if
per annum	a year
per day	a day
null and void and of no effect	void
full force and effect	force (or effect)
together with	and

OFFICIAL TITLES

In referring to a public officer or a state department or agency, the official and correct title of that public officer or state department or agency should be used. Do not call the commissioner of natural resources the "director of natural resources" or the department of highways the "highway department". (But note that for amendatory purposes, within certain sections a definition

section has shortened these titles.) In addition to the statutory provision originating the department or office in question, the appendix which relates to state government structure and which is found in the last volume of the statutes will be helpful.

CONCLUSION

Sutherland, in vol. 2, § 4906, says as to grammar, style, and expression:

> "It is traditional that statutes are unreadable, indefinite, confusing, and misleading. The very length of sentences and sections contributes to this result. The traditional belief that statutes must couch simple and direct statements in pompous and verbose language adds greatly to confusion. ***
>
> "In the expression of legislative policy simplicity is the primary standard. Simplicity may be gained not only by the exclusion of unnecessary words, but also by following strictly a single pattern of statutory expression. Unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony. ***" (Underlining supplied.)

Notwithstanding how carefully, clearly and concisely the nomographer drafts a bill he must resign himself to the fact that the courts make the final interpretation of a statute, and determine its meaning. As Justice Frankfurter said in United States vs. Monia, 317 US 424, on page 431:

> "The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification."

- - - - - - - -

CHECKLIST FOR DRAFTSMEN

1. Are constitutional limits on legislation observed?
2. Does the title express the subject adequately?
3. Is the enacting or resolving clause in proper form?
4. Are amended sections of existing statutes set forth at length? (Or subdivisions, if section is subdivided)
5. Are amended sections of existing session laws set forth at length?
6. Have lawyers' reference and internal reference cards been checked?
7. Have rules of the senate and house (and joint rules) been complied with?
8. Are statutory references accurate?
9. Is each distinct part a separate section?
10. Are provisions of the bill properly integrated with existing law?
11. Are conflicting statutes specifically repealed?
12. Are titles of public officers, departments, agencies, and institutions exact?
13. Is the bill free from ambiguities and conflicts?
14. Is the style concise and understandable?
15. Has the use of "this act" been eliminated where possible?
16. Has "Styles and Forms" been followed?
17. Have headnotes and new coding been inserted where appropriate?
18. When in doubt have you consulted the revisor?
19. Have you endorsed the necessary approvals on the bill covers?
20. If a special act, does it comply with the constitution, article XI, and section 645.021 of the statutes?

- - - - - - - -

FORM APPROVAL

The House of Representatives requires that all bills introduced in the House of Representatives be approved by the Revisor of Statutes as to form and in compliance with the rules of the House. To comply with the rules (House of Representatives rule 4a) each bill which you draft and which must be approved, and each bill submitted for approval by others, shall be examined as to the following:

(1) Does the bill contain a title?

(2) If the bill includes amendatory or repealing material, are the sections amended or repealed expressed in the title?

(3) Does the bill contain an enacting clause?

(4) Is the bill divided into sections, subdivisions, or both, as distinguised from paragraphs, sub-paragraphs, etc.?

(5) If the bill is amendatory, does it amend only sections or subdivisions?

(6) In the case of amendatory provisions, is the material from the statutes to be eliminated stricken, and the new material underlined?

(7) If the bill amends sections or subdivisions, is there reference to Minnesota Statutes 1971?

(8) If the bill is a special act, does it name the appropriate governmental unit or units as required by the Constitution, Article XI? If the bill is a special act with an approval clause, does the approval clause cover the appropriate governmental units affected by the bill?

(9) If the bill amends sections or subdivisions of an uncoded law, is there reference to the laws of a given year, the chapters of the laws, and the sections or subdivisions thereof?

(10) Are there any misspellings in the bill?

(11) Is the punctuation correct?

FORM APPROVAL - continued

(12) Is the bill in pica type? On 8-1/2x13" paper? Has it proper margins? Is it printed in black? (This item is only applicable in the event the bill is to be prepared without being input by the CRT terminals.)

If the bill affirmatively meets the foregoing requirements, it shall be approved. If the bill is to be input by the CRT terminals it shall be changed to meet the foregoing requirements in order that it may be properly stored by the computer, and the bill requester or author, as the case may be, shall be notified thereof. If the bill is not to be input by the CRT, but it does not meet all of the foregoing, the authors should be notified and advised that we will retype the bill in order that it may comply with the house rules.

Processing a bill so that it may be approved as to form shall comply with the manual relating to procedures.

It is emphasized that approval as to form does not involve any legal considerations whatsoever. It does not involve the legality or illegality, the workability or nonworkability of any provision, or the wisdom thereof. The revisor is not concerned with the substance of any bill and his approval thereof as to form does not in any way imply that he otherwise approves the content of the bill.

- - - - - - - -

BILL SUMMARIES

Occasionally the Revisor of Statutes' office is requested to draft bill summaries. Following are the instructions on this subject:

The rules of the house of representatives provide that

> "the members of a standing committee may, by majority vote, order the preparation of a Revisor's analysis of a bill being considered by the committee. A Revisor's analysis shall consist of a concise description of the terms of the bill and shall be provided by the Revisor of Statutes. The members of a standing committee may also, by majority vote, order the preparation of a Revisor's analysis at the time a bill is given committee approval, which analysis shall accompany the committee report to the House and which shall thereafter be attached to the printed bill by the Chief Clerk."

To comply with the foregoing rule a Revisor's analysis of a bill be drafted in conformity with the following:

(1) The request of the committee will be in writing, signed by the chairman, and indicate that it is a request of a majority thereof.

(2) If the request is to cover a bill given committee approval, the amendment of which is recommended by the committee, a copy of the proposed committee report will accompany the request for an analysis.

(3) The primary purpose of a bill analysis is to provide a brief description in understandable language of the effect of a legislative proposal. The responsibility of the person writing an analysis is to clearly state the full effect of the measure in an objective manner. He must not permit subjectivity to creep into the analysis, nor should he rely on an analysis which the author of a bill may submit when the committee makes its request under the rule.

(4) A proposed analysis drafted by the author of a bill shall be reviewed if he requests. The author shall be given a courteous hearing and the draftsman shall carefully consider the author's point of view. But the ultimate responsibility for the analysis is the revisor's, not the author's.

(5) A bill analysis ready for delivery to the committee shall not be reviewed by an author unless such a review is authorized by the revisor or the committee chairman. The time element involved forces this instruction.

(6) It should be remembered that a bill analysis is prepared for a different reason than a bill draft. When a draft is prepared it reflects the requester's wishes, an analysis is prepared for the readers of the bill and it may be for the all members of the legislature. A view of the author must be weighed against the legislature's right to be told, without bias, the proposals effect.

(7) There will be times when the Revisor's analysis of a bill will be challenged. In such a case the draftsman shall seek the advice of the revisor. The disposition of the matter will be determined by the revisor.

(8) Since there is no single "right" way to prepare a bill analysis, the following are intended as "aids", not rules:

(a) The analysis should present a brief and impartial statement of the essential parts of a proposal. The analysis is not intended to be a complete reference to everything proposed, but should specify those points which are the salient features of the proposal. Legalese language should be avoided. It should be written in plain, simple English.

(b) The analysis should pinpoint what the proposal does, by use of "active" verbs. A list of suggested verbs and their connotations follows:

ADDS: extends categories to which existing law is applicable.
AUTHORIZES: grants jurisdiction.
CREATES: new agency (see "establishes").
DECLARES: states new policy.
DEFINES: either terms or situations in which proposal applies.
DELETES: erases.
DIRECTS: mandatory action by specified person or agency.
ESTABLISHES: new program (see "creates").
EXEMPTS: excludes categories of persons or things for application of proposal.
EXTENDS: length of time; scope of provisions.
INCREASES: makes larger.
LIMITS: expenditures; time.
MODIFIES: changes.
PERMITS: allows person or agency to perform specified nonmandatory acts.

PROHIBITS: bans specified action, criminal penalty.
REMOVES: specified current provisions.
RENAMES: redesignates.
RETAINS: certain specified provisions of otherwise modified law.
REVISES: rewrites existing law, when no substantive change is intended.
SUBJECTS: establishes category subject to application of proposal.
TRANSFERS: conveyance from one person or agency to another.

(c) The use of adjectives should be avoided, except when they are necessary to limit a noun.

(d) Penalties, special effective dates, appropriations, and special provisions should be briefly described in the analysis.

(e) If the analysis is to be made of a bill given committee approval with recommended amendments, the analysis shall recite that

"This analysis is made to H.F. _____ with amendments recommended by the committee on _____."

If necessary to write a proper analysis, the draftsman may request the engrossing and enrolling supervisor for assistance. He may obtain copies of bills through the bill drafting clerk.

(f) The bill analysis will be prepared on the office form for such purpose and be signed by the staff member preparing it. A Revisor's analysis should be delivered to the requesting committee within five days of the request, except under unusual circumstances.

- - - - - - - -