MINNESOTA REVISOR'S MANUAL with Styles and Forms

MINNESOTA
REVISOR'S MANUAL
with
Styles and Forms

By the staff of the
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1

INTRODUCTION

1.1 Authority
1.2 Functions of Manual
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1.1 Authority

This manual is prepared by the staff of the office of Revisor of Statutes in fulfillment of the mandate of Minnesota Statutes 1978, Section 482.09 (7). That section provides that the Revisor of Statutes shall "prepare and issue styles and forms for drafting bills and other legislative measures..."

1.2 Functions of Manual

The manual is intended to serve several functions.

First, it is intended to be used by the Revisor's Office as a text to teach new drafters the method of drafting legislative bills. Even for those who are already familiar with the general manner of legislative drafting, it is necessary to learn the nuances of drafting for the Minnesota legislature. Although, on the surface, the drafting system for all the states and for Congress appears similar, once below the surface substantial differences appear.

Second, this manual is intended as a ready reference for the staff of revisor's office who are already familiar with Minnesota bill drafting. A drafter must be familiar with a wide variety of matters both procedural and substantive to be an effective drafter. No drafter can be expected to keep all of it in mind all the time. This manual, therefore, is intended to be a source of ready reference into all facets of drafting in Minnesota. To facilitate the use of this manual as a ready reference, a wide variety of cases, laws, rules and principles which are available in a variety of other publications have been collected here.

Third, pursuant to the apparent intent of Section 482.09 (7) of the Minnesota Statutes, the manual serves as a guide to ensure uniformity in drafting among all persons drafting bills and other legislative documents. Without such a guide, disparity of technique would soon result and would influence legislation rather than the substance of the bill or resolution itself.

Fourth, the manual enforces the necessary uniformity required by the various current and proposed computerized systems. The principal computerized system is the bill drafting system which was developed in order to provide two essential elements to legislative drafting. The element of speed is necessary so as not to delay the legislative process. The element of accuracy is necessary so that errors do not somehow become enshrined into law. The system is sufficiently flexible to accommodate most conceived needs. However, the system must be utilized properly or the result will be to diminish speed and accuracy.

This manual is not intended to be an "office manual" or "standard operating procedures" for the Revisor's Office. For that reason, description of the procedures, forms and activities of the Revisor's Office which are unique to this office have been left out.

Lastly, while legislative drafting is not one of the most extensively explained areas of the law, there is no paucity of materials on the subject. The reader is encouraged to read the materials available on the subject, not the least of which are the bill drafting manuals produced by the legislatures of virtually every state. A bibliography of materials is provided at the end of this text.

1.3 Scheme of Organization of Manual

The manual is organized in a manner to provide both a ready reference and a manual of instruction.

The ready reference is provided through the printing of examples on colored paper. This should enable the experienced drafter to rapidly locate either example pages or the cases, laws, rules and principles which may govern a problem in a drafting request.

The manual itself is organized in a manner which is believed best for instruction in bill drafting. It may be questioned why a manual concerned with drafting bills places information on the construction of statutes first. The reason is that the prospective drafter must know how to read a statute before he or she can write a statute.

Also, bills, resolutions, and amendments are treated separately. This is done because each has its own nuances in drafting.

Lastly, particular bill subject areas, practical helps in drafting, and the rules of grammar are treated separately also, but they generally apply to all legislative documents.

2

MINNESOTA LAW ON THE CONSTRUCTION OF STATUTES

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2.1 Introduction

In *The Merchant of Venice*, Antonio gives Shylock a bond which has as a penalty that Shylock may take from Antonio "a pound of flesh". When the bond is forfeit, Shylock repeatedly refuses all entreaties to be either merciful,

to follow the implication of the words rather than their letter, or to take other compensation for the penalty. Portia then construes the words of the bond as narrowly as Shylock previously professed to desire:

> "Tarry a little; there is something else.
> This bond doth give thee here no jot of blood;
> The words expressly are "a pound of flesh";
> Take then thy bond, take thou thy pound of flesh;
> But, in the cutting it, if thou dost shed
> One drop of Christian blood, thy lands and goods
> Are, by the laws of Venice, confiscate
> Unto the state of Venice."
>
> William Shakespeare, *The Merchant of Venice,* Act IV, Scene I.

It is frequently necessary to construe statutes with Portia's skill. When done by the courts, the consequences may be as dramatic as they are in *The Merchant of Venice.*

The principal reason for the necessity of construction of a legislative enactment is the imprecision of language as a medium of communication, *Sutherland, Statutory Construction,* (4th), Section 45.01, states:

> "The text of a statute is a medium of communication. Its function is to communicate the will of society, articulated by the legislature as society's agent for that purpose, to society's members, telling them how they should or should not behave or what consequences should or might attach to certain actions or events. The significant point is that communication does not take place in a vacuum. It always occurs in a relational situation. Words comprise the connecting link in the relationship between persons endeavoring to convey ideas to others and persons to whom the ideas are sought to be conveyed, or, in the case of a statute, between a legislative body and members of the public. In the process of communication there are thus two essentially distinct and separate stages at which the word symbols which comprise the media or vehicles of communication are "used," — once by the party or parties on the sending end of the communication relationship and again by the party or parties on the receiving end. Semanticists have pointed out that words do not have single, fixed, and immutable meanings established by some authority in nature or supernature, and that, instead, they have only such meanings as are given to them from time to time when they are spoken, written, heard, or read by persons endeavoring to participate in the communication process." (citations deleted)

The imprecision in language is also due to the inherent difficulty of the legislature which passes a bill to foresee all the factual variables which might arise in application of the bill's provisions. Thus, imprecise terms are used in an attempt to cover all relevant situations. With imprecise words it is sometimes difficult to determine what is or is not included.

Another source of difficulty in legislative enactments is due to the legislative process itself. The legislative process is lengthy and complex. While some outsiders also charge that it is slow moving, experienced legislative drafters know that on an individual bill there is frequently all too little time to think, write, rethink and rewrite and then complete necessary checks and rechecks on requested bills and amendments prior to their delivery. Hundreds of bills and hundreds of amendments move faster and faster, particularly in the closing days of a session. This speed, combined with human fallibility, creates a certainty that someone somewhere will make a mistake. The result will be a provision or bill which is hopelessly unclear or in error.

Also, the legislative process does not operate as a statutory assembly line. People do not act one after the other on a bill to produce a finished "product". Rather, the legislative process is an attempt to have a large number of people agree to the "product" which usually involves much compromise. The process of obtaining a compromise may result in different parties to the agreement reading different meanings into the words of the bill. Later, those outside the legislature may find the same different meanings. The courts will then be called upon to decide which "meaning" is correct.

It may be believed that problems in legislative drafting are an unfortunate by-product of drafting which can and should be avoided. It is true that the drafter should draft to avoid foreseeable problems. However, when a portion of a draft does not have an immediately clear single meaning, it is not necessarily a problem area. A drafter at times can and should use vagueness as an ally.

In this connection a drafter should read "The Diseases of Legislative Language" by Professor Reed Dickerson in 1 *Harvard Journal on Legislation* 5 (1964), and "Vagueness and Legal Language" by Professor George C. Christie, in 48 *Minnesota Law Review* 885 (1964). Both articles have similar themes centering around the difference between ambiguity and vagueness. Only ambiguity should be avoided. Vagueness may be desirable.

The difference between "ambiguity" and "vagueness" is subtle. "Ambiguity" is doubt between several alternatives as to which the word is referring. On the other hand, "vagueness" is the capability of a word, independent of ambiguity, to apply to a field (narrow or broad) within clear limits.

An example of ambiguity would be a statute providing "all light trucks shall have red reflectors mounted on the rear bumper". In the example, does "light truck" refer to weight or color? The provision is ambiguous.

However, a statute might provide for the quarantine of "persons with communicable diseases". There are a variety of diseases which may fall within the range of being "communicable", but there is no doubt as to the range intended.

So the drafter should be continually aware of the problems of drafting and avoid them. However, a thorough knowledge of the properties of the American language will also enable the drafter to use the properties to correctly express intent.

2.2 Practical Test for Clarity of Intent

The best test a drafter can use to ensure that later construction will be consonant with the intent at drafting is to read the draft with the viewpoint of a person hostile to the statute. If a person hostile to the statute would arrive at the same meaning as the drafter, the meaning for everyone else would likely be the same.

2.3 "Clarity", the Threshold to Determination of Legislative Intent

When there is no ambiguity and the meaning of a statute is clear, a court will not resort to the rules of statutory interpretation to ascertain legislative intent. This is known as the plain meaning rule.

In construing a statute allocating costs for the installation of certain new equipment at the sewage plant, the court, in *Minneapolis-St. Paul Sanitary Dist. v. City of St. Paul,* 240 Minn. 434, 61 N.W.2d 533 (1953), stated:

> "It is elementary that where the language of a statute is clear and unambiguous the statute is not open to construction." 240 Minn. 434 at 437

The court found the statute unambiguous and held that it was not open to construction and that its legislative history could not be used in its interpretation.

In *Lahr v. City of St. Cloud*, 246 Minn. 489, 76 N.W.2d 119 (1956) the court cited the *Minneapolis-St. Paul Sanitary Dist.* decision as authority for the plain meaning rule and states that the rule still prevails in Minnesota. 246 Minn. 489 at 494

The plain meaning rule is codified in Minnesota Statutes, Section 645.16. In pertinent part, the statute provides:

> "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."

The rule that a clear statute is not construed is not as clear as it might seem. The problem concerns the standard by which clarity is judged. It is a complex problem for which there are only a few aids.

First, an ambiguity is not created solely by the fact that counsel for the parties dispute the meaning of the statute. For instance, in *Minneapolis-St. Paul Sanitary District, supra,* the court found that the statute was clear despite one party's contention that it was ambiguous and could be understood only by extrinsic aids.

Second, an ambiguity will not be created by resorting to rules of statutory construction. In, again, *Minneapolis-St. Paul Sanitary District, supra,* the court refused to consider reports which were contemporary with the origins of the statute and various testimony and opinions that the language of the statute does not mean what it appears to say.

Third, the courts seem to decide questions of ambiguity on a black and white basis. That is, a statute is either "clearly clear" or "clearly ambiguous". There seldom seems to be a gray area or a doubt upon the part of the court as to whether or not a statute is clear.

In those few cases where the courts have enunciated criteria to determine whether a statute is clear or ambiguous, they have said that a statute is clear and unambiguous if the words have one meaning which is not contradicted by other language in the same act. For instance, in *Foley Brothers, Inc. v. Filardo,* 336 U.S. 281, 93 L. Ed. 680, 69 S. Ct 575 (1949), the United States Supreme Court said:

> "Although the spirit of the instrument, especially of the Constitution, is to be respected not less than its letter yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of the instrument expressly provided shall be exempt from its operation. Where words conflict with each other, where the different clauses of the instrument bear upon each other and would be inconsistent unless the nature and common import of the word be validated, interpretation becomes necessary; and to depart from the obvious meaning of words is justifiable. Yet, in most cases, the plain meaning of a provision not contradicted by any other provision in the same instrument, is not to be disregarded because we believe the framers of the instrument could not

> intend what they say. It must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would without hesitation, unite in rejecting the application."

If all the above criteria for determining clarity seem unsatisfying, Professor C. Dallas Sands agrees in *Sutherland, Statutory Construction.* He says:

> "What is meant by references to a 'literal' meaning or interpretation generally goes unexplained. The fact that courts evidently do not feel an obligation to explain why they consider an application of a statute to represent a literal interpretation suggests that they consider literal meanings to be either intrinsic or self-evident ones. But the absence of intrinsic meanings in language is an insight of semantics that has come to be widely understood and accepted. And common experience with the multifariousness of meanings that language can carry in the manifold uses to which it can be applied counsels caution about attributing self-evident meanings. Declarations in favor of literal or 'plain' meanings often are accompanied by disclaimers that statutes have been construed in arriving at meanings which are so characterized. As further explained, in the language of a court, 'if . . . the intention of the legislature is perfectly clear from the language used, rules of construction are not to be applied.' Statements of that nature imply that literal or plain meanings are meanings which are arrived at by considering nothing outside or beyond the "letter" of the statute itself. What seems to be suggested is that, when he uses the approach of literalism, a judge puts on blinders, so to speak, in order to obscure from view everything but just the text of the statute whose effect on the matter at issue is in question. Again it is pertinent, however, to recall the semantic insight that language symbols do not have intrinsic meanings, independent of contextual considerations which influence the meanings that people, in whatever capacity, attribute to them. Even when a judge claims not to be construing a statute nor to consider anything but the text of the act, he can not help putting to use whatever he has learned, through common experience or otherwise, about customary language usage and common understanding associated with the relevant text. This is confirmed by the fact that dictionary definitions, which report common usage, are often mentioned in court opinions which pronounce what are labelled as literal statutory applications. It must be concluded, therefore, that literal interpretation consists of an approach which (a) concentrates attention upon and maximizes the significance of the statutory text, (b) takes into

consideration less rather than more indicia of meaning other than the statutory text, instead of not considering such indicia at all as is sometimes claimed, and (c) often may take extra-textual considerations into account only subconsciously or unconsciously rather than deliberately and purposefully. It may, further, result in giving effect to a judge's unrationalized conception as to what a statute means, arrived at reflexively or intuitively and without reference to any considered choice between legislative intent and meaning to the general public as the proper criteria of decision. An interpretation so arrived at, without being subjected to a corrective influence of conscious reference to either the senders' or the receivers' viewpoint as a chosen standard of judgment, may be suspected of representing nothing more than subjective meaning to the judge alone, which may be different from what either the legislature or the public understood a statute to mean." *Sutherland, Statutory Construction,* Section 46.02.

2.4 Legislative Intent

Once the threshold inquiry of whether or not a statute is clear is crossed, the next consideration is the purpose of all of the aids to statutory construction. Simply stated, all of the aids are used to discover the original legislative intent.

In *Peterson v. Haule,* 304 Minn. 160, 230 N.W.2d 51, (1975), the Minnesota Supreme Court articulated the basic rule relating to ascertainment of legislative intent, stating:

> "In the interpretation of statutes, the courts are required to discover and effectuate legislative intent, to consider objects which the legislature seeks to accomplish by the statute and the mischief sought to be remedied and to avoid a result which would be absurd or would do violence to the language of the statute." (304 Minn. 160 at 170; citing *Grushus v. Minn. Min. & Mfg. Co.,* 257 Minn. 171, 100 N.W.2d 516 (1960) (dealing with the construction of an unemployment compensation disqualification provision of law) and *Wichelman v. Messner,* 250 Minn. 88, 83 N.W.2d 800 (1957) (dealing with the construction of the so called Marketable Title Act).

The *Peterson* court held that the Chisholm Dairy Queen is a "public building" within the meaning of Minnesota Statutes, Section 299G.11, a provision of law which requires markings on clear glass doors of public buildings. In so finding, the court upheld judgment for the plaintiff who suffered injuries when she walked into an unmarked door. In arriving at its decision in *Peterson*, the court looked at the legislative history of section 299G.11; the interpretation the Wisconsin court gave to "public buildings" for purposes of

its safe-place statute; and construed the statute with other provisions of law having the same subject matter (commonly referred to as statutes *in pari materia).*

In *Wichelman v. Messner,* 250 Minn 88, 83 NW 2d 800 (1957), the court again articulated the interpretative rule of effectuating legislative intent and the corollary rule that the legislature does not intend a result that is absurd, impossible of execution.

Section 645.16 of the Minnesota Statutes codifies the object of determining legislative intent. In pertinent part, it provides:

> "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions."

However, in ascertaining legislative intent, the "motive" of the legislature is not a proper subject of judicial inquiry. In *Starkweather v. Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955), the court held that it was not an invalid exercise of legislative authority when the legislature attached a rider to an appropriation bill prohibiting payment of salary to an assistant director of the division of game and fish. The court refused to inquire into the legislative motive for the rider, stating:

> "It must be kept in mind that there is an obvious difference between examining the journals of the legislature in seeking to determine legislative intent, i.e., what the legislature intended by the language it used, and in seeking to determine the motives of the legislature in passing an act. As long as the legislature does not transcend the limitations placed upon it by the constitution, its motives in passing legislation are not the subject of proper judicial inquiry." 245 Minn. 371 at 380

In *State v. Target Stores*, Inc., 279 Minn. 447, 156 N.W.2d 908 (1968), the court held that it could not judicially notice legislative motive. The law in question prohibited the sale of specific classes of commodities on Sunday. The court invalidated it on grounds that the statute was so vague that it violated due process. In the *Target* decision the court very carefully delineates the difference between taking judicial notice of facts which lead up to the legislation and the motives of the legislators.

2.5 Aids to Construction

In order to determine legislative intent or what a statute means, two categories of resource materials are relied upon. *Sutherland, Statutory Construction,* (4th), Section 45.14, states:

> "The resource materials for statutory construction are commonly classified into two fundamentally different categories called "intrinsic" and "extrinsic" aids. The reference in these characterizing labels is to the text of the statute, intrinsic aids being those which derive meaning from the internal structure of the text and conventional or dictionary meanings of the terms used in it, whereas extrinsic aids consist of information which comprises background of the text, such as legislative history and related statutes." (citations deleted)

2.6 Intrinsic Aids

(a) Introduction

Sutherland, Statutory Construction, (4th), Section 47.01, states:

> "One of the common techniques of statutory construction, besides always a starting point, is to read and examine the text of the act and draw inferences concerning meaning from its composition and structure."

The rules or canons of construction can be viewed as generalizations about customary habits in the use of language. *Sutherland, Statutory Construction*, (4th), Section 47.01.

The court in *Mattson v. Flynn,* 216 Minn. 354, 13 N.W.2d 11 (1944), stated:

> ". . ., we must consider practical construction in its proper light — that of an aid to judicial interpretation. Such aids to construction serve only as "crutches" on which the court is permitted to lean in search of the true intention of the legislature." 216 Minn. 354 at 362-363

The *Mattson* case involved construction of a statute determining the rights of a teacher to retirement benefits. The court, after a careful examination of the pertinent statutory language, came to the conclusion that it could not rely on the rules of grammar or the canons of construction but had to consider legislative history, an extrinsic aid to construction. The opinion is an example of a court's sophisticated analysis of a statute by use of a variety of resources for statutory construction, both intrinsic and extrinsic.

In *Governmental Research Bureau, Inc. v. St. Louis County,* 258 Minn. 350, 104 N.W.2d 411 (1960), the court cited the rule that canons of construction are never the masters of the courts, but merely their servants, to aid them in ascertaining the legislative intent (citing *Ott v. G.N. Ry. Co.*, 70 Minn. 50, 55, 72 N.W. 833, 834).

The rules of construction, however, do not necessarily lead to certainty of construction on the circumstance to which they relate. Professor Karl L. Llewellyn in his article "Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed", 3 *Vanderbilt Law Review* 395, 401-406 (1950), provides an excellent comparison of the conflicting rules of statutory construction:

"Statutory interpretation still speaks a diplomatic tongue. Here is some of the technical framework for maneuver.

THRUST	BUT	PARRY
"1. A statute cannot go beyond its text.		1. To effect its purpose a statute may be implemented beyond its text.
"2. Statutes in derogation of the common law will not be extended by construction.		2. Such acts will be liberally construed if their nature is remedial.
"3. Statutes are to be read in the light of the common law and a statute affirming a common law rule is to be construed in accordance with the common law.		3. The common law gives way to a statute which is inconsistent with it and when a statute is designed as a revision of a whole body of law applicable to a given subject it supersedes the common law.
"4. Where a foreign statute which has received construction has been adopted, previous construction is adopted too.		4. It may be rejected where there is conflict with the obvious meaning of the statute or where the foreign decisions are unsatisfactory in reasoning or where the foreign interpretation is not in harmony with the spirit or policy of the laws of the adopting state.
"5. Where various states have already adopted the statute, the parent state is followed.		5. Where interpretations of other states are inharmonious, there is no such restraint.
"6. Statutes in pari materia must be construed together.		6. A statute is not in pari materia if its scope and aim are distinct or where a legislative design to depart from the general purpose or policy of previous enactments may be apparent.

"7. A statute imposing a new penalty or forfeiture, or a new liability or disability, or creating a new right of action will not be construed as having a retroactive effect.	7. Remedial statutes are to be liberally construed and if a retroactive interpretation will promote the ends of justice, they should receive such construction.
"8. Where design has been distinctly stated no place is left for construction.	8. Courts have the power to inquire into real—as distinct from ostensible—purpose.
"9. Definitions and rules of construction contained in an interpretation clause are part of the law and binding.	9. Definitions and rules of construction in a statute will not be extended beyond their necessary import nor allowed to defeat intention otherwise manifested.
"10. A statutory provision requiring liberal construction does not mean disregard of unequivocal requirements of the statute.	10. Where a rule of construction is provided within the statute itself the rule should be applied.
"11. Titles do not control meaning; preambles do not expand scope; section headings do not change language.	11. The title may be consulted as a guide when there is doubt or obscurity in the body; preambles may be consulted to determine rationale, and thus the true construction of terms; section headings may be looked upon as part of the statute itself.
"12. If language is plain and unambiguous it must be given effect.	12. Not when literal interpretation would lead to absurd or mischievous consequences or thwart manifest purpose.
"13. Words and phrases which have received judicial construction before enactment are to be understood according to that construction.	13. Not if the statute clearly requires them to have a different meaning.
"14. After enactment, judicial decision upon interpretation of particular terms and phrases controls.	14. Practical construction by executive officers is strong evidence of true meaning.
"15. Words are to be taken in their ordinary meaning unless they are technical terms or words of art.	15. Popular words may bear a technical meaning and technical words may have a popular signification and they should be so construed as to agree with evident intention or to make the statute operative.
"16. Every word and clause must be given effect.	16. If inadvertently inserted or if repugnant to the rest of the statute, they may be rejected as surplusage.

"17. The same language used repeatedly in the same connection is presumed to bear the same meaning throughout the statute.	17. This presumption will be disregarded where it is necessary to assign different meanings to make the statute consistent.
"18. Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute.	18. Rules of grammar will be disregarded where strict adherence would defeat purpose.
"19. Exceptions not made cannot be read.	19. The letter is only the "bark." Whatever is within the reason of the law is within the law itself.
"20. Expression of one thing excludes another.	20. The language may fairly comprehend many different cases where some only are expressly mentioned by way of example.
"21. General terms are to receive a general construction.	21. They may be limited by specific terms with which they are associated or by the scope and purpose of the statute.
"22. It is a general rule of construction that where general words follow an enumeration they are to be held as applying only to persons and things of the same general kind or class specifically mentioned *(ejusdem generis)*.	22. General words must operate on something. Further, *ejusdem generis* is only an aid in getting the meaning and does not warrant confining the operations of a statute within narrower limits than were intended.
"23. Qualifying or limiting words or clauses are to be referred to the next preceding antecedent.	23. Not when evident sense and meaning require a different construction.
"24. Punctuation will govern when a statute is open to two constructions.	24. Punctuation marks will not control the plain and evident meaning of language.
"25. It must be assumed that language has been chosen with due regard to grammatical propriety and is not interchangeable on mere conjecture.	25. "And" and "or" may be read interchangeably whenever the change is necessary to give the statute sense and effect.
"26. There is a distinction between words of permission and mandatory words.	26. Words imparting permission may be read as mandatory and words imparting command may be read as permissive when such construction is made necessary by evident intention or by the rights of the public.
"27. A proviso qualifies the provision immediately preceding.	27. It may clearly be intended to have a wider scope.

"28. When the enacting clause is general, a proviso is construed strictly.	28. Not when it is necessary to extend the proviso to persons or cases which come within its equity."

The following section deals with a few of the more important canons and how the Minnesta court has used them in the process of judicial decision making.

(b) Canons of Construction

(1) Noscitur a sociis (associated words). The meaning of doubtful words may be determined by their reference to associated words. In *State v. Suess,* 236 Minn. 174, 52 N.W.2d 409 (1952), the court upheld a criminal statute prohibiting hunters to locate and take wild animals by use of "shining" a light on them. The rule that a penal statute must be definite enough to give notice of prohibited conduct was at issue. The court applied the *noscitur a sociis* canon in construing the term "or other implement whereby big game could be killed". The court associated it with the term "firearm" and concluded the former term meant some lethal instrument, capable of killing big game animals.

(2) Ejusdem generis. If words of a specific and limited meaning are followed by words of a general meaning, the latter are to be construed as applicable only to things of a like nature to those designated by the former. This canon has been codified in section 645.08, clause (3), as follows:

> "General words are construed to be restricted in their meaning by preceding particular words;"

The use of the *ejusdem generis* rule is well established in Minnesota law. The court in *State v. Walsh,* 43 Minn. 444, 45 N.W. 721 (1890), stated that:

> "The rule is too familiar to require a selection from the multitude of decisions for the purpose of citation." 43 Minn. 444 at 445

The *Walsh* decision involved construction of a penal statute prohibiting removal of or destruction to certain parts of railroad property. The parts named were: "rail, sleeper, switch, bridge, viaduct, culvert, embankment or 'structure"'. 43 Minn. 444 at 445

The court held that the defendant's conviction under the statute for removal of fencing was not within the meaning of the statute because "the fences bounding and enclosing the land for railroad purposes are not *ejusdem generis* with the things specified, constituting parts of the railroad proper, and, under the rule to which we have referred, cannot be included in the general term 'structure'." 43 Minn. 444 at 446

However, the *ejusdem generis* rule is inapplicable when the legislative intent is obviously otherwise. In *Olson v. Griffin Wheel Co.*, 218 Minn. 48, 15 N.W.2d 511 (1944), the court held that the rule was inapplicable in the construction of a provision of the Workers' Compensation Act that provided that several specific injuries enumerated or "any other injury which totally incapacitates" shall constitute total disability because the legislative intent to include all cases of total disability not specifically enumerated was apparent. The *Olson* decision demonstrates the agility a court possesses in its uses of the aids of statutory construction in ascertaining legislative intent and how any specific canon can be overcome by resort to other aids.

(3) Last Antecedent. This principle covers the reverse situation from that covered in *ejusdem generis.* The principle provides that when a series of words of general meaning are followed by words of limitation, its limitation will apply to the last antecedent in the list. For instance, a statute providing "licensees may hunt moose, deer, geese and ducks *which are not on the endangered species list",* the italic words will be held to apply solely to "ducks" and not to the other species listed.

(4) Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another. The court in *Northern Pacific Ry. Co. v. Duluth,* 243 Minn. 84, 67 N.W.2d 635 (1954), stated:

> "This maxim is not of universal application, and great caution is needed in its application. Also, the maxim is only a rule of construction and not of substantive law and serves only as an aid in discovering legislative intent when not otherwise manifest." 243 Minn. 84 at 88-89 (citations deleted)

Minnesota Statutes, Section 219.39 failed to expressly permit railroads to initiate proceedings before the railroad and warehouse commission with respect to dangerous crossings, authorizing only municipalities to initiate such proceedings. The court refused to follow the canon and held that the railroad was not precluded from initiating a proceeding. The maxim has been employed in the interpretation of a wide variety of legal documents as well as statutes. In addition, *Sutherland, Statutory Construction,* (4th), Section 47.24, states:

> "The maxim has been considered in determining the effect of a statute on existing statutory and common law. It has been applied to define the limits of an express repeal, implied repeal and amendment of an existing statute." (citations deleted)

(c) Pertinent Context

Sutherland, Statutory Construction, (4th), Section 47.02, states:

> "Inherent in the use of textual considerations as resource materials for the interpretation of statutes is the problem of determining how much of the statutory context of the particular word or passage to be construed is relevant and probative for that purpose."

In *Governmental Research Bureau, Inc.,* 258 Minn. 350, 104 N.W.2d 411 (1960), the court in construing the phrase "tax limitations now established by statute" in a general statute relating to growing tax relief to homeowners stated:

> "The words of a statute are not to be isolated, and their meaning must be found in the context of the statute as a whole." 258 Minn. at 353-354

Plaintiff taxpayer contended "now" referred to tax limitations in effect in 1933, while the county contended "now" was prospective in application. The current millage rate should be applied to lower assessed valuations because the millage rate was not "now established" when the act was passed in 1933. The court found:

> "The meaning of the word now as used in M.S.A. 273.13, subd. 7a, must be found in its context as a part of a general statute, the broad purpose of which is to have future application in giving tax relief to homestead owners without depriving taxing authorities of the right to use the total assessed valuation of the county for tax purposes." 258 Minn. 350 at 356

An earlier decision which cited the rule that an act must be read as a whole and effect given to all its parts, *Underhill v. State,* 208 Minn. 498, 294 N.W. 643 (1940), construed Laws 1937, Chapter 480, an act dealing with the state's immunity from suit. Section 1 of that act reads:

> "That the state of Minnesota hereby waives immunity from suit for any damages for personal injuries and property damaged, caused by the location, construction, reconstruction, improvement and maintenance of the trunk highway system." 208 Minn. 498 at 499; citing Laws 1937, Chapter 480, Section 1

The court said reading this section in isolation from the other provisions of the act might support an argument to allow plaintiff to bring suit against the state, but that looking at the rest of the act it was clear that permission to sue was limited to claims described in the act.

(d) Parts of the Bill

The court has dealt with the interpretive significance of the various parts of a bill.

(1) Title. The title of a bill may be used as an aid in construction. In *LaBere v. Palmer,* 232 Minn. 203, 44 N.W.2d 827 (1950), the court held that the plaintiff's right to control the venue where his original selection of venue was based upon residence under Laws 1939, Chapter 148, an automobile negligence venue law, was limited to cases where there is only one defendant, or where a majority or all of the defendants actually reside in a single county. The court held that the legislature did not intend the automobile venue statute to apply to all automobile negligence cases was clear not only from the body of the act but also from the title. The title provided:

> "An act fixing venue of cases arising out of the negligent management, operation and control of motor vehicles, *in certain cases,*" 232 Minn. 203 at 205 (citing Laws 1939, Chapter 148) (emphasis added by the court)

The court held that the phrase "in certain cases" would not have been used if a restrictive application of the automobile venue statute had not been intended. The court went on to state:

> "Although the title of an act is not of decisive significance and may not be used to vary the plain import of a statute's explicit language within the scope of the title, it may be considered in aid of its construction, or, *as here,* to confirm that the legislative use of certain definitive language was purposeful and deliberate." 232 Minn. 203 at 206 (emphasis added by court)

(2) Preamble. The preamble consists of one or more "whereas" clauses which come before the enacting clause which recite the reasons for the passage of the law. It is now very rarely used but unusual or emergency legislation may sometimes still carry a preamble. In *Blaisdell v. Home Building and Loan,* 189 Minn. 422, 249 N.W. 334 (1933), affirmed 290 U.S. 924, the court took judicial notice of the facts recited in the "Mortgage Moratorium Law" (Laws 1933, Chapter 339). So a preamble is not without some utility.

Sutherland suggests the preamble should be considered for purposes of statutory construction along with the part of the law coming after the enacting clause under the "whole act" manner of interpretation. The "whole act" interpretation reads all the provisions of an act together for purposes of interpretation. *Sutherland, Statutory Construction,* (4th), Sections 47.02 and 47.04.

(3) Definitions. Definitions are subject to interpretation in the same manner as any other part of a bill.

A definition may be read by the court *in pari materia* with other statutes. For example, the court in *McNeise v. City of Minneapolis,* 250 Minn. 142, 84 N.W.2d 232 (1957), 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.

The court in *Hahn v. City of Ortonville,* 238 Minn. 428, 57 N.W.2d 254 (1953), considered whether the civil damage act (section 340.95), which imposes a liability in favor of a third party injured as a proximate result of intoxication of a purchaser of liquor, applies to a municipality. The court used the definition 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:

> "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 when statutes are *in pari materia* they are to be construed harmoniously and together." 238 Minn. 428 at 437

Section 645.08 of the Minnesota Statutes has codified the use of words defined by statute. In pertinent part, it says:

> "Words and phrases are construed according to rules of grammar and according to their common and approved usage; but [words] defined in this chapter, are construed according to ... their definitions;"

(4) Saving Clause. The saving clause is designed to preserve certain rights, duties or privileges which would otherwise be destroyed by a general enactment containing amendment to or repeal of provisions of law. The saving clause is used to preserve existing rights and duties that have already matured and proceedings that have already commenced. The common law rule is that if a law is repealed and there is no specific saving clause in the repealing law or a general savings clause which would cover such an occurrence the repealed law, in regard to its operative effect, is considered as if it had never existed. *State v. Chicago Great Western Railway Co.,* 222 Minn. 504, 25 N.W.2d 294 (1946).

State v. Chicago Great Western Railway Co., supra, was an action by the state to recover penalties for the removal of track by a railroad which did not first receive permission for removal from the railroad and warehouse commission. The court stated:

> "General saving statutes pertaining to the effect of repealing acts are simply declaratory of a statutory rule of construction, an

> indication of what the legislature intends shall be the effect of a repealing statute unless its contrary intention is made plainly to appear in the repealing statute itself." 222 Minn. at 510

The court had to decide how to rule when the repealing act did not contain a specific savings clause and also expressly provided that section 645.35, a general savings statute, did not apply. The court held that the repeal was to be construed as a common law and provisions of the repealed law were not to be kept in effect with respect to pending proceedings or enforcement of penalties incurred.

The general saving statute or a specific saving clause in the act itself does not save all existing rights of action. Rights which are not substantive and private in nature are not protected. Modes of procedure and rules of evidence are not protected by a general saving statute.

In *Ogren v. City of Duluth,* 219 Minn. 555, 18 N.W.2d 535 (1945), a workers' compensation case, the question was whether a 1943 law was retroactive both as to the protection of substantive rights and as to procedure and evidence. The *Ogren* court held that the substantive right as to compensation, since it accrued while the prior law was in effect, was protected but that the procedural and evidentiary provisions governing assertions of that right were to be governed by the 1943 law. The court stated there is no such thing as a vested right in a rule of evidence. Therefore, a presumption relating to contraction of an occupational disease was lost due to the repeal of the statute creating it. The statute created "... a rebuttable presumption of causation under the circumstances mentioned that a particular occupational disease resulted from the corresponding industrial process". 219 Minn. 555 at 563

Minnesota Statutes provide three separate savings statutes, at least one of which will apply to any bill.

The first saving clause is the general presumption against retroactive effect:

> 645.21 [PRESUMPTION AGAINST RETROACTIVE EFFECT.] No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.

The second provides that amendment of a law is not a repeal of the old law (which might terminate rights under it):

> 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.

The third provision directly provides that the repeal of a statute does not terminate rights under it:

> 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.

In view of the complete coverage of savings clauses by these standard provisions, there is no need to insert one into an individual bill.

(5) Headnotes. The court in *In re Dissolution of School District No. 33,* 239 Minn. 439, 60 N.W.2d 60 (1953), held that headnotes to a statutory section have no value as aids to statutory construction for determination of legislative intent because the revisor of statutes inserts them as required by section 482.07. However, in the uniform commercial code the headnotes are made part of the act by section 336.1-109 and therefore are presumably available as an aid to statutory construction.

(e) Specific Provisions Control General Provisions

The court in *Aslakson v. State,* 217 Minn. 524, 15 N.W.2d 22 (1944), applied the rule of statutory construction found in Minnesota Statutes, Section 645.26. The rule provides that where there is a conflict between a general provision of law and a special provision in the same or another law, the two shall be construed together and, if possible, harmonized and reconciled and effect given to both.

Section 645.26, subdivision 1, reads:

> "When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special

> provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail."

The court harmonized the civil service act then in existence and a rental agreements statute for purposes of determining whether a truck operator hired under the latter statute was an employee or independent contractor. In applying the rule of statutory construction found in section 645.26, the court held that the specific statute controlled and, due to the degree of control exercised by the state, the state and truck operator had the relationship of employer and employee and thus recovery under workers' compensation was appropriate.

The court in *State v. Kalvig,* 296 Minn. 395, 209 N.W.2d 678 (1973), relied on the provisions of section 645.26, subdivision 1, in holding that legislative policy in a specific welfare fraud statute controlled and prohibited prosecutorial discretion in bringing welfare fraud charges under the general theft statute. The dissenting opinion provides an extended analysis of the general-specific rule.

(f) Words and Phrases

"Words and sentences are to be understood in no abstract sense, but in the light of their context which communicates meaning and color to every part." *Christensen v. Hennepin Transportation,* 215 Minn. 394, 10 N.W.2d 406 (1943); *Kollodge v. F. and L. Appliances, Inc.,* 248 Minn. 357, 80 N.W.2d 62 (1956). In *Kollodge,* the court in construing section 169.21, a section dealing with pedestrian traffic control, stated a certain paragraph standing alone made no distinction between controlled or uncontrolled crosswalks but that considered in relation to the other provisions of that section it was intended to be limited to crosswalks where traffic control signals are not in operation.

In *Standafer v. First National Bank of Minneapolis,* 236 Minn. 123, 52, N.W. 718 (1952), the court said:

> "Words and phrases of a statute — and this is equally applicable to an ordinance — are to be construed according to their common and approved usage, unless by so doing a construction results which is inconsistent with manifest legislative intent or repugnant to the context of the statute." 236 Minn. at 127

In *State v. Bolsinger,* 221 Minn. 154, 21 N.W.2d 480 (1946), the court fully discusses the meaning of operating or driving a vehicle "in a reckless or grossly negligent manner" in the context of section 169.11, the statute then defining the crime of "criminal negligence in the operation of a vehicle resulting in death." The court found that the legislative intent was to use the words

"reckless" and "grossly negligent" with their approved and recognized meanings as the court had defined them in prior case law. Further, the court concluded, the statute in question vehicular homicide and other statutes relating to homicide in force at the time of enactment related to one common subject matter homicide. Thus the technical meaning of "reckless" and "gross negligence" should be preserved since to do so would preserve the meaning commonly found in homicide statutes. The court stated:

> "The distinctions made in different statutes as manifested by the difference of terminology used should be observed. Where a statute uses words with discrimination, it evinces an intention that the accepted technical meaning should be given them." 221 Minn. 154 at 162

The resulting rule is that unless a technical meaning is clearly indicated, words will be given their common or ordinary meaning. The rule is codified at section 645.08 of the Minnesota Statutes. In pertinent part, it says:

> "Words and phrases are construed . . . according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, . . . are construed according to such special meaning . . ."

(g) Rules of Grammar

The case of Welscher v. Myhre, 231 Minn. 33, 42 N.W.2d 311 (1950), illustrates how the court applies the rules of grammar in statutory construction. Freeholders in Houston county petitioned the board of county commissioners for the establishment of a county road. The county board refused predicating its decision upon construction of section 162.21, subdivision 4, prior to amendment by Laws 1949, Chapter 284, Section 1. The *Welscher* court reversed the board and held that the statutory section should be construed ". . . to authorize the board to consider on the merits a petition 'for the establishment of *any road or of any roads* which connect with each other running into more than one town, or . . .'" 231 Minn. 39

In the revision process leading up to the enactment of the "Minnesota Revised Statutes" in 1945 the Revisor of Statutes had, the court held, inadvertently omitted the phrase "of any road or". In arriving at this conclusion, the court applied the rules of grammar and found that the statutory section without the phrase "of any road or" results in an "ungrammatical hodgepodge".

While punctuation is usually considered to be a part of the American language, very little importance is attached to punctuation for the purpose of statutory construction.

Section 645.18 provides:

> "Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence is without meaning as it stands. In no case shall the punctuation of a law control the intention of the legislature in the enactment thereof. Words and phrases which may be necessary to the proper interpretation of a law and which do not conflict with its obvious purpose and intent nor in any way affect its scope and operation may be added in the construction thereof."

In *State Department of Highways v. Ponthan,* 290 Minn. 58, 186 N.W.2d 180 (1971), the court reversed a lower court decision which turned on an error in punctuation. Under Minnesota's implied consent law a chemical test could only be administered by a peace officer who had satisfactorily completed a prescribed course of instruction in law enforcement conducted by the University of Minnesota or a similar course considered equivalent by the commissioner of public safety. In a regulation, the commissioner determined a course was equivalent if "conducted by a municipal, county, state or federal government agency or a college or university, accredited by one of the six regional accrediting associations." The court held that the words "accredited by one of the six regional accrediting associations" applied only to a college or university. The insertion of a comma was a mere error in punctuation and the equivalent course given by the Minnesota bureau of criminal apprehension was sufficient under the regulation.

The court may transpose words and phrases in a statute only where it is necessary to give the statute meaning and avoid absurdity, where it is necessary to make the act consistent and harmonious throughout, where the mistake is obvious, or where it is apparent on the face of the statute that the word or phrase has been misplaced through inadvertence. *Gale v. Commissioner of Taxation,* 228 Minn. 345, 37 N.W.2d 711 (1949); citing *Sutherland, Statutory Construction,* (3 ed), Section 4927.

The *Gale* court construed Laws 1945, Chapter 596, Section 4, which provides that the provisions of "this act shall apply to all taxable years beginning after December 31, 1944." The court said there was no justification for transposition of words and the natural import of the provision is to convey a meaning in which the phrase "beginning after December 31, 1944" qualifies "taxable years". The court held that to transpose words and thereby have the phrase "beginning after December 31, 1944" qualify the words "this act shall apply" would render the words "taxable years" futile. This would contradict the rule that a statute should be construed so no word, clause or sentence will be superfluous, void or insignificant.

(h) Number

Section 645.08, clause (2) reads:

> "(2) The singular includes the plural; and the plural, the singular; . . ."

The court in *State ex. rel. Nelson v. Anoka,* 240 Minn. 350, 61 N.W.2d 237 (1953), held that under section 413.14 a sole owner of two separate tracts each contiguous to a city may include both tracts in a single petition for annexation. It had been argued that annexation of two separate parcels could not be had under the statute since the statute uses the singular — "owner of any tract, piece, or parcel of land." The court found that the singular included the plural.

(i) Gender

Sutherland, Statutory Construction, (4th), Section 47.32, states:

> "It is not uncommon usage, in statutes as well as elsewhere, for masculine pronouns to be used generically to refer to both sexes. General interpretation statutes commonly provide for such usage.
>
> "In recognition of the common practice, courts have, even in the absence of a statutory directive, interpreted masculine pronouns to make statutes applicable to both sexes where that result is reasonable. If that construction is questionable, however, and particularly in the case of criminal statutes subject to strict construction, a masculine referent may be held applicable only to males.
>
> "Feminine referents, on the other hand, are not construed to include males.' (citations deleted)

The rule on gender is codified in section 645.08 of the Minnesota Statutes. In pertinent part, it provides:

> "words in the masculine gender include the feminine and neuter;. . . ."

As indicated in section 10.4 of this book, the policy is to draft new legislation to be sex neutral. This must be done with care so that no appearance is given that elsewhere in the same law that only one gender is intended. See the chapter on grammar for a more complete explanation of this policy.

(j) Conjunctive or Disjunctive

On construction of the terms "or", "and" and "nor", 17B *Dunnell's Digest,* (3 ed), Section 8976, states:

> "To carry out the obvious intention of the legislature "or" may be construed to mean "and" or "nor" and "and" may be construed to mean "or".

The court condemned the use of the term "and/or" in *Podany v. Erickson,* 235 Minn. 36, 49 N.W.2d 193 (1951), since the term can be viewed conjunctively or disjunctively.

For an illuminating discussion of the use of "and" and "or" see: Dickerson, *The Fundamentals of Legal Drafting,* Section 6.2.

(k) Mandatory and Directory Provisions

In *State ex.rel. Laurisch v. Pohl,* 214 Minn. 221, 8 N.W.2d 227 (1943), the court held that Minnesota Statutes 1941, Section 375.02, which provides that "... when it appears that after a state or federal census 30 percent or more of the population of any county is contained in one district, exclusive of the inmates of any state penal or corrective institution, or state hospital for the insane, maintained wholly or partly within such district, such county shall be redistricted by its county board," is mandatory. The court stated:

> "There is no universal rule by which directory provisions in a statute may, under all circumstances, be distinguished from those which are mandatory. Consideration must be given to the legislative history, the language of the statute, its subject matter, the importance of its provisions, their relation to the general object intended to be accomplished by the act, and, finally, whether or not there is a public or private right involved." 214 Minn 221 at 223

The provision in section 375.02 requiring redistricting under certain circumstances was added by Laws 1917, Chapter 370, Section 1; prior to the amendment the statute provided that county boards "may" redistrict counties after each state or federal census. The court reasoned that to interpret the second clause in section 375.02 as directory would render it mere surplusage and therefore found it to be mandatory.

The court in *State v. Jones,* 234 Minn. 438, 48 N.W.2d 662 (1951), interpreted as directory section 630.29 which provided that the court "may" permit a plea of guilty to be withdrawn at any time before judgment and a plea of not guilty substituted. While admitting the use of the word "may" was not decisive, the court, in examining legislative intent, found no reason to interpret "may" as mandatory for purposes of section 630.29.

In a recent decision, *State v. Glovka* et al, No. 95, 96, 97 (Minn., filed July 14, 1978), the court interpreted the provision of Minnesota Statutes, Section 169.127, Subdivision 3, requiring that the hearing in a contested driver's license revocation proceeding be held within 30 days as directory even though the statutory word used was the mandatory "shall". The court found that the lower courts did not lose jurisdiction due to noncompliance with the 30-day period. The court predicated its holding on the statute's silence as to the consequences of noncompliance. In support of its conclusion, the court states:

> "In our view, this case comes squarely within 'the well established rule of statutory construction that statutory provisions defining the time and mode in which public officers shall discharge their duties, and which are obviously designed merely to secure order, uniformity, system, and dispatch in public business, are generally deemed directory.'" *State v. Glovka* at page 3 of the slip opinion; citing *Wenger v. Wenger,* 200 Minn. 436, 438, 274 N.W. 517, 518 (1937), relying on *Vogle v. Grace,* 5 Minn. 232, (294) (1861).

Sutherland, Statutory Construction, (4th), Section 57.03, states:

> "Since classification of statutory provisions as mandatory or directory is the result of interpretation, all of the pertinent intrinsic and extrinsic aids to construction are applicable for this purpose.
>
> Where the language of a statute is clear and unambiguous, courts may hold that the construction intended by the legislature is obvious from the language used. And it is said that the ordinary meaning of language should always be favored. Although the form of the verb used in a statute, i.e., whether it says something 'may' or 'shall' or 'must' be done, is the single most important textual consideration bearing on whether a statute is mandatory or directory, it is not the sole determinant and what it naturally connotes can be overcome by other considerations." (citations deleted)

The words "shall" and "may" are something of words of art at least as compared to ordinary speech. The word "shall" imposes a duty or obligation. The word "may" confers a power. The principle is codified in section 645.44 of the Minnesota Statutes. In pertinent part, it says:

> "Subd. 15. [MAY.] 'May' is permissive. Subd. 16. [SHALL.] 'Shall' is mandatory."

2.7 Extrinsic Aids

(a) Introduction

Minnesota sets statutory limitations on the use of extrinsic aids in determining the legislative intent of a law. The permissible types of extrinsic aids may be summarized as follows:

(1) Legislative history

(2) Legislative construction of statutes

(3) Executive construction of statutes

(4) Administrative construction of statutes

(5) Prior judicial construction

(6) Construction of statutes *in pari materia*

(7) Construction of statutes adopted by reference

(8) Construction of uniform laws

Each of these types of extrinsic aid shall be subsequently discussed in turn.

(b) Legislative History

Due to technological advances in the area of recording instruments, there are a variety of means to ascertain much of the contemporaneous discussion of legislation. However, while some of these sources can be used for information or history, the Minnesota legislature has prohibited the use of some of these sources in the determination of legislative intent.

Currently, both houses of the Minnesota legislature tape record the proceedings of each house and their respective committees. Additionally, minutes are kept of all committee proceedings. Both the minutes and recordings are filed with the Legislative Reference Library. However, each house has an explicit prohibition against the use of these materials in the determination of legislative intent:

> "It is the intention that testimony and discussion preserved under this rule not be admissable in any court or administrative proceeding on an issue of legislative content". (Permanent Rule of the Minnesota Senate, No. 65) (referring to magnetic tapes and m proceedings of the Senate and its committees)

> "Testimony and discussion preserved under this rule is not intended to be admissable in any court or administrative proceeding on an issue of legislative intent." (Permanent Rule of the

> Minnesota House of Representatives, No. 6.6) (referring to magnetic tapes and minutes of the proceedings of the House of Representatives and its committees)

These prohibitions are based on the fact that no one legislator or even group of legislators speak for the entire body. The reasons for voting for a bill may be as numerous as there are legislators themselves. Thus, statements of individual legislators should only be regarded as their own opinion.

There are several other means of ascertaining the legislative history of particular legislation.

The primary source available in the determination of legislative intent is the evaluation of the changes in language in a bill during the legislative process. The chief source of showing the evaluation is in the *Legislative Journal.* Both houses of the Minnesota legislature are constitutionally required to keep a legislative journal. Minnesota Constitution, art. 4, sec. 15. The journals contain the chronology of a bill's passage into legislation, the text of amendments to the language of the bill, reports of house committees to which the bill has been referred, and conference committee reports. The journals are statutorily made available as evidence to the courts:

> "Printed copies of all statutes, acts, and resolutions of this state published under its authority, whether of a public or private nature, the journals of the senate and the house of representatives kept by the respective clerks thereof as provided by law, and deposited in the office of the secretary of state, and the printed journals of such houses, respectively, published by authority of law, shall be admitted as sufficient evidence thereof in all cases." Minn. Stat., Sec. 599.12

The courts have used legislative journals as a means of determining matters other than legislative intent. In *Randal Jacques v. Pike Rapids Power Co.,* 172 Minn. 306, 215 N.W. 221 (1927), the court determined which of two enrolled bills the Minnesota legislature actually passed. The journals are also used as a means of ascertaining whether the constitutional prerequisites to the enactment of a law have been met. For example, in *State ex. rel. Foster v. Naftalin,* 246 Minn. 181, 74 N.W.2d 249 (1955), the Minnesota Supreme Court used the legislative journals to determine that the two houses had never agreed as to the exact text of the bill involved in the dispute before the court.

Some attention should be focused on two components of the legislative journals. They are house committee reports and conference committee reports.

Committees to which legislation has been referred send formal reports on their action regarding specific legislation back to their respective houses.

These committee reports are governed by the rules of each house. (Permanent Rule of the Minnesota Senate, No. 61; Permanent Rule of the Minnesota House of Representatives, No. 6.7) The reports note the committee action on a particular bill, the date of the action and the signature of the chairman. In effect, these reports act as guideposts in the evolutionary path of the final language of the law. On rare occasion minority reports suggesting different courses of action or language than that formally adopted by the committee are also submitted. Minnesota acknowledges that committee reports are a means of showing legislative intent. In *Christgau v. Woodlawn Cemetery Assn.,* 208 Minn. 263, 293 N.W. 619 (1940), the Minnesota Supreme Court relied upon a report by a congressional committee on a bill indicating the purpose of a change in wording in the bill. The defendant had argued that the change was not substantive, which was contrary to the indication in the committee's report.

Conference committee reports reconcile any differences arising between companion bills passed by each house. These reports are governed by the joint rules of the Minnesota legislature. (Joint rules of the Minnesota Senate and House of Representatives, No. 2.06) Conference committee reports indicate how the final version of a piece of legislation is extracted from its House and Senate progenitors.

The Permanent Rules of both the Minnesota Senate and House of Representatives, and the rules that they jointly promulgate, serve as additional sources of legislative history. In *Loper v. State,* 82 Minn. 71, 84 N.W. 650 (1900), the court relied upon a legislative rule that required the whole of an amended existing section be recited with the amendment incorporated. The court chose to follow such a recitation in a bill as the law rather than a conflicting "headnote" to the section. The legislative rules govern the operation of the legislature and indicate the number of committees, their composition, and their authority. These rules act as the backdrop for any formal legislative action. As such, they aid in the explanation of the election of certain courses of legislative action and certain legislation in preference to other courses and legislation.

Legislative history also includes the comparison of the law with the preexisting law.

The Minnesota Statutes provides the consideration of several elements of the former law.

> "When the words of a law are not explicit, the intention of the legislature may be ascertained by considering . . . the former law, . . .;"

The former law may be either a preexisting statute or the common law.

The intent of legislation whose subject area is based in the common law may be discerned by examining the common law. In *State v. Arnold,* 182 Minn. 313, 235 N.W. 373 (1931), the Minnesota Supreme Court noted in a case involving a codification of a common law offense that:

> "Our own court has held that we may go to the common law to determine the meaning of common law terms used in our penal code." 182 Minn. at 314 (citing *Benson v. State,* 5 Minn. 19 (Gil. 6)(1860)

The court noted later in the opinion that the legislature had the ability to change or even repudiate the common law when it enacted legislation. However, it found that the legislature "... neither expressly or impliedly acted to create the offense with which the defendant is charged," and so determined that interest of the legislature was consonant with common law. 182 Minn. at 321. Specifically, the court found that a new legislative enactment did not change the preexisting common law that a married woman could not commit larceny against her husband because the marriage created a unitary ownership with her husband of her husband's "property". The "Married Woman's Act" did not change her status.

(c) Legislative Construction of Statutes

One means of expressing legislative construction is the reports issued by interim legislative commissions. These reports often recommend passage of legislation. Interim reports serve as the groundwork on which the legislative intent for the proposed legislation is subsequently built. Additionally, the commission interprets and restates the intent of the legislature as a necessary prelude to its examination of existing law. In actuality, interim commission reports are treated in the same fashion as are those of committees operating during the legislative session. In *Barlau v. Minneapolis-Moline Power Implement Co.,* 214 Minn. 564 at 575, 9 N.W.2d 6 (1943), the Minnesota Supreme Court relied upon a special report to a committee of the United States Senate recommending a change in a workers' compensation statute and setting forth the purpose of overcoming a difficulty in the statute which one of the parties to the case claimed still existed.

Another means of expressing legislative construction of statutes is the revision or recodification of existing legislation. In instances where the legislation purports solely to reorganize or update the existing legislation, the scheme that is enacted serves as a legislative construction of the intent of the existing legislation.

On the other hand, where the legislation seeks to reform or modify the existing language, the resulting legislation is a hybrid of legislative construction of existing intent along with injections of newly pronounced legislative intent. The general rule is that;

> "... laws in force at the time of the adoption of any revision or code are not repealed by the revision or code unless expressly repealed therein." Minn. Stat., Sec. 645.28.

However, this general statement is modified by Minnesota Statutes, Section 645.39 which states:

> "645.39 [IMPLIED REPEAL BY LATER LAW.] 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."

The prime matter of legislative intent will be an examination of the text to determine whether it was intended as a complete change, a rewrite without change or a partial change from preexisting law.

Finally, in a general revision of the law, legislative intention to change the meaning of existing legislation may as clearly appear from the omission of old language as by the addition of new language. In *Garberg v. Hennepin County,* 294 Minn. 445, 202 N.W.2d 220 (1972), the court found that in a law generally revising the statutes relating to a city's tort liability, the omission of an old notice requirement was intended and not an oversight.

(d) Executive Construction of Statutes

Certain actions of the executive branch of government may be used to determine legislative intent. Not all of the devices mentioned in this section deal, in the strictest sense, with the actual construction of statutes by the executive. However, for want of a better classification, they are discussed here.

The interpretation of executive orders on which legislation is subsequently based may be used to determine the intent of the legislature in enacting the "executive order" legislation. In this instance, legislative intent is discerned much as it is where statutes are *in pari materia.*

Executive objections to legislation that has been vetoed are useful in determining legislative intent. The governor's objections are entered in the legislative journal (Minnesota Constitution, art. IV, sec. 23), and become a part of the legislative history of a law. Executive objections that are overridden by the legislature may be seen as an executive construction of the "offending" legislation. If a veto is sustained and the legislation rewritten to accommodate the objection, the statement of executive objections become part of the underlying legislative intent of the modified legislation.

At the beginning of each legislative session, the governor is required to communicate a message to the legislature (Minnesota Constitution, art. V, sec. 3). This "state of the state" message influences legislative intent in that it forms part of the backdrop for all the legislation passed in that session. In this sense, "state of the state" messages are indicative of legislative intent because they provide in part ". . . the circumstances under which it [legislation] was enacted." (Minn. Stat., Sec. 645.16)

Messages communicated by the governor before special sessions of the legislature are also indicative of legislative intent. In this instance, they not only set ". . . the circumstances . . ." but also provide ". . . the occasion and necessity for the law" (Minn. Stat., Sec. 645.16). In other words, the governor's message calling a special session (Minnesota Constitution, art. IV, sec. 12), sets the perimeters of the subject matter of the session and thereby outlines in general terms the legislative intent of legislation passed in that session.

Finally, the executive branch of government construes, influences, and helps determine legislative intent through the opinions of the attorney general. The statutory construction imparted by these opinions, while not binding on the courts (*Blaine v. Independent School Dist.,* 272 Minn. 343, 138 N.W.2d 32 (1965)), is of much persuasive weight in statutory construction when they have been acted upon and have gone unchallenged for many years. (*State v. Hartman,* 261 Minn. 314, 112 N.W.2d 340 (1961)). Additionally, the legislature may affirmatively enclose the attorney general's construction of a statute as being the correct interpretation of legislative intent. In *Peterson v. Joint Independent Consolidated School Districts,* 239 Minn. 233, 58 N.W.2d 465 (1953), the Supreme Court found legislative endorsement of an attorney general's opinion construction:

> ". . . the attorney general rules that an appeal from the action of the county superintendent of schools under M.S.A. 122.21 and 122.22 relating to the consolidation of school districts must follow the procedure prescribed by section 122.32. Thereafter the legislature, . . ., *re-enacted verbatim the statute . . . as it existed and was construed by the opinion of the attorney general . . . This*

> *indicates legislative approval of the construction placed upon the state by the attorney general* . . ." 239 Minn. at 237, footnote 5 (emphasis added).

Of great persuasive weight in their own right, attorney general opinions become binding in matters of statutory construction when legislatively endorsed.

The fact that attorney general opinions are not binding on the courts should be distinguished from the fact that some opinions are binding on the agency until a contrary opinion is given by the courts or conflicting legislation enacted by the legislature. See: Minn. Stat., Secs. 8.07, 121.17, 270.07 and 270.09, Subd. 1.

(e) Administrative Construction of Statutes

Closely related in nature to executive construction of statutes is the statutory construction developed by administrative agencies. These executive branch agencies are charged with the enforcement and implementation of several statutory initiated programs. Consequently, the agencies develop their own construction of the specific governing statute. These constructions are disregarded by the courts where:

> ". . . the administrative interpretation is not a longstanding one and the statutory language not ambiguous, it is clear that this court is under no obligation to respect the administrative interpretation, particularly where such interpre-tation is one which operates to expand the jurisdiction of the agency rendering such interpretation." *Minnesota Microwave v. Public Service Comm.,* 291 Minn. 241, 246 190 N.W.2d 661, 244 (1971).

However,

> "A longstanding administrative interpretation of a statute is entitled to great weight, although not if it is erroneous and contrary to legislative intent or if such administrative construction extends or modifies provisions of the statute." *Mankato Citizens Tel. Co. v. Commissioner of Taxation,* 275 Minn. 107, 145 N.W.2d 313 (1966), at page 112 (citing *Mattson v. Flynn,* 216 Minn. 354, 13 N.W.2d 11 (1944).

Evidently, the longer an administrative construction has been in existence, the greater the weight accorded by the judiciary in matters of statutory construction. As can be seen from the quotations above, this general rule of "time = weight" is tempered by a strong judicial aversion to expanding the scope of administrative agencies' purview. No matter how cogent or how long in effect, an administrative construction will be accorded little or no weight in

determining legislative intent if it expands the jurisdiction of the parent administrative agency. Apparently, only clear legislative direction will suffice for administrative agency expansion.

(f) Prior Judicial Construction

By reenacting without amendment a statute that has previously been judicially construed, the legislature adopts that prior judicial construction. *Cashman v. Hedberg,* 215 Minn. 463, 10 N.W.2d 388 (1943). In *Cashman,* the court stated:

> "The foregoing holding has been the law in this state for 50 years. It has never been modified or overruled. The many intervening legislatures have added no saving clause to the death statute. By reenactment, without amendment, the legislature has adopted the judicial interpretation given in the Rugland case." 215 Minn. at 470

This rule is statutorily recognized by Minnesota Statutes, Section 645.17 which in pertinent part states:

> "When a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; . . ."

However, as noted in *Murray v. Floyd,* 216 Minn. 69, 11 N.W.2d 780 (1943):

> ". . . [T]he statutory rule is that courts 'may be guided' by the presumption in construing statutes, the presumption is but an aid in ascertaining the legislative intent", 216 Minn. at 73 (citations deleted)

Thus, prior judicial construction of a statute is an important, not controlling, factor in determining legislative intent.

(g) Construction of Statutes in pari materia

Laws that pertain to the same subject matter are *in pari materia* as the law at issue. According to *Sutherland, Statutory Construction;*

> "Statutes are considered to be *in pari materia* — to pertain to the same subject matter — when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object. As between characterization of the subject matter with which a statute deals and characterization of its object or purpose, the latter appears to be the more important factor in determining whether different statutes are closely enough related to justify interpreting one in the light of the other. For example, it

> has been held that where the same subject is treated in several acts having different objects the rule of *in pari materia* does not apply. 2A *Sutherland, Statutory Construction,* (4th), Section 51.03

Minnesota has apparently adopted the two-tiered "subject" plus "purpose" rule of construction. In *In re Karger's Estate,* 253 Minn. 542, 93 N.W.2d 137 (1958), the Minnesota Supreme Court was asked to construe Minnesota Statutes, Section 525.172 dealing with the inheritance rights of an illegitimate child, in light of Minnesota Statutes, Section 257.23, dealing with determinations of the paternity of an illegitimate child. Though the two statutes dealt with the same general subject, illegitimate children, the court declined to find the statutes *in pari materia,* stating:

> "In ascertaining to what extent the legislature has conferred inheritance rights upon illegitimates, we cannot construe sections 525.172 and 257.23 with reference to each other since these two statutory sections are *wholly unrelated in basic purpose and are not in pari materia with each other.*" 253 Minn. at 549 (emphasis added).

The basic rule of construction with regard to statutes *in pari materia* is to construe the statutes in a consistent fashion, so as to harmonize one with the other and gain a uniform result. *Minneapolis Eastern Ry Co. v. Minneapolis,* 247 Minn. 413, 77 N.W.2d 425 (1956); *Lenz v. Coon Creek Watershed District,* 278 Minn. 1, 153 N.W.2d 209 (1967). Where there is a conflict between clauses, the statute enacted later in time controls, as this is deemed to be the more current expression of legislative intent. (*Fink v. Cold Spring Granite Co.,* 262 Minn. 393, 115 N.W.2d 22 (1962)). While statutes passed during the same legislative session are given special weight with regard to the construction of one another (*Halverson v. Elsberg,* 202 Minn. 232, 277 N.W. 535 (1938)), statutes with the same subject and purpose are deemed to have been enacted with the same legislative intent despite having been enacted at different legislative sessions. *Christgau v. Woodlawn Cemetery Assn.,* 208 Minn. 263, 293 N.W. 619 (1940).

(h) Construction of Statutes Adopted by Reference

Statutes adopted by reference are a specialized form of statutes *in pari materia.* As such, they are construed in much the same fashion. However, there is an objection often raised that is peculiar to statutes adopted by reference. Adoption of statutes by reference has been attacked as an unconstitutional delegation of legislative authority.

A Minnesota Law Review article written in 1941 set forth the distinction between permissible adoption of foreign legislation and unconstitutional delegation of legislative authority:

> "When, therefore, a legislature adopts a precept merely in the existing form in which another law-making body has already passed it there is clearly no delegation at all. . . . On the other hand, if future laws, rules or regulations are included in the adoption there is with equal clarity a delegation. . . . Less extreme, but equally delegations, are the references that expressly include the adopted measure and its future amendments. So also are those that simply include the adopted measure 'and amendments thereto' when at the time of the reference no such amendments yet exist; but not necessarily if amendments have previously been made, since in the latter case the court is free by construction to avoid unconstitutionality by saying that only the ones previously made were intended to be included." Read, "Is Referential Legislation Worth While?" 25 Minn. L. Rev. 261, at 283-284 (1941) (citations deleted)

The Minnesota Supreme Court endorsed this delineation with its holding in *Wallace v. Commissioner of Taxation,* 289 Minn. 220, 184 N.W.2d 588 (1971). This case concerned an adoption by reference by a Minnesota tax statute of a provision of the Internal Revenue Code. The statute in question read as follows:

> "The term 'gross income' in its application to individuals, estates and trusts means the adjusted gross income as computed for federal income tax purposes as defined in the laws of the United States for the taxable year with the modifications specified in this section." 289 Minn. 220 at 224 (citing Minn. Stat. 1965, Sec. 290.01, Subd. 20)

The court construed the statute to adopt federal law by reference, ". . . as it existed at the time the statute was adopted." 289 Minn. 220 at 228. The court quoted the controlling language in *Featherstone v. Norman,* 170 Ga. 370, 153 S.E. 58 as the basis for its decision:

> ". . . The mere adoption of the method fixed by the Federal law is not vesting in Congress the power to create the state's method. *It adopts existing exemptions and an existing method* in determining in part the net taxable income of the taxpayer. Adoption of existing exemptions and an existing method is not a delegation to congress of the legislative power of the state. . . . *This act in no way undertakes to make future Federal legislation a part of the law of this state on that subject."* 289 Minn. 220 at 226-227; citing *Featherstone v. Norman,* supra. (emphasis added).

Therefore, the court endorsed the adoption by reference of existing foreign legislation. Only the adoption by reference of future foreign legislation constitutes an unconstitutional delegation of legislative authority. In the words of the court:

> "The legislature did not, or could not, grant to Congress the right to make future modifications or changes in Minnesota law." 289 Minn. 220 at 228

On its face, this holding would appear to conflict with Minnesota Statutes, Section 645.31, Subdivision 2:

> "Subd. 2. [Adoption of Law by Reference.] When an act adopts the provision 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."

However, in view of *Wallace v. Commissioner of Taxation, supra,* section 645.31, subdivision 2 should be construed to apply only to Minnesota legislation. This construction is reinforced by the *Wallace* court's failure to discuss section 645.31, subdivision 2 with regard to adoption of foreign legislation by reference. As section 645.31, subdivision 2 was adopted in 1965 (Laws 1965, Chapter 83, Section 1), six years prior to the *Wallace* decision, it would have seemed incumbent for the court to discuss the section had it applied to adoption by reference of foreign legislation. Therefore, section 645.31, subdivision 2 notwithstanding, the Minnesota legislature may adopt existing, not future, foreign legislation by reference.

A current example of this adoption of existing foreign legislation by reference may be found in Minnesota Statutes, 1977 Supplement, Section 290.01, Subdivision 20. In pertinent part, this section reads:

> "For each of the taxable years beginning after December 31, 1970, the term 'gross income' in its application to individuals, estates, and trusts shall mean the adjusted gross income as computed for federal income tax purposes as defined in the Internal Revenue Code of 1954, as amended through the date specified herein for the applicable taxable year, with the modifications specified in this section.
>
> (v) The Internal Revenue Code of 1954, as amended through December 31, 1976, including the amendments made to section 280A . . . in H.R. 3477 as it passed the Congress on May 16, 1977 . . ."

That the Minnesota legislature took the *Wallace* court at its word with regard to the adoption by reference of "existing method(s)," one need only look to Minnesota Statutes, Section 16.84, Subdivision 4. This section adopts by reference administrative rules:

> "Subd. 4. 'Code' means the state building code or any amendment thereof promulgated by the commissioner in accordance with the terms of Laws 1971, Chapter 561."

Logically, there is no reason why an existing administrative rule may not be adopted. As noted by the courts, existing foreign legislation is adopted because it is an existing method, not because it is existing legislation. If it were to be adopted because of its legislative origin, the entire question of delegation of legislative authority would be reopened.

(i) Construction of Uniform Laws

Numerous uniform laws have been proposed by the National Conference of Commissioners on Uniform State Laws for the purpose of standardizing state law with regard to a particular legal subject. The Uniform Commercial Code is the most successful of these acts in terms of state adoption. An unofficial tally of the Minnesota statutory index reveals 48 acts which are deemed by Minnesota to be "uniform". As these uniform laws are adopted for the purpose of standardization and uniformity, the construction placed on the laws by other enacting states is of particular value in construing one's own state version. For example, in *Layne-Minnesota Co. v. Regents of University of Minnesota,* 266 Minn. 284, 123 N.W.2d 371 (1963), the Minnesota Supreme Court relied upon comments of the National Conference of Commissioners of Uniform State Laws to construe a provision of the Uniform Arbitration Act. Naturally, the same considerations regarding "outstate construction" are applicable to other "model" or "compact" legislation that is enacted by several other states.

Minnesota Statutes provides for the interpretation of uniform laws.

> 645.22 [UNIFORM LAWS.] Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.

Of particular importance with regard to the Uniform Commercial Code is the commentary language developed by the National Conference of the Commissioners of Uniform State Laws. While not possessing the force and effect of law, these comments have been widely used by courts to develop a uniform means of construing the Uniform Commercial Code.

3

CONSTITUTIONAL PROVISIONS, STATUTORY LAW AND LEGISLATIVE RULES REGULATING THE FORM AND SUBSTANTIVE CONTENT OF BILLS

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3.1 Generally

There are certain fundamental rules which regulate the form and substantive content of every bill. These rules can be found in the Minnesota Constitution, in the Minnesota Statutes, the Permanent Rules of the House, the Permanent Rules of the Senate and the Joint Rules of the House of Representatives and Senate. Every drafter must be thoroughly familiar with the following constitutional provisions, statutes, and legislative rules.

3.2 Provisions Governing the Form of a Bill

(a) Approval of Bill Form by Revisor

> "No bill shall be introduced until it has been examined and approved by the Revisor of Statutes as to form and compliance with the Joint Rules of the House and Senate and the Rules of the House. Approval as to form shall be endorsed on the bill by the Revisor of Statutes." House Rule 5.1.

As the practical implementation of this rule, the Revisor of Statutes endorses approval of each bill in two ways.

First, the top of each bill draft approved by the revisor bears the logo "<REVISOR>". As a practical matter, bills printed on the revisor's computer line printer are readily identified from typewriter copy originating elsewhere. The logo, however, remains the official indication.

Second, each House bill jacket for the original bill contains a certification by the revisor. Only those persons dealing with the original bill will see this certification, however.

(b) Compliance with Rules of Legislature

> "Each house may determine the rules of its proceedings...." Const. art. IV, sec. 7.

> "Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor." Const. art. IV, sec. 23.

(c) Title of Bill

> "The title of each bill shall clearly state its subject and briefly state its purpose." Joint Rule 2.01.

> "No law shall embrace more than one subject, which shall be expressed in its title." Const. art. IV, sec. 17.

> "When a bill amends or repeals an existing act, the title shall refer to the chapter, section or subdivision." Joint Rule 2.01.

For a discussion of drafting bill titles see section 4.2 of this book.

(d) Enacting Clause

"The style of all laws of this state shall be: 'Be it enacted by the legislature of the state of Minnesota.'" Const. art. IV, sec. 22.

(e) Bills Should Amend Minnesota Statutes. (Only sections or subdivisions may be amended.)

"Reference shall be made to Minnesota Statutes for the provisions appearing therein unless reference to previous session laws is required for some special reason." Joint Rule 2.01.

"A bill for the amendment of a statute shall contain the full text of the section or subdivision to be amended as it appears in the latest edition of Minnesota Statutes unless it has been amended at a later session, in which event it shall contain the full text as amended." Joint Rule 2.01.

(f) Forms of Citation

"Bills shall refer to Minnesota Statutes as follows: 'Minnesota Statutes (year), Section (number).' Bills shall refer to the session laws as follows: 'Laws (year), Chapter (number), Section (number).'" Joint Rule 2.01.

645.46 [REFERENCE TO SUBDIVISION.] Wherever in the Minnesota Statutes or any legislative act a reference is made to a subdivision without stating the section of which the subdivision referred to is a part, the reference is to the subdivision of the section in which the reference is made.

645.47 [REFERENCE TO PARAGRAPH.] Wherever in the Minnesota Statutes or any legislative act a reference is made to a paragraph without stating the section and subdivision of which the paragraph referred to is a part, the reference is to the paragraph of the subdivision in which the reference is made.

645.48 [USE OF THE WORD "TO" WHEN REFERRING TO SEVERAL SECTIONS.] Wherever in the Minnesota Statutes or any legislative act a reference is made to several sections and the section numbers given in the reference are connected by the word "to," the reference includes both the sections whose numbers are given and all intervening sections.

(g) Showing New Language

"The words and characters constituting the amending matter shall be inserted in the proper place in the text and underscored." Joint Rule 2.01.

"The text of a new section or subdivision shall also be underscored when a bill amends an existing chapter or section by adding a new section or subdivision." Joint Rule 2.01.

"In the omnibus appropriation bills required by Joint Rule 2.02, sections making an appropriation or transfer and not amending a statute or session law need not have new material underscored." Joint Rule 2.01.

"Before a committee favorably reports upon a bill, the chairman of the committee shall see that the bill conforms to this rule." Joint Rule 2.01.

(h) Removing Old Language

"The words and characters to be eliminated by the amendment shall be stricken by drawing a line through them." Joint Rule 2.01.

(i) Numbering Sections and Subdivisions

"If the bill is for an original law and not for an amendment of an existing law, the sections and subdivisions shall be arranged, subdivided and numbered in like manner as Minnesota Statutes." Joint Rule 2.01.

"All chapters and sections of Minnesota Statutes shall retain the numbers and titles given them in Minnesota Revised Statutes until changed by the revisor or by statute." Minn. Stat., Sec. 648.35.

(j) Headnotes

"If such a bill assigns to the sections thereof headnotes or identification by the decimal system of numbering used in Minnesota Statutes, such headnotes and decimal identification may be submitted by standing committee chairmen to the Revisor of Statutes for examination. Any such headnotes shall be capital letters enclosed in brackets, and shall be subject to the provisions of Minn. Stat., Sec. 648.36." Joint Rule 2.01.

"The headnotes of the sections of any edition of the Minnesota Statutes printed in black-face type are intended to be mere catchwords to indicate the contents of the section and are not any part of the statute, nor shall they be so deemed when any of such sections, including the headnotes, are amended or reenacted, unless expressly so provided." Minn. Stat., Sec. 648.36.

(k) Use of Numbers

"All numbers in title shall be expressed in figures. All numbers of section or chapter of law 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 shall not be followed by numbers or parentheses." Joint Rule 2.01.

3.3 Provisions Affecting the Contents of a Bill

(a) Statutes Governing Interpretation of Statutes

Every drafter should review the statutory provisions regarding the construction of statutes. They are set out and discussed in chapter 2 of this book.

(b) Effective Dates

"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." Minn. Stat., Sec. 645.02.

(c) Measuring Time

645.071 [STANDARD OF TIME.] Subdivision 1. [SOLAR TIME; DAYLIGHT TIME.] Every mention of, or reference to, any hour or time in any law is to be construed with reference to and in accordance with the mean solar time of the ninetieth meridian of longitude west of Greenwich, commonly known as Central Standard Time. The standard of time in this state in each year commencing at 2 a.m. on the fourth Sunday in May and ending at 2 a.m. on the Tuesday following Labor Day, both dates inclusive,

shall be one hour ahead of such solar time and for the rest of the year shall be such solar time and no department of the state government and no county, city or town shall employ any other time or adopt any ordinance or order providing for the use of any other time than the standard time. [subdivision 2 deleted]

645.14 [TIME; COMPUTATION OF MONTHS.] When, in any law, the lapse of a number of months before or after a certain day is required, such number of months shall be computed by counting the months from such day, excluding the calendar month in which such day occurs, and including the day of the month in the last months so counted having the same numerical order as the day of the month from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

645.15 [COMPUTATION OF TIME.] Where the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, such time, except as otherwise provided in sections 645.13 and 645.14, shall be computed so as to exclude the first and include the last day of any such prescribed or fixed period or duration of time. When the last day of such period falls on Sunday or on any day made a legal holiday, by the laws of this state or of the United States, such day shall be omitted from the computation.

(d) General Definitions Applying to the Statutes

Certain common words have been given a special meaning for purposes of their use in Minnesota Statutes. Minnesota Statutes, Chapter 645, contains the definitions of a number of common and some uncommon terms and phrases which appear frequently throughout the statutes. Many statutes contain special definitions or use terms which are not defined in chapter 645. Unless a special or different definition is explicitly made applicable to a statute, however, the administrative agencies and courts which construe and apply that statute will look to chapter 645 for an authoritative definition of any term found there.

The definitions provided for all the Minnesota Statutes are as follows:

645.44 [PARTICULAR WORDS AND PHRASES.] Subdivision 1. [MEANINGS ASCRIBED.] The following words, terms, and phrases used in Minnesota Statutes or any legislative act shall have the meanings given them in this section, unless another intention clearly appears.

Subd. 2. [CLERK.] When used in reference to court procedure, "clerk" means the clerk of the court in which the action or proceeding is pending, and "clerk's office" means his office.

Subd. 3. [COUNTY, TOWN, CITY.] When a county, town or city is mentioned, without any particular description, it imports the particular county, town or city appropriate to the matter.

Subd. 4. [FOLIO.] "Folio" means 100 words, counting as a word each number necessarily used; if there be fewer than 100 words in all, the paper shall be computed as one folio; likewise any excess over the last full folio.

Subd. 5. [HOLIDAYS.] "Holiday" includes New Year's Day, January 1; Washington's and Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Christopher Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25; provided, when New Year's Day, January 1; or Independence Day, July 4; or Veterans Day, November 11; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday and, provided, when New Year's Day, January 1; or Independence Day, July 4; or Veterans Day, November 11; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday. No public business shall be transacted on any holiday, except in cases of necessity and except in cases of public business transacted by the legislature, nor shall any civil process be served thereon.

Any agreement between a public employer and an employee organization citing Veterans Day as the fourth Monday in October shall be amended to cite Veterans Day as November 11.

Subd. 5a. [PUBLIC MEMBER.] "Public member" means a person who is not, or never was, a member of the profession or occupation being licensed or regulated or the spouse of any such person, or a person who does not have or has never had, a material financial interest in either the providing of the professional service being licensed or regulated, or an activity directly related to the profession or occupation being licensed or regulated.

Subd. 6. [OATH; AFFIRMATION; AFFIRM; SWORN.] "Oath" includes "affirmation" in all cases where by law an affirmation may be substituted for an oath; and in like cases "swear" includes "affirm' and "sworn" "affirmed.'

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

Subd. 8. [POPULATION; INHABITANTS.] When used in reference to population, "population" and "inhabitants" mean that shown by the last preceding census, state or United States, unless otherwise expressly provided.

Subd. 9. [RECORDED; FILED FOR RECORD.] When an instrument in writing is required or permitted to be filed for record with or recorded by any officer, the same imports that it must be recorded by such officer in a suitable book kept for that purpose, unless otherwise expressly directed.

Subd. 10. [SEAL.] When the seal of a court, public office, or corporation is required by law to be affixed to any paper, the word "seal' includes an impression thereof upon the paper alone, as well as an impression on a wafer, wax, or other substance thereto attached.

Subd. 11. [STATE; UNITED STATES.] When applied to a part of the United States, "state" extends to and includes the District of Columbia and the several territories. "United States" embraces the District of Columbia and territories.

Subd. 12. [SHERIFF.] "Sheriff" may be extended to any person officially performing the duties of a sheriff, either generally or in special cases.

Subd. 13. [TIME; MONTH; YEAR.] "Month" means a calendar month and "year" means a calendar year, unless otherwise expressed; and "year" is equivalent to the expression "year of our Lord."

Subd. 14. [WRITING.] "Written" and "in writing" may include any mode of representing words and letters. The signature of a person, when required by law, (a) must be in the handwriting of the person or, (b) if he be unable to write, (i) his mark or his name written by some person at his request and in his presence or, (ii) by a rubber stamp facsimile of his actual signature, mark, or a signature of his name or a mark made by another person and adopted for all purposes of signature by the person with a motor disability and affixed in his presence.

Subd. 15. [MAY.] "May" is permissive.

Subd. 16. [SHALL.] "Shall" is mandatory.

Subd. 17. [VIOLATE.] "Violate" includes failure to comply with.

Subd. 18. [PLEDGE; MORTGAGE; CONDITIONAL SALE; LIEN; ASSIGNMENT.] "Pledge," "mortgage," "conditional sale," "lien," "assignment," and similar terms used in referring to a security interest in goods include corresponding types of security interests under article 9 of the uniform commercial code.

645.45 [DEFINITIONS, CONTINUED.] The following words and phrases, when used in any law enacted after the effective date of Laws 1941, Chapter 492, Section 45, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Abode," means domicile;

(2) "Action," any proceeding in any court of this state;

(3) "Adult," an individual 18 years of age or over;

(4) "As now provided by law," a reference to the laws in force at the time the law containing the phrase was finally enacted;

(5) "As provided by law," a reference to the laws in force at the particular time the law containing the phrase is applied;

(6) "Attorney at law," an individual admitted to practice law by a court of record of this state;

(7) "Attorney of record," an attorney at law who is entered on the docket or record of a court as appearing for or representing a party in a legal proceeding;

(8) "Child" or "children" includes children by birth or adoption;

(9) "Day" comprises the time from midnight to the next midnight;

(10) "Fiscal year," the year by or for which accounts are reckoned;

(11) "Hereafter," a reference to the time after the time when the law containing such word takes effect;

(12) "Heretofore," a reference to the time previous to the time when the law containing such word takes effect;

(13) "Judicial sale," a sale conducted by an officer or person authorized for the purpose by some competent tribunal;

(14) "Minor," an individual under the age of 18 years;

(15) "Money," lawful money of the United States;

(16) "Night time," the time from sunset to sunrise;

(17) "Non compos mentis," refers to an individual of unsound mind;

(18) "Notary," a notary public;

(19) "Now," in any provision of a law referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or to the persons in office, or to the facts or circumstances existing, respectively, on the effective date of such provision;

(20) "Verified," when used in reference to writings, means supported by oath or affirmation.

645.451 [DEFINITIONS, CONTINUED.] Subdivision 1. The terms defined in the following subdivisions shall have the meanings given them for the purpose of any statute or law of this state now in force, for the purposes of any statute or law hereinafter enacted unless a different meaning is specifically attached to the terms or the context clearly requires different meaning.

Subd. 2. "Minor" means an individual under the age of 18.

Subd. 3. "Adult" means an individual 18 years of age or older.

Subd. 4. "Minority" means with respect to an individual the period of time during which the individual is a minor.

Subd. 5. "Majority" means with respect to an individual the period of time after the individual reaches the age of 18.

Subd. 6. "Legal age" or "full age" means 18 years of age or older.

645.46 [REFERENCE TO SUBDIVISION.] Wherever in the Minnesota Statutes or any legislative act a reference is made to a subdivision without stating the section of which the subdivision referred to is a part, the reference is to the subdivision of the section in which the reference is made.

645.47 [REFERENCE TO PARAGRAPH.] Wherever in the Minnesota Statutes or any legislative act a reference is made to a paragraph without stating the section and subdivision of which the paragraph referred to is a part, the reference is to the paragraph of the subdivision in which the reference is made.

645.48 [USE OF THE WORD "TO" WHEN REFERRING TO SEVERAL SECTIONS.] Wherever in the Minnesota Statutes or

any legislative act a reference is made to several sections and the section numbers given in the reference are connected by the word "to," the reference includes both the sections whose numbers are given and all intervening sections.

(e) Minnesota Bill of Rights

The Minnesota Bill of Rights (Minn. Const., art. I, secs. 1 to 17) contains a number of provisions remarkably similar to the federal Bill of Rights. The following excerpts highlight those sections of article I which might affect general legislation.

(1) The Object of Government

Art. I, Sec. 11. OBJECT OF GOVERNMENT. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.

(2) Bills of Attainder, Ex Post Facto Laws and Laws Impairing Contracts Prohibited

Art. I, Sec. 11. BILLS OF ATTAINDER, EX POST FACTO LAWS AND LAWS IMPAIRING CONTRACTS PROHIBITED. No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

The state constitution prohibits bills of attainder, *ex post facto* laws, and laws impairing contracts. Attention should be paid to this section because it can sometimes be a trap for the unwary drafter. Bills of attainder are legislative acts which inflict punishment upon certain persons or classes of persons without prior trial or judicial determination of guilt. A bill of attainder is a legislative usurpation of judicial power. An example of such an act might be one which legislatively determines that Company "A" is violating the insurance laws or the environmental protection laws of the state and therefore will not be allowed to do business in the state.

An *ex post facto* law, broadly defined, is an act which makes past actions punishable under a new provision of law, which deprives an accused of any substantial right to which he was entitled at the time of the alleged commission of an offense, or which increases the penalty for an offense after the time the offense was allegedly committed. An example of such an act might be one which adds a surcharge to the drivers license fees of all persons previously convicted of driving while under the influence of alcohol.

There are many instances where a state law might impair a contract. This provision is a frequent source of problems in drafting. Insurance contracts, employment contracts, sale agreements, rental agreements, pension plans, bond agreements, and many other important and not so important contractual arrangements govern everyday life. These contracts might run for long periods of time and might involve important social issues. Nevertheless, if a contract was lawful at the time of its formation, the state cannot by fiat change the relationship of the parties, impose new obligations on one or the other of the parties, or abrogate the agreement.

(3) Freedom of Religion

Art. I, Sec. 17. FREEDOM OF RELIGION. ". . . . The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries." Const. art. I, sec. 16.

"No religious test or amount of property shall be required as a qualification for any office of public trust in the state. No religious test or amount of property shall be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion." Const. art. I, sec. 17.

"In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught." Const. art. XIII, sec. 2.

(f) Right to Due Process in Civil Matters

"No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. . . ." Const. art. I, sec. 2.

"Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or

character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." Const. art. I, sec. 8.

For a discussion of drafting legislation relating to religious institutions as issues, see section 7.9 of this book.

(g) Equal Protection of Law

"Taxes shall be uniform upon the same class of subjects...." Const. art. X, sec. 1.

"... The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated." Const. art. XII, sec. 1.

(h) Separation of Powers

"The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." Const. art. III, sec. 1.

"... [T]he legislature shall have the power to prescribe the bounds of congressional and legislative districts." Const. art. IV, sec. 3.

"The governor shall communicate by message to each session of the legislature information touching the state and country. He is commander-in-chief of the military and naval forces and may call them out to execute the laws, suppress insurrection and repel invasion. He may require the opinion in writing of the principal officer in each of the executive departments upon any subject

relating to his duties. With the advice and consent of the senate he may appoint notaries public and other officers provided by law. He may appoint commissioners to take the acknowledgment of deeds or other instruments in writing to be used in the state. He shall take care that the laws be faithfully executed. He shall fill any vacancy that may occur in the offices of secretary of state, treasurer, auditor, attorney general and the other state and district offices. . . ." Const. art. V, sec. 3.

"The governor in conjunction with the board of pardons has power to grant reprieves and pardons after conviction for an offense against the state except in cases of impeachment." Const. art. V, sec. 7.

"The judicial power of the state is vested in a supreme court, a district court and such other courts, judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish." Const. art. VI, sec. 1.

"The legislature may provide by law for retirement of all judges and for the extension of the term of any judge who becomes eligible for retirement. . . . The legislature may also provide for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice." Const. art. VI, sec. 9.

"The house of representatives has the sole power of impeachment. . . ." Const. art. VIII, sec. 1.

"Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the

governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

"If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill. At the time he signs the bill the governor shall append to it a statement of the items he vetoes and the vetoed items shall not take effect. If the legislature is in session, he shall transmit to the house in which the bill originated a copy of the statement, and the items vetoed shall be separately reconsidered. If on reconsideration any item is approved by two-thirds of the members elected to each house, it is a part of the law notwithstanding the objections of the governor." Const. art. IV, sec. 23.

"Each order, resolution or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his veto as prescribed in case of a bill." Const. art. IV, sec. 24.

(i) Restrictions on Internal Improvements

"The state shall not be a party in carrying on works of internal improvements except as authorized by this constitution." Const. art. XI, sec. 3.

"Public debt may be contracted and works of internal improvements carried on for the following purposes:

(a) to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes if the law authorizing the debt is adopted by the vote of at least three-fifths of the members of each house of the legislature;

(b) to repel invasion or suppress insurrection;

(c) to establish and maintain highways subject to the limitations of article XIV;

(d) to promote forestation and prevent and abate forest fires, including the compulsory clearing and improving of wild lands whether public or private;

(e) to construct, improve and operate airports and other air navigation facilities;

(f) to develop the state's agricultural resources by extending credit on real estate security in the manner and on the terms and conditions prescribed by law; and

(g) as otherwise authorized in this constitution.

As authorized by law political subdivisions may engage in the works permitted by (f) and (g) and contract debt therefor." Const. art. XI, sec. 5.

"Taxes shall be . . . levied for public purposes. . . ." Const. art. X, sec. 1.

The constitutional restriction on state involvement with internal improvements and the constitutional directive that taxes be used only for public purposes can be discussed together. Any challenge based on either provision usually raises the same central issue. That is, is the state financing authorized by the law in question related to an activity appropriate for state government involvement?

This same issue arises from both provisions because the courts have carved out an exception to the "internal improvements" prohibition which goes beyond the specific exceptions listed in article XI, section 5 of Minnesota's Constitution. The courts have generally upheld state involvement in that type of public work which is used by and for the state in the performance of its "governmental functions".

The determination of what is or is not a "governmental function" is closely aligned with a determination of whether or not the expenditure is for a public purpose.

In a series of early decisions based on the internal improvements clause, for example, the courts approved state financing of state universities, penitentiaries, reformatories, asylums, quarantine buildings, and the like, because they were for the purposes of education, the prevention of crime, charity, and the preservation of public health.

More recent court decisions have upheld government financing of terminal port facilities, (*Visina v. Freeman,* 252 Minn. 177, 89 N.W.2d 635 (1958)); Water pollution control facilities (*Minnesota Pollution Control Agency v. Hatfield,* 294 Minn. 260, 200 N.W.2d 572 (1972)), low and moderate-income housing (*Minnesota Housing Finance Agency v. Hatfield,* 297 Minn. 155, 210 N.W.2d 298 (1973)), and a multi-purpose sports facility (*Lifteau v. MSFC*, filed August 4, 1978 in Ramsey County).

Lifteau questioned the "public purpose" of a municipal financing scheme, but the court's view about whether a "public purpose" was served would also be applicable to a state scheme of financing.

Perhaps the best statement of the law regarding the determination of public purpose is in the *Visina* decision. The court said:

> The Visina case, however, is noteworthy for having stated the following principles as controlling in cases of this type: (1) The state or its municipal subdivisions or agencies may expend public money only for a public purpose. (2) A "public purpose" is such activity as will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government. (3) A legislative declaration of public purpose is not always controlling. In the final analysis, the courts must make the determination. (4) The mere fact that some private interests may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public. On the other hand, if the primary object is to promote some private end, the expenditure is illegal, although it may incidentally also serve some public purpose. *Visina v. Freeman,* 252 Minn. at 288 (1958).

The court also recognizes the changing nature of what is a public purpose. In *Minnesota Pollution Control Agency v. Hatfield, supra,* (1973) the plaintiff attemptd to argue that the state could only provide low-income housing at public expense since that was approved in *Thomas v. Housing & Redevelopment Authority of Duluth,* 234 Minn. 221, 48 N.W.2d 175 (1951). Since the law in the 1973 *Hatfield* case provided for housing at public expense for both low and moderate income persons, plaintiff argued that the law was now too broad and no longer a "public purpose". The court disagreed, saying:

> The major difference between the statute under consideration in the instant case and that upheld in Thomas is that we now are called upon to consider provisions for construction of housing for families or individuals with moderate incomes as well as for those with low incomes. This distinction is more a product of the changing conditions, however, than of a change in the "public" nature of the activity. This concept of evolving public uses was recognized in *State ex rel. Twin City B. & I. Co. v. Houghton,* 144 Minn. 1, 174 N.W. 885 (1919), 144 Minn. 13, 16, 176 N.W. 159, 161 (1920):
>
> "The notion of what is public use changes from time to time. Public use expands with the new needs created by the advance of civilization and the modern tendency of the people to crowd into large cities. Such a taking as here proposed could not posssibly have been thought a taking for public use at the time of the

> adoption of our Constitution when the state was practically a wilderness without a single city worthy of the name. "The term "public use" is flexible, and cannot be limited to the public use known at the time of the forming of the Constitution.' *Stewart v. Great Northern Ry. Co.,* 65 Minn. 515, 68 N.W. 208, 33 L.R.A. 427. What constitutes a public use at the time it is sought to exercise the power of eminent domain is the test. The Constitution is as it was when adopted, but, when it employs terms which change in definition as conditions change, it refers to them in the sense in which they are meant when the protection of the Constitution is sought."

Accord, *Housing & Redevelopment Authority of St. Paul v. Greenman,* 255 Minn. 396, 96 N.W.2d 673 (1959).

When, as the trial court found, the cost of housing has risen so that even moderate-income families find themselves priced out of the housing market, it would seem that the instant case falls fully within the public purpose found in *Thomas v. Housing & Redevelopment Authority of Duluth, supra.* 234 Minn. at 168, 210 N.W.2d at 308 (1973).

It is also important to note that in *Lifteau, supra,* the court reaffirmed an earlier holding that the concept of "public purpose" is elastic and will change as economic and social conditions change. "Governmental function" probably has the same elasticity of definition.

A drafter should not, therefore, feel completely bound by a prior court decision that a subject of present legislation will be off-limits just because it was decreed to be so by a court earlier this century.

Drafters who are uncertain about whether or not a court will interpret a law as authorizing state involvement in a valid governmental function or for a valid public purpose should take at least two steps to encourage court approval.

First, they could structure a bill to include a statement of legislative policy or purpose.

Second, they could include a statement of legislative findings which would support state action in the questionable area. See, for example, Minnesota Statutes, Section 462A.02, the Housing Finance Agency Law of 1971, cited extensively by the *Lifteau* court. Subdivision 1 states the rationale for the housing law as follows:

> "It is hereby found and declared that as a result of public actions involving highways, public facilities and urban renewal activities, and as a result of the spread of deteriorated housing and blight to formerly sound urban and rural neighborhoods, and as a

> result of the inability of private enterprise and investment to produce without public assistance a sufficient supply of decent, safe and sanitary residential dwellings at prices and rentals which persons and families of low and moderate income can afford, there exists within the state of Minnesota a serious shortage of decent, safe and sanitary housing at prices or rentals within the means of persons of low and moderate income." Minn. Stat., Sec. 462A.02 (1)

Subdivision 2 continues as follows:

> "[This housing shortage] is inimical to the safety, health, morals and welfare of the residents of the state and to the sound growth and development of its communities." Minn. Stat., Sec. 462A.02 (1)

Subsequent subdivisions set out additional legislative findings about housing conditions in Minnesota.

Statements of policies or legislative findings should be used only to encourage court approval for laws on the perimeter of acceptable governmental activities. They are neither necessary nor desirable for bills in which the purpose of governmental involvement is clear.

Drafters should also be aware of the following statement by the Minnesota Supreme Court:

> "In determining whether an act of state constitutes a performance of a governmental function or a public purpose which will justify expenditure of public money, a legislative declaration of public purpose is not always controlling, and determination of what is and what is not a public purpose or performance of a governmental function initially is for the legislature but in the final analysis must rest with courts." *Minnesota PCA v. Hatfield,* 294 Minn. 260, 200 N.W.2d 572 (1972).

If statements of policies or findings are used, therefor, they should be written without resort merely to catch-all phrasing, such as "for the public welfare." If the court must be convinced that the activity is for a public purpose or in performance of a governmental function, policy statements or legislative findings should delineate specific reasons necessitating state involvement in the area in question.

(j) Restrictions on Loan of the State's Credit

> "The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided." Const. art. XI, sec. 1.

(k) Debt Limits

"The state may contract public debts for which its full faith, credit and taxing powers may be pledged at the times and in the manner authorized by law, but only for the purposes and subject to the conditions stated in section 5. Public debt includes any obligation payable directly in whole or in part from a tax of state wide application on any class of property, income, transaction or privilege, but does not include any obligation which is payable from revenues other than taxes." Const. art. XI, sec. 4.

"Public debt may be contracted. . . for the following purposes:

(a) to acquire and to better public land and buildings and other public improvements of a capital nature and to provide money to be appropriated or loaned to any agency or political subdivision of the state for such purposes if the law authorizing the debt is adopted by the vote of at least three-fifths of the members of each house of the legislature;

(b) to repel invasion or suppress insurrection;

(c) to borrow temporarily as authorized in section 6;

(d) to refund outstanding bonds of the state or any of its agencies whether or not the full faith and credit of the state has been pledged for the payment of the bonds;

(e) to establish and maintain highways subject to the limitations of article XIV;

(f) to promote forestation and prevent and abate forest fires, including the compulsory clearing and improving of wild lands whether public or private;

(g) to construct, improve and operate airports and other air navigation facilities;

(h) to develop the state's agricultural resources by extending credit on real estate security in the manner and on the terms and conditions prescribed by law; and

(i) as otherwise authorized in this constitution.

As authorized by law political subdivisions may engage in the works permitted by (f) and (g) and contract debt therefor." Const. art. XI, sec. 5.

"As authorized by law certificates of indebtedness may be issued during a biennium, commencing on July 1 in each odd-numbered

year and ending on and including June 30 in the next odd-numbered year, in anticipation of the collection of taxes levied for and other revenues appropriated to any fund of the state for expenditure during that biennium. . . ." Const. art. XI, sec. 6.

"Public debt other than certificates of indebtedness authorized in section 6 shall be evidenced by the issuance of bonds of the state. All bonds issued under the provisions of this section shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose. . . . When the full faith and credit of the state has been pledged for the payment of bonds, the state auditor shall levy each year on all taxable property within the state a tax sufficient with the balance then on hand in the fund to pay all principal and interest on bonds issued under this section due and to become due within the ensuing year and to and including July 1 in the second ensuing year. The legislature by law may appropriate funds from any source to the state bond fund. The amount of money actually received and on hand pursuant to appropriations prior to the levy of the tax in any year shall be used to reduce the amount of tax otherwise required to be levied." Const. art. XI, sec. 7.

"The permanent university fund of this state may be loaned to or invested in the bonds of any county, school district, city or town of this state and in first mortgage loans secured upon improved and cultivated farm lands of this state, but no such investment or loan shall be made until approved by the board of investment; nor shall a loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 percent of the assessed valuation of the taxable property of the county, school district, city or town issuing the bonds; nor shall any farm loan or investment be made when the investment or loan would exceed 30 percent of the actual cash value of the farm land mortgaged to secure the investment; nor shall investments or loans be made at a lower rate of interest than two percent per annum nor for a shorter period than one year nor for a longer period than 30 years." Const. art. XI, sec. 9.

"The legislature shall not authorize any county, township or municipal corporation to become indebted to aid in the construction or equipment of railroads to any amount that exceeds five per cent of the value of the taxable property within that county, township or municipal corporation. . . ." Const. art. XI, sec. 12.

"The legislature may provide by law for the sale of bonds to carry out the provisions of [article XIV,] section 2 [authorizing a state trunk highway system]. .... The proceeds shall be paid into the trunk highway fund. Any bonds shall mature serially over a term not exceeding 20 years, shall not be sold for less than par and accrued interest and shall not bear interest at a greater rate than five percent per annum. If the trunk highway fund is not adequate to pay principal and interest of these bonds when due, the legislature may levy on all taxable property of the state in an amount sufficient to meet the deficiency or it may appropriate to the fund money in the state treasury not otherwise appropriated." Const. art. XIV, sec. 11.

"No [anticipation of tax revenue] certificates shall be issued in an amount which with interest thereon to maturity, added to the then outstanding certificates against a fund and interest thereon to maturity, will exceed the then unexpended balance of all money which will be credited to that fund during the biennium under existing laws. ...." Const. art. XI, sec. 6.

".... All bonds issued [for public debt, not including anticipation of tax revenue certificates] shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose. ...." Const. art. XI, sec. 7.

"The legislature shall not authorize any county, township or municipal corporation to become indebted to aid in the construction or equipment of railroads to any amount that exceeds five per cent of the value of the taxable property within that county, township or municipal corporation. ...." Const. art. XI, sec. 12.

"Bonds issued [to finance the state trunk highway system] and unpaid shall not at any time exceed $150,000,000 par value. ...." Const. art. XIV, sec. 11.

(l) Public Purpose Doctrine

"Taxes shall be...levied for public purposes...." Const. art. X, sec. 1.

See discussion under section 3.3 (i) of this book.

(m) Power of Taxation

"The power of taxation shall never be surrendered, suspended or contracted away." Const. art. X, sec. 1.

"Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes . . ." Const. art. X, sec. 1.

". . . [P]ublic burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this section. There may be exempted from taxation personal property not exceeding in value $200 for each household, individual or head of a family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning." Const. art. X, sec. 1.

"To encourage and promote forestation and reforestation of lands whether owned by private persons or the public, laws may be enacted fixing in advance a definite and limited annual tax on the lands for a term of years and imposing a yield tax on the timber and other forest products at or after the end of the term." Const. art. X, sec. 2.

"Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state an occupation tax on the valuation of all ores mined or produced, which tax shall be in addition to all other taxes provided by law. The tax is due on the first day of May in the calendar year next following the mining or producing. The valuation of ore for the purpose of determining the amount of tax shall be ascertained as provided by law. Funds derived from the tax shall be used as follows: 50 percent to the state general revenue fund, 40 percent for the support of elementary and secondary schools and ten percent for the general support of the university." Const. art. X, sec. 3.

"The state may levy an excise tax upon any means or substance for propelling aircraft or for propelling or operating motor or other vehicles or other equipment used for airport purposes and not used on the public highways of this state." Const. art. X, sec. 4.

"The legislature may tax aircraft using the air space overlying the state on a more onerous basis than other personal property. Any

such tax on aircraft shall be in lieu of all other taxes. The legislature may impose the tax on aircraft of companies paying taxes under any gross earnings system of taxation notwithstanding that earnings from the aircraft are included in the earnings on which gross earnings taxes are computed. The law may exempt from taxation aircraft owned by a nonresident of the state temporarily using the air space overlying the state." Const. Art. X, Sec. 5.

"Laws of Minnesota 1963, Chapter 81, relating to the taxation of taconite and semi-taconite, and facilities for the mining, production and beneficiation thereof shall not be repealed, modified or amended, nor shall any laws in conflict therewith be valid until November 4, 1989. Laws may be enacted fixing or limiting for a period not extending beyond the year 1990, the tax to be imposed on persons engaged in (1) the mining, production or beneficiation of copper, (2) the mining, production or beneficiation of copper-nickel, or (3) the mining, production or beneficiation of nickel. Taxes imposed on the mining or quarrying of taconite or semi-taconite and on the production of iron ore concentrates therefrom, which are in lieu of a tax on real or personal property, shall not be considered to be occupation, royalty, or excise taxes within the meaning of this amendment." Const. art. X, sec. 6.

"The legislature by law may tax motor vehicles using the public streets and highways on a more onerous basis than other personal property. Any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes imposed by political subdivisions solely for highway purposes. The legislature may impose this tax on motor vehicles of companies paying taxes under the gross earnings system of taxation notwithstanding that earnings from the vehicles may be included in the earnings on which gross earnings taxes are computed. The proceeds of the tax shall be paid into the highway user tax distribution fund. The law may exempt from taxation any motor vehicle owned by a nonresident of the state properly licensed in another state and transiently or temporarily using the streets and highways of the state." Const. art. XIV, sec. 9.

"The legislature may levy an excise tax on any means or substance used for propelling vehicles on the public highways of this state or on the business of selling it. The proceeds of the tax shall be paid into the highway user tax distribution fund." Const. art. XIV, sec. 10.

(n) Appropriations

"No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Const. art. XI, sec. 1.

3.23 [APPROPRIATIONS.] A standing appropriation, within the meaning of sections 3.23 and 3.24, is one which sets apart a specified or unspecified and open amount of public money or funds of the state general fund for expenditure for any purpose and makes that amount, or some part of it, available for use continuously and at a time more distant than the end of the second fiscal year after the session of the legislature at which the appropriation is made.

Every appropriation stated to be an "annual appropriation," "payable annually," "appropriated annually," or "annually appropriated," and every appropriation described by equivalent terms or language is to be included among the standing appropriations as hereinbefore defined. Minn. Stat., Sec. 3.23.

3.24 [STANDING APPROPRIATION REPEALED.] Each and every provision of the laws of Minnesota constituting a standing appropriation of money from the general fund, or derived from any revenue of the state, or in any way justifying the continuous payment of any money from the treasury of the state, is hereby repealed, except in cases where there is a provision for a tax levy or fees or receipts for any purpose and set apart in a special fund, and also excepting the miscellaneous receipts of all state educational, charitable, and penal institutions, and the state agricultural society; and all standing or continuous appropriations not based on a tax levy, fees, or receipts, as heretofore provided, are hereby abolished and terminated and each and every word, clause, and paragraph providing for such appropriations is hereby stricken from the laws of this state, respectively, in which they occur.

All acts containing provisions for standing appropriations shall remain unaffected by sections 3.23 and 3.24, except as to such appropriations and the amount thereof. Minn. Stat., Sec. 3.24.

16A.28 [APPROPRIATIONS TO REVERT TO STATE TREASURY.] Except as specifically provided for in appropriation acts, every appropriation or part thereof of any kind hereafter made subject to the provisions of this section remaining unexpended and unencumbered at the close of any fiscal year shall lapse and the commissioner shall cause same to be returned to the fund from which such appropriation was made; provided, that the commissioner, with the approval of the governor, may reinstate a lapsed

appropriation within three months after the date the appropriation lapsed. An appropriation reinstated pursuant to this section shall lapse no later than three months after the date the appropriation has lapsed. No payment may be made pursuant to a reinstated appropriation except as provided under section 16A.15, subdivision 3. Notwithstanding the foregoing, an appropriation for construction or other permanent improvement shall not lapse until the purposes for which the appropriation was made shall have been accomplished or abandoned unless such appropriation has stood during the entire fiscal biennium without any expenditure therefrom or encumbrances thereon.

On October 16 of each year all allotments and encumbrances for the preceding fiscal year shall be cancelled unless an agency certifies to the commissioner that there is an encumbrance incurred pursuant to law for services rendered or goods ordered in the preceding fiscal year. The commissioner may reinstate that portion of the cancellation needed to meet the certified encumbrance or he may charge the certified encumbrance against the current year's appropriation.

Except as otherwise expressly provided by law, the provisions of this section shall apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made, but shall not, unless expressly so provided by law, apply to any fund or balance of a fund derived wholly or partly from special taxes, fees, earnings, fines, federal grants, or other sources which are by law appropriated for special purposes by standing, continuing, or revolving appropriations. Minn. Stat., Sec. 16A.28.

(o) Administrative Rule Making

15.0412 [RULES, PROCEDURES.] Subdivision 1. Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in sections 15.0411 to 15.052, and only pursuant to authority delegated by law and in full compliance with its duties and obligations. Except as provided in subdivision 3, sections 15.0411 to 15.052 shall not be authority for an agency to adopt, amend, suspend or repeal rules. No agency shall adopt a rule which duplicates language contained in Minnesota Statutes unless the hearing examiner determines that duplication of the language is crucial to the ability of a person affected by a rule to comprehend its meaning and effect. Minn. Stat., Sec. 15.0412, Subd. 1.

"'Agency' means any state officer, board, commission, bureau, division, department, or tribunal, other than a court, having a

statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. 'Agency' also means the capitol area architectural and planning board. Sections 15.0411 to 15.052 do not apply to (a) agencies directly in the legislative or judicial branches, (b) emergency powers in Laws 1951, Chapter 694, Title III, Sections 301 to 307, (c) corrections board and pardon board, (d) the unemployment insurance program in the department of economic security, (e) the director of mediation services, (f) the workers' compensation division in the department of labor and industry, (g) the workers' compensation court of appeals, (h) board of pardons, or (i) the department of military affairs. Sections 15.0418 to 15.0426 do not apply to the Minnesota municipal board." Minn. Stat., Sec. 15.0411, Subd. 2.

"'Rule' includes every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include (a) rules concerning only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public; or (b) rules of the commissioner of corrections relating to the internal management of institutions under his control and those rules governing the inmates thereof prescribed pursuant to section 609.105; or (c) rules of the division of game and fish published in accordance with section 97.53; or (d) rules relating to weight limitations on the use of highways when the substance of such rules is indicated to the public by means of signs; or (d) opinions of the attorney general." Minn. Stat., Sec. 15.0411, Subd. 3.

(p) School Lands and Other Public Lands; Restrictions on Disposition

"The permanent school fund of the state consists of (a) the proceeds of lands granted by the United States for the use of schools within each township, (b) the proceeds derived from swamp lands granted to the state, (c) all cash and investments credited to the permanent school fund and to the swamp land fund, and (d) all cash and investments credited to the internal improvement land fund and the lands therein. No portion of these lands shall be sold otherwise than at public sale, and in the manner provided by law. All funds arising from the sale or other disposition of the lands, or income accruing in any way before the sale or disposition thereof, shall be credited to the permanent school fund." Const. art. XI, sec. 8.

"As the legislature may provide, any of the public lands of the state, including lands held in trust for any purpose, may be exchanged for lands of the United States or privately held lands with the unanimous approval of the governor, the attorney general and the state auditor. Lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The state shall reserve all mineral and water power rights in lands transferred by the state." Const. art. XI, sec. 10.

"School and other public lands of the state better adapted for the production of timber than for agriculture may be set apart as state school forests, or other state forests as the legislature may provide. The legislature may also provide for their management on forestry principles. The net revenue therefrom shall be used for the purposes for which the lands were granted to the state." Const. art. XI, sec. 11.

(q) Eminent Domain

"Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured." Const. art. I, sec. 13.

"Land may be taken for public way and for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for land and for the damages arising from taking it. All corporations which are common carriers enjoying the right of way in pursuance of the provisions of this section shall be bound to carry the mineral, agricultural and other productions of manufacturers on equal and reasonable terms." Const. art. XIII, sec. 4.

(r) Independence of the University of Minnesota

"All the rights, immunities, franchises and endowments heretofore granted or conferred upon the university of Minnesota are perpetuated unto the university." Const. art. XIII, sec. 3.

"Sec. 4. The government of this University shall be vested in a Board of twelve Regents, who shall be elected by the Legislature...." Terr. L. 1851, Ch. 3.

(s) Local or Special Laws

For a review of the constitutional prohibitions and restrictions on special laws and how to draft special laws, see section 7.4 of this book.

4

BILL DRAFTING

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4.8 Bill Summaries
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4.1 Generally

A bill is the most important and most common legislative vehicle. It is the only form which carries the words "An Act" in its title and the enacting clause prescribed in the constitution. The exact form of a bill varies according to its purpose. The purpose may be any one or combination of the following:

(a) to create a new law

(b) to amend existing law

(c) to repeal existing law

(d) to appropriate money from the treasury

(e) to propose an amendment to Minnesota's Constitution.

Each bill draft follows a standard framework. The framework, however, is only standard in its broadest sense. Each bill is a custom product and the drafter may modify the framework if it is necessary to draft an effective bill.

Bills will usually follow the following framework:

(a) Title

(b) Enacting Clause

(c) Legislative intent and purpose provisions

(d) Basic provisions

1. New Law
2. Laws amended

(e) Miscellaneous Special Provisions

1. Interpretation clause
2. Saving or Nonsaving Clauses
3. Repealers
4. Appropriations
5. Effective Date

(f) Bill Analyses

For the purpose of demonstrating the proper method of drafting, the following discussion will consider each of the parts of the bill separately.

At the end of this chapter is a comprehensive set of forms to illustrate the matters discussed.

4.2 Title

(a) General Requirements

The Minnesota Constitution provides in Article IV, Section 17, that "No law shall embrace more than one subject, which shall be expressed in its title." Joint rule 2.01 of the Senate and House states: "The title of each bill shall clearly state its subject and briefly state its purpose."

In view of these provisions, the drafter is faced with three objectives in drafting a title:

(1) The title must contain only the one subject of the bill; and,

(2) The title must express the contents of the bill (conversely, the bill may not contain anything which is not expressed in the title); and,

(3) The title should be clear and brief.

(b) The One-Subject Rule

The one subject rule is intended to prevent logrolling and riders. It was probably easier to comply with in 1857 when the constitution was written since bills then tended to be shorter and limited in effect. Today, however, one piece of legislation may be comprehensive in material treated.

The subject expressed in the title is sufficient if all matters contained in the bill are clearly related to the subject expressed. If there is any doubt as to the relation of subject matter, the drafter should do one of two things:

(1) Redraft to make the relation of subject matter explicit;
or,

(2) Separate the subjects into two or more bills.

(c) The Expression in the Title Rule

This rule is intended to give fair notice to everyone as to what the bill contains. It prevents legislation by deception. It also reenforces the anti-logrolling and anti-rider restriction of the "one subject" rule.

It is not necessary that the title of the bill be an index of the bill or express every alternative or nuance in the bill.

To avoid difficulties, the drafter should ensure that the title fairly indicates the subject and that nothing is being concealed. In order to accomplish this objective, it is best to draft the title after drafting the bill.

(d) Drafting Format

In Minnesota the format of a bill's title is very formalized and has several "parts" divided by semicolons. They are:

(1) Opening Boilerplate. The opening five words are always "A bill for an act." If the bill is ultimately passed, these words are removed in the enrolling process and replaced by the words "AN ACT."

(2) The General Subject. The general subject always begins "relating to . . . ." The subject is always the broad area involved. Some examples would be: education, taxation, highways, state government, energy, crimes and criminals, etc. If the law is a broad recodification, it may be possible that the general subject is all that is needed. Then, however, the subject, after the first semicolon, should be expressed as "recodifying the laws governing . . . ."

(3) The Object or Specific Subject. This phrase usually begins with some phrase other than "relating to." It may be "authorizing," "empowering," "providing,' "creating," "abolishing," "restricting" or similar words. The remainder should give the specific thrust of the bill.

In two instances specific language must be added following the object or specific subject. They are:

First, when the bill contains an appropriation, in which case the phrase "; appropriating money;" should be used.

Second, when a criminal penalty is imposed, in which case the phrase "; imposing a penalty;" should be used.

(4) A List of Existing Statute Sections Amended. When a section or subdivision of Minnesota Statutes is amended, that section or subdivision must be recited in the title. The typical format is: "amending Minnesota Statutes 1978, Section 12.34."

If only a subdivision is amended, the section and subdivision are designated. An example is: "amending Minnesota Statutes 1978, Section 12.34, Subdivision 4."

There are many other variations which are set out in the forms at the conclusion of this chapter.

(5) A List of Existing Statutes Repealed. In similar fashion to sections amended, all sections or subdivisions repealed are listed.

4.3 Enacting Clause

An enacting clause is required in every bill, and its style is fixed by Article IV, Section 22 of the Minnesota Constitution. Its wording is:

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

Only bills have enacting clauses. See chapter 7 for the various forms of "resolving clauses" used in resolutions.

4.4 Purpose or Policy — Short Title

(a) Statement of Purpose or Policy

A statement of purpose or policy, sometimes termed "Legislative Intent" should be utilized only when specifically requested. If the bill is otherwise clear, as should be the case, speculation as to what the legislature intended will serve no practical purpose.

One example of a statement of policy is found in Minnesota Statutes, Section 32A.02. The section prohibits unfair trade practices in the dairy industry. It provides:

> 32A.02 [PUBLIC POLICY.] It is hereby declared to be the policy of the legislature, recognizing that "selected dairy products," as herein defined, are important sources of revenue to a large number of citizens of this state engaged in producing, processing, manufacturing or selling such products and are important items of food essential to the health and welfare of the people of this state and that certain trade practices have developed within this state in the sale and distribution of such products which result in unfair competition and upset the orderly marketing of such products, causing financial loss to the producers in this state of the milk or cream used in "selected dairy products," to protect the health and welfare of our people and to preserve the traditional markets and outlets for our producers of such milk or cream and to restore the orderly marketing in this state of "selected dairy products" and to eliminate certain trade and marketing practices which are done with the intent of or have the effect of destroying, lessening or restraining competition or injuring one or more competitors or injuring one or more persons dealing in "selected dairy products" or impairing or preventing fair competition in the sale of "selected dairy products", to prevent disturbances in the dairy products industry which threaten to destroy or seriously impair the supply of dairy products; and to develop and maintain satisfactory marketing conditions and bring a reasonable amount of stability and prosperity in the production and marketing of "selected dairy products", and to assure the producer a reasonable return for his product, and to eliminate discriminatory practices against independent merchants and other retailers in the sale of "selected dairy products". All of the provisions of sections 32A.01 to 32A.09 shall be liberally construed to achieve these ends and administered and enforced with a view to carrying out the above declaration of policy.

Another example is Minnesota Statutes, Section 270.32. It deals with the purpose of the "Minnesota Tree Growth Tax Law". It provides:

> 270.32 [PUBLIC POLICY.] The present general system of ad valorem taxes in the state of Minnesota as applied to forest lands does not provide an equitable basis of taxation and has resulted in inadequate taxes on some lands and excessive tax forfeiture on other lands.

Therefore it is the declared public policy of this state that the public interest would be best served by encouraging private forest landowners to retain and improve their holdings of forest lands upon the tax rolls of the state and to promote better forest management of such lands by appropriate tax measures, therefore, sections 270.31 to 270.39 are enacted for the purpose of permitting privately owned lands generally suitable for the planting, culture and growth of continuous forest products to be taxed on the basis of the annual increase in value in accordance with the following provisions.

(b) Citation or Short Title

Occasionally a lengthy or comprehensive bill may require a citation or short title. Many instances can also be found where even a single section act has been given a citation or short title. While the use of citations or short titles is not encouraged, they should be used in instances where deemed desirable or, more often, in instances where the requestor specifies.

When used, the citation should be contained in a separate section immediately following the enacting clause or near the end of the bill preceding only the repealer section and effective date section, if any. For example:

> Section 1. [Citation.] Sections 1 to 21 may be cited as the "State of Minnesota Property Tax Refund Act."

> Subd. 7. This section may be cited as the "Uniform Simultaneous Death Act."

A citation should use the terminology "Sections 1 to . . ." rather than "This Act". This is particularly necessary in an instance where an act contains amendatory sections which are numerically separated in Minnesota Statutes (See Section 10.8(d) of this book).

4.5 Definitions

A definition section is frequently used in drafting a bill. It follows the statement of purpose or policy if this statement is used. The purpose of the definition section may be to:

(a) Define words or phrases requiring definition; or,

(b) Reduce the length of a bill by eliminating repetition of a lengthy title of, for example, a board, commission, or agency.

If more than one term is to be defined, each term should be set out in a separate subdivision as follows;

> "Section 1. [DEFINITIONS.] Subdivision 1. As used in sections 2 to 20, the terms defined in this section have the meanings given them.
>
> Subd. 2. "Engineering" means the [etc.]
>
> Subd. 3. "Board" means the board of architecture, engineering, land surveying and landscape architecture."

In the example above, Subdivision 1 represents the standard opening subdivision of all multiple definition sections; Subdivision 2 represents a term requiring definition; Subdivision 3 represents a good example of a definition used to avoid repetition.

A definition should be simply what it purports to be. Do not write substantive law into a definition. For an example, see Minnesota Statutes, Section 645.44, Subdivision 5.

If the term defined is restrictive, use "means". If inclusive, use "includes". Seldom is it necessary to use both in one definition.

Certain terms are defined by law. In this regard, see section 3.3 (d) of this book. The terms defined therein should not be re-defined, unless some variance in meaning is intended. If a variant definition is intended, then the bill draft should specifically state it is an exception from the general definition.

If a definition is found in Minesota Statutes, other than the general definition section, which is acceptable for use in the new law, the drafter should either incorporate the definition by reference or repeat the entire definition. Incorporation by reference may be preferable since this will result in shortening the draft. However the drafter should be careful of incorporating other definitions by reference if the other statute is unrelated in subject matter. The incorporation might give the false impression that the old and new statutes are related.

4.6 Basic Provisions

(a) New Law

When a drafter is preparing a bill consisting primarily of new law rather than amendment of existing law, the sections and subdivisions should be arranged and subdivided like those which already exist in Minnesota Statutes. The drafter should generally divide the bill into relatively short sections and, when length or content of the subject matter requires, subdivide the sections. This makes for easier reading and facilitates later amendments.

The preferable arrangement of provisions within a bill varies with each bill, but regardless of the type of bill, should be in a logical order.

There are a variety of ways to develop the necessary logical order for complex legislation. All the ways have one factor in common. That factor is that a drafter cannot receive a drafting request and just sit down and start writing. To do so is a prescription for poor drafting or, even worse, drafting which does violence to existing statutes.

At least three methods can be used in developing the logical order of complex legislation. They are: the "assembly of the parts" method; the "preliminary outline" method; and the "key provision first then fill in the detail" method. There are undoubtedly others, perhaps as many methods as there are drafters. But an individual method cannot be developed without some thought. The three recommended methods of developing logical order will each be discussed.

The "assembly of the parts" method is described by Jack Davies, Professor of Law at William Mitchell College of Law and Minnesota State Senator, in his book *Legislative Law and Process in a Nutshell* (West Publishing Co., 1975). Professor Davies says:

> "One way to speed drafting is to view a bill as a collection of separate parts. The easiest provisions can be drafted first. As sections accumulate they are put in sequence; there is freedom to insert forgotten provisions at any time and to rearrange everything if a more logical structure comes to mind. A grand outline is unnecessary, for sections are surprisingly self-contained. The most powerful section is often the easiest to draft. It will state the rule of law to be imposed, or the mission of the agency to be created, or the newly imposed task to be performed. The detailed and difficult provisions are those that define when and where and to whom the law is applicable. They can be drafted later. Usually they grow slowly through a first rough draft to seventh and eighth versions as the draftsman's imagination suggests appropriate limitations and exclusions or expansions of coverage. Eventually, the draftsman produces a product he dares turn over to someone else for comment, or study, or further drafting--or introduction. Only the simplest or roughest bills go from the start of drafting to formal introduction with one draftsman." (*Legislative Law and Process in a Nutshell,* pg. 111.)

The "preliminary outline" method envisions the complete development of the proposed bill in outline form before drafting any of the text. The outline should be reworked until all necessary provisions in the bill are known and they fit together as a logical, consistent whole. This manner is particularly advantageous when it is known that the various sections of the bill will be

interdependent and internal cross-references will be frequent. It may also assist in ensuring that everything that should be provided for in the draft will be provided for and that individual sections do not contain material which is more logically placed elsewhere.

The "key provision first then fill in the detail" method envisions the development of core or principal provisions first. Once they are fully developed and "finalized" the other, or "detail" provisions are drafted. Those who use this method feel that most bills contain keystone provisions and that any remaining "detail" provisions (such as administrative provisions, organization, appellate procedure, forms, et cetera) can be easily developed once the "keystone" has been finalized.

Regardless of the method for developing the bill, the final product must follow certain required formats.

The bill drafter should draft headnotes for each section, using all capital letters in brackets; headnotes should be put in subdivisions only when absolutely necessary.

The drafter should propose coding for new law which will be coded. If the drafter has difficulty determining proposed coding, then the Editor of the Minnesota Statutes should be consulted.

Neither the headnotes nor the proposed coding become law if the bill is passed; they merely provide guidance to those who make coding and headnote decisions during the editorial process.

In a bill for a new law, the Joint Rules provide that "sections and subdivisions shall be arranged, subdivided and numbered in like manner as the Minnesota Statutes".

A drafter should avoid long and complicated sections when drafting. The better practice is to create additional sections or to break a section into smaller elements.

In addition to dividing a section into subdivisions, subdivisions may be divided into paragraphs (Minnesota Statutes, Section 645.47), and paragraphs may be divided into clauses. No further subdividing should be used. The breakdown of the various possible parts of a section is as follows:

Part	Example
Section	645.45
Subdivision	Subd. 2.
Paragraph	(a)
Clause (or item)	(2)

In some drafts there are no paragraph-like elements but there are clauses or items. In these cases, the letter identification of paragraphs may be skipped and only clause or item identification used.

The drafter should keep the possible divisions of a chapter in mind. When drafting legislation with numerous inter-related sections each containing exceptions and exceptions to exceptions, it is best to use the "outline' system permitted by the possible divisions rather than to create sentences that are paragraphs or even pages long.

An example of how the "outline" method can simplify a statute is shown by comparison of the following two examples.

Example 1

"Sec. 4. [SPECIFICATIONS OF PETROLEUM PRODUCTS.] Subdivision 1. [GASOLINE.] No gasoline shall be sold for use in motor vehicles unless it shall conform to the following specifications:

(a) It shall be free from water, suspended matter, and all impurities, except for:

1) trace elements; or,

2) gasoline produced for use in experimental equipment and clearly labeled for such use;

(b) The initial boiling point shall not be higher than 131 degrees Fahrenheit.

Subd. 2. [FUEL OIL.] No fuel oil shall be sold unless it shall conform to the following specifications:

(a) It shall be free from water, suspended matter, and all impurities;

(b) It shall not flash below 110 degrees Fahrenheit."

Example 2

"Sec. 4. [SPECIFICATIONS OF PETROLEUM PRODUCTS.] Gasoline shall not be sold for use in motor vehicles unless it shall be free from water, suspended matter and all impurities, except for trace elements and gasoline produced for use in experimental equipment and clearly labeled for such use; and also have an initial boiling point not higher than 131 degrees Fahrenheit. Fuel oil shall not be sold unless it shall be free from water, suspended matter, and other impurities; and shall not flash below 110 degrees Fahrenheit."

The former example is much more clear than the second example.

Regardless of how a section is divided, only short and simple sentences should be used. Disregard of this principle will create statutes which are difficult to understand and more likely to be misconstrued. Multiple short sentences are easier and faster to write anyway.

In a bill consisting entirely of new law, new law is not underlined. However, if any sections are amendatory then the entire bill is considered amendatory and all new language must be underlined.

(b) Amended Old Law

A section of a bill amending existing law should begin by stating exactly which section or subdivision of Minnesota Statutes or Session Laws is being amended. The subdivision is the minimum unit which may be amended (See, Joint Rule 2.01), despite the fact that the subdivision may be divided into paragraphs or the paragraphs into clauses. Then the existing law should be set forth with parts which are to be deleted lined out and new words underlined. New language must follow deleted old language or punctuation. Language should never be stricken and then re-inserted with underlining.

Sections of Minnesota Statutes or the Supplement should be amended in a bill in numerical order, followed by amendments to sections of Session Laws.

Changes should be made, if necessary, in the headnotes to reflect amendments. Strikeouts and underlining are not used to show these changes since headnotes are not a part of the law.

When a section is being amended by adding a subdivision, although not required, a drafter should consider showing the proposed new subdivision in its proper place with all new language underlined and the new subdivision numbers. This is necessary in order to show the new subdivision in its proper context. Only when the language of a new subdivision makes sense on its own should the section be added by merely ordering a subdivision added and reciting only the language of the new subdivision.

Many drafts may consist both of totally new sections and amendments to existing sections. When this occurs, the new sections with their proposed coding are inserted into the draft in the proper order with existing statutory sections proposed for amendment. The result is that a new section may be followed by an amended section which is followed by another new section et cetera. By drafting this way all changes in the statutes are shown in the order they will occur.

4.7 Miscellaneous Special Provisions

Following the primary drafting of new or amendatory law, various other provisions must usually be added. All these sections have common features. First, they are temporary sections needed to implement the law or coordinate with existing law. Second, the sections are not coded (i.e., not inserted in

Minnesota Statutes) and thus have neither proposed coding nor headnotes. Third, they are technical provisions such as providing necessary repealers or the effective date of the act.

(a) Appropriations

The bulk of the money appropriated by the legislature is contained in the general appropriations bills adopted by the legislature during the session held in odd-numbered years. Bills for large appropriations such as for operation of state government, buildings and capital improvements, school aids, et cetera, are discussed in section 7.1 of this book.

There will arise however, numerous requests for the appropriation of money for special projects of programs not contemplated by the major appropriation bills. In most instances, the appropriation will be only one section, usually the final section, of a longer bill establishing, for instance, a new program or agency.

A typical biennial appropriation section would appear substantially as follows:

> "Sec. . . . . The sum of $..... is appropriated from the general fund to the commissioner of administration for the purpose of ....., and shall be available until June 30, 1981."

In the case of a biennial appropriation made during a session in an odd-numbered year the statement "to be available until June 30, 1981" should be used. If made during an even-year session, the same date "June 30, 1981" is still used. This will keep appropriations "in step" with the state's fiscal biennium in general appropriations, and future appropriations can then be made as a line item in the next major appropriations bill previously mentioned. Do not attempt to finance beyond the end of the next biennium in an off-year session or of the current biennium in an even-year session.

Unless otherwise specified, an appropriation is available on July 1 following enactment in accordance with Minnesota Statutes, Section 645.02. If it is desired that the funds be available at an earlier or later date it must be so specified. Similarly, Section 16A.28 provides that an appropriation remaining unexpended or unencumbered at the end of a fiscal year shall lapse. Thus if the appropriation is one for a specific project which may not be completed by the end of the fiscal year, an anti-lapse provision should be added.

Most appropriations are from the "general fund". When the drafter refers to another fund he or she should know why and use the exact name of the fund.

There are several frequent errors in drafting on appropriation provisions.

Don't say "the sum of $..... *shall be* appropriated". The appropriation is made by the legislature by passing the bill. The legislature does not order someone else to do the appropriating. Also, the present tense is preferred in all drafting.

Don't say "the sum of $..... is *hereby* appropriated". "Hereby" is surplusage.

Don't say "the sum of $..... is *annually* appropriated" unless a standing appropriation that would be repeated each year is consciously intended. The recipient loves a standing appropriation, but legislative policy opposes it.

The appropriation should name the official, board, or agency that has statutory power to spend the money.

Describe the purpose of the appropriation in a short phrase, like a headnote, so the commissioner of finance can give the appropriation account an accurate descriptive name. If the purpose is more fully described elsewhere in the bill, and you wish to refer the appropriation to it, say "for salaries as provided in section 10".

For the dollar amount, round off to the nearest thousand or hundred dollars. Don't use cents.

Consider the period for which the appropriation should be available. If the bill has no expressed effective date, and nothing is said about how long the appropriation is available, it will become effective the following July 1, pursuant to Minnesota Statutes, Section 645.02, and lapse on June 30 of the next year, pursuant to section 16A.28. This is normal and desirable. Avoid drafting a bill that contains an appropriation when the bill is effective the day following final enactment. The appropriation is then available immediately but will also lapse on June 30. This is not usually what the requester intends. It may be extended for the next full fiscal year by inserting after the dollar amount the phrase '', and shall be available until June 30, 19..''. Appropriations for construction and repair of real property are available until expended, pursuant to section 16A.28. Other appropriations should not normally "remain available until expended".

Don't create open appropriations of "the amount necessary for this purpose" if that can be avoided. They make budgeting difficult. Give a specific dollar amount for the next fiscal year or for the balance of the biennium.

If the bill contains several appropriation items, sort them out and paragraph them so they may be easily seen.

It may sometimes be desirable to appropriate the proceeds of a license fee to the agency administering the act in order to finance administration. This may be done by creation of a revolving account.

Examples of various appropriation sections, including standing and revolving account appropriations, which can be used in bills which are basically on other subjects can be found at the end of this chapter.

While not involved with general appropriations bills, all drafters should be familiar with their method of drafting. It is discussed in section 7.1 of this book.

(b) Interpretation Clauses

Statutes are ordinarily construed to effectuate the intention of the legislature and secure the most beneficial operation which is a familiar rule of construction. The statement of this principle is set forth in Minnesota law. See section 2.4 of this book. In view of this, a section directing that a section be "liberally interpreted" to accomplish its stated purpose, is of no value. Such a section should not be inserted unless specifically indicated by the requester.

Uniform acts usually carry a provision which provides for interpretation so as to "make uniform the laws with respect to the subject of the act". Such a section will ensure that the provision is recognized as a uniform act. For further discussion see section 2.7 (i).

Legislation should never contain directives to the courts indicating policy on specific factual situations.

(c) Effective Date

(1) For General Laws. Minnesota Statutes, Section 645.02, provides that acts without effective date, except those making appropriations, are effective at 12:01 A.M. August 1 next following final enactment. Unless another effective date is specified, an act containing one or more appropriations sections is effective at the beginning of July 1 next following its final enactment.

If a requester wants to speed an act into effect, or if he wants to provide a delay to allow preparations to be made for an act's provisions, or in certain other special cases (e.g. when taxable years are involved), the drafter should include a section at the end of the bill clearly stating when the act, or each of its provisions, is to be effective.

Avoid references to specific dates or the use of phrases like "on the date of enactment" in any section of a bill except the "effective date" section. Use instead "on the effective date of section[s] ..... as provided by section .....". This can prevent conflicting effective dates.

(2) For Special Laws. Special laws, laws of local rather than general application, are effective in accordance with Minnesota Statutes, Sections 645.02 through 645.024.

When a special law requires local approval, as most do, the law becomes effective when the requirements of Minnesota Statutes, Section 645.021 (filing one or more certificates of approval with the Secretary of State) are met. When a special law does not require local approval, it becomes effective at the same time as detailed for a law of general application. Use a local approval section on a local or special law unless instructed to the contrary.

(3) For Unusual Cases. Property tax laws must be effective beginning with a certain year's tax levy (payable the following year).

Income tax laws must be effective beginning with a certain taxable year.

Certain laws — e.g. income tax laws — can be made effective retroactively.

In most cases a bill containing an appropriation should be made effective July 1 so that the whole bill can be effective at once (at the beginning of a fiscal year — the specified time for effective date of appropriations).

(d) Saving or Nonsaving Clause

A saving clause is a section which is occasionally inserted into a bill and which is designed to preserve from destruction certain rights, remedies, or privileges which would otherwise be destroyed by the bill, particularly repeals and amendments.

Minnesota Statutes contain three general savings provisions. Section 645.21, dealing with the presumption against retroactive effect; Section 645.31, dealing with the operative effect of amendatory laws; and Section 645.35, dealing with the effect of repeals. The use of each is discussed in section 2.6 (d)(4) of this book.

In view of the existing general saving statutes, such a provision should not be inserted into a bill except by the direction of the requester.

There may also arise instances where the intent of the proposed bill repealing or amending certain laws is to strike down pending actions or rights. If this be the case, the bill must say so clearly, or the general saving statute will apply. This gives rise to the possible use of a "nonsaving clause", in effect the reverse of a saving clause. In this regard, a simple statement that "Minnesota Statutes, Section 645.21 [or sections 645.31 or 645.35, as appropriate] shall not be construed to apply to this act." would be held sufficient. The provision could be modified to cite only the particular section or sections that are relevant.

(e) Repealers

A bill drafter should always check existing law for provisions inconsistent with the bill being drafted. Conflicting or superseded existing laws should

be either expressly amended as necessary to make them consistent or expressly repealed in a section (generally the last section unless an effective date section is used), called a repealer which is in the following form:

> "Sec. 10. [REPEALER.] Minnesota Statutes 1978, Sections 51.02, 51.04 and 51.06 are repealed."

If a series of sections is being repealed, each should be listed rather than using "Sections . . . to . . ." to facilitate reference and checking.

The drafter of a bill containing a repealer should endeavor to find all references to the repealed sections or subdivisions elsewhere in the statutes and make appropriate changes in those cross-references.

A bill drafter sould repeal sections only by reference to Minnesota Statutes or session laws. West Publishing Company's Minnesota Statutes Annotated occasionally includes sections based on proposed coding which have not been — and may never be — officially coded.

A general repealer providing that "all laws in conflict with this act are repealed" or using similar words has no legal effect and should never be used. The determination of which laws are repealed should be made by the legislature, not by the courts.

A general repealer is sometimes used in the case of a general bill intended to supersede all special laws in its field. This is because of the difficulty in finding all of the special laws affected. Despite the lack of a proper index of special laws, all affected special laws should be found and repealed and a general repealer not used.

4.8 Bill Summaries

A rule of the House of Representatives provides for the preparation by the Revisor of a bill analysis, consisting of a concise description of the terms of a bill. A bill analysis is not prepared for all bills, but only upon request of a majority of the members of the standing committee to which the bill was referred.

The request should be in writing, signed by the committee chairman, and should indicate that it is made pursuant to action by a majority of committee members. If the bill has been recommended to pass as amended by the committee, a copy of the committee amendment must accompany the request.

An analysis must be entirely objective, and must state the full effect of the bill. The primary purpose of the analysis is to state this effect in a concise and understandable manner. Subjectivity or personal opinion should play no part in preparation of an analysis.

In preparing the bill analysis, the drafter should carefully avoid use of any judgmental words.

There is no single right way to prepare a bill analysis. The analysis is not intended to be an index to everything proposed, but should specify those parts comprising the salient features of the bill. A flat statement as to the effect of the bill should be made only in instances where the bill is clear and will permit no exceptions. Any possible variance or exception to the application of the proposal, whether intentional or not, should be noted.

If analyses of the bill are prepared by either the author or by the staff of other agencies, they should be considered for any information they possess but should not be regarded as controlling.

The final draft of the analysis, labeled as such and noting any committee amendments considered in the analysis, should be transmitted directly to the chairman of the requesting committee, unless otherwise directed by the committee chairman. It is signed by the preparer.

When the committee amendment is adopted and the bill engrossed, the bill analysis is reprinted at the end of the bill.

It should be noted, however, that the House rule providing for bill analysis also provides that the analysis prepared cannot be used to establish legislative history.

A drafting format for a bill analysis is found at the end of this chapter.

4.9 Post-Drafting Procedure

When the drafter has completed his or her work, it is given to an assistant who inputs the bill into the computer bill drafting data base and turns out hard copy for the drafter to examine again. This, however, is not the end of the drafting process. At least four more steps should be carried out.

First, the bill must be proofread. Effective proofreading can only be done by one person reading the drafter's original text out loud while another person follows the new hard copy. Proofreading when done alone is slow and so subject to error as to make it worthless. In addition to mechanical proofreading, an assistant who is aware of the principles of bill drafting can catch errors or recommend improvement to the drafter.

Second, the bill should be examined by the drafter, and, if necessary, redrafted. When drafting complex bills it may be necessary to re-draft several times before the bill is ready for introduction. If time exists, the drafter should show the draft to other drafters. In particular, the advice of those familiar with the subject area or who have done preliminary research which

led to the bill should be consulted. The collective work of several persons on the text is more likely to be an effective draft than the work of one person working alone.

Third, the bill should be given to the requester for examination. After an opportunity for examination the drafter should determine whether the requester's wishes have been effectively carried out. If not, the bill should again be re-drafted.

Fourth, since few bills go through the legislature without amendments at least being considered if not adopted, the drafter should be ready to draft any necessary amendments. As indicated in the section of this manual on amendments, amendments cannot be drafted in isolation from the bill itself. In particular, if called upon to draft amendments to bills drafted by others, the amendment drafter should be careful to preserve the integrity of the bill. In the case of highly complex or specialized legislation, the best course may be to defer to the bill drafter in the drafting of amendments.

4.10 Forms

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EXAMPLES — TITLES

A typical title showing all parts

Opening boilerplate A bill for an act

General subject relating to education;
Specific subject authorizing school districts to provide teacherages;
Sections amended amending Minnesota Statutes 1978, Section 122.12;
Sections repealed repealing Minnesota Statutes 1978, Section 122.34, Subdivision 6.

General title, one section only affected:

relating to [etc.]; amending [or repealing] Minnesota Statutes 1978, Section 12.34.

General title, only one subdivision affected:

relating to [etc.]; amending [or repealing] Minnesota Statutes 1978, Section 456.78, Subdivision 3.

General title, several non-inclusive sections affected:

relating to [etc.]; amending Minnesota Statutes 1978, Sections 12.34; 12.35; 12.38; and 12.40.

General title, several inclusive sections affected:

relating to [etc.]; repealing Minnesota Statutes 1978, Sections 123.45 to 123.48.

Amended since publication of statutes:

relating to [etc.]; amending [or repealing] Minnesota Statutes 1978, Section 234.56, as amended.

Subdivision added since the cited publication:

relating to [etc.]; amending [or repealing] Minnesota Statutes 1978, Section 123.45, Subdivision 6, as added.

Section amended and published in the supplement:

relating to [etc.]; amending [or repealing] Minnesota Statutes, 1979 Supplement, Section 123.45.

Amendment since publication of supplement:

relating to [etc.]; amending [or repealing] Minnesota Statutes, 1979 Supplement, Section 123.45, as amended.

EXAMPLES — TITLES (CONT.)

Amendment to a law not coded:

```
relating to [etc.]; amending [or
repealing] Laws 1945, Chapter 123,
Section 1.
```

Amendment to a law not coded that has already been amended:

```
relating to [etc.]; amending Laws 1953,
Chapter 123, Section 7, as amended.
```

Section amended by adding a subdivision and the text of the entire section is not set out:

```
relating to [etc.]; amending Minnesota
Statutes 1978, Section 78.91, by adding
a subdivision.
```

EXAMPLE — NEW LAW

A bill for an act

relating to public welfare; establishing a senior companion program; appropriating money.

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

Section 1. [CITATION.] Sections 1 and 2 may be cited as the "Minnesota senior companion act".

Sec. 2. [SENIOR COMPANION PROGRAM; ESTABLISHMENT.] Subdivision 1. [SENIOR COMPANIONS.] The Minnesota Board on Aging shall establish a senior companion program to engage the services of low (etc.).

Subd. 2. [COMPENSATION.] Persons serving as senior companions shall be compensated for no more than 20 hours (etc.).

Subd. 3. [GRANTS.] The Minnesota board on aging may make grants-in-aid for the purchase of senior companion (etc.).

Subd. 4. [RULES.] The Minnesota board on aging shall promulgate rules necessary to implement the provisions of (etc.).

Sec. 3. [APPROPRIATION.] The sum of $100,000 is appropriated from the general fund to the commissioner of public welfare for the use by the Minnesota Board on Aging in implementing the senior companion program created by this act, and shall be available until June 30, 1981.

Sec. 4. This act shall be effective July 1, 1980.

NOTE: While this bill is valid, it is preferred that a bill for a new law show proposed coding. See example on page 93.

The bill has sections with subdivisions. While the division of a section into subdivisions naturally occurs in complex legislation, the use of subdivisions even in simpler legislation is encouraged. The insertion of subdivisions now will make the section easier to amend later.

EXAMPLE — NEW LAW

```
1                        A bill for an act
2       relating to crimes and criminals; providing for
3       transportation of certain persons to place of
4       arrest.
5
6  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7       Section 1.  Every county or municipality which causes
8  to be issued a warrant for arrest of a person pursuant to
9  Minnesota Statutes, Section 628.05 or 629.41, shall cause
10 the person, at his request, to be transported to the
11 location of the arrest after a trial or final hearing on the
12 matter.
13      Sec. 2.  [EXCEPTIONS.] Section 1 does not apply:
14      (1) To arrests made outside the state pursuant to
15 Minnesota Statutes, Sections 629.01 to 629.291; or,
16      (2) Where the person is convicted or pleads guilty to
17 any offense; or,
18      (3) Where the arrest is made pursuant to Minnesota
19 Statutes, Section 629.61; or,
20      (4) Where the person has sufficient money on his person
21 to return to the location of the arrest.
```

Note in Section 1 that "Section" is written out but that it is abbreviated for the second and subsequent sections.

Section 1 does not have a headnote while Section 2 does. Some sections of a bill may have headnotes when others do not. It is preferred, however, that all sections to be coded have both a proposed coding and a proposed headnote. See example on page 93.

Pages and lines are numbered automatically by the computer printer. Line 1 is always the first line of the title, which is always "A bill for an act".

EXAMPLE — NEW LAW (with proposed coding and headnote)

A bill for an act

relating to game and fish; authorizing use of portable fish houses within the boundary waters canoe area.

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

Section 1. [101.425] [GAME AND FISH; BOUNDARY WATERS; PORTABLE FISH HOUSES.] Notwithstanding any regulation of the commissioner of natural resources to the contrary, a person may utilize fish houses or dark houses (etc.).

The proposed code number, [101.425], and the headnote, [GAME AND FISH; BOUNDARY WATERS; PORTABLE FISH HOUSES.], are not a part of the law. Appropriate headnotes should be inserted in proposed new law. Proposed coding should also be inserted by the drafter. Do not leave section or subdivision numbers blank.

EXAMPLE — AMENDATORY BILL (Amending a section)

A bill for an act

relating to cemeteries; prohibiting certain activities on public and private cemeteries and Indian burial grounds; requiring the posting of Indian burial grounds; amending Minnesota Statutes 1978, Section 307.08.

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

Section 1. Minnesota Statutes 1978, Section 307.08, is amended to read:

307.08 [DAMAGES; DISCHARGE OF FIREARMS; PENALTY.]

Subdivision 1. Every person who shall willfully destroy, mutilate, injure, or remove any tombstone, monument, or structure placed in any public or private cemetery or authenticated and identified Indian burial ground , or any fence, railing, or other work erected for protection or (etc.).

Subd. 2. Every authenticated and identified Indian burial ground shall be posted every 75 feet around its (etc.).

Subd. 3. (Insert Text)

Subd. 4. (Insert text)

Subd. 5. (Insert text)

Subd. 6. (Insert text)

The section amended here prior to amendment did not have subdivisions. The original section was changed to a subdivision by the addition of "Subdivision 1" in line 12. Additional subdivisions were then appended at the end and numbered appropriately.

EXAMPLE — AMENDATORY BILL (Adding a section)

A bill for an act

relating to public employees; providing for (etc.); amending Minnesota Statutes 1978, Chapter 352E, by adding a section.

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

Section 1. Minnesota Statutes 1978, Chapter 352E, is amended by adding a section to read:

[352E.045] [ATTORNEY'S FEES FOR CLAIMING BENEFITS.] A fee for legal services that is claimed for the work of an attorney relating to a claim made pursuant to the provisions of Minnesota Statutes, Sections 352E.01 to 352E.05 is not (etc.).

Sec. 2. [EFFECTIVE DATE.] Section 1 is effective for fees charged for services performed by an attorney after July 31, 1979.

In section 2 note the reference to "Section 1" being effective on a certain date and not to "this act". The use of "this act" must be avoided. See section 10.8(d) of this book.

The title and section headings note the chapter to which the section is being added.

In the section heading in line 8 the correct wording is "by adding a section" and not "by adding a new section".

New language is underlined. Proposed coding and proposed headnote are in brackets.

EXAMPLE — AMENDATORY BILL (Amending a subdivision)

A bill for an act

relating to taxation; providing for an exception to the application of tax in certain cases of cigarettes stored or used in Minnesota; amending Minnesota Statutes 1978, Section 297.22, Subdivision 3.

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

Section 1. Minnesota Statutes 1978, Section 297.22, Subdivision 3, is amended to read:

Subd. 3. This tax shall not apply to the use or storage of cigarettes in quantities of 200 or less in the possession of any one consumer , provided that the cigarettes were carried into this state by such consumer .

Sec. 2. The provisions of this act are effective the day following its final passage.

No less than a subdivision of a section can be amended, so it is necessary to copy into the bill the entire subdivision, even if it is lengthy.

The title must indicate the part of the law being amended.

Note the punctuation in lines 13 and 14. Punctuation must be treated the same as words; new punctuation must be underlined and punctuation to be omitted must be stricken. The period which existed before is moved to the end of the new language and is not underlined.

In section 2, notice that the section is underlined because the bill is amendatory. However there is no proposed coding or headnote because the section is temporary and not codified.

EXAMPLE — AMENDATORY BILL (Adding a subdivision)

A bill for an act

relating to state parks; prohibiting littering; providing a penalty; amending Minnesota Statutes 1978, Section 85.20, by adding a subdivision.

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

Section 1. Minnesota Statutes 1978, Section 85.20, is amended by adding a subdivision to read:

Subd. 6. [STATE PARKS; LITTERING; PENALTY.] A person shall not drain, throw, or deposit upon the lands and waters within a state park any substance that would mar the appearance, create a stench, destroy the cleanliness or safety of the (etc.).

A bill always begins with "Section 1" even though there is only one section.

The new subdivision number is underlined because these words become a part of the section to which the subdivision is being added. Note that the period at the end of the subdivision number is also underlined.

EXAMPLE — AMENDATORY BILL (Both adding a subdivision to a section and amending a subdivision)

A bill for an act

relating to the designer selection board; defining terms; amending Minnesota Statutes 1978, Section 16.822, Subdivision 5, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1978, Section 16.822, Subdivision 5, is amended to read:

Subd. 5. "Designer" means an architect ~~or~~ , engineer , or landscape architect , or a partnership, association, or corporation comprised primarily of architects ~~or~~ , engineers or ~~of both architects and engineers~~ landscape architects, or a combination of them .

Sec. 2. Minnesota Statutes 1978, Section 16.882, is amended by adding a subdivision to read:

Subd. 5a. "Landscape architect" means a person licensed or registered to practice landscape architecture as defined in section 326.02, subdivision 4a.

In section 1 within the subdivision the language intended to be omitted is stricken through, and the new language is underlined.

Section 2 adds a new subdivision to an existing section. Therefore, the language, including the number of the new subdivision, is underlined.

The words "section" or "subdivision", when not preceded by "Minnesota Statutes" or "Laws 19", are in lower case.

Section 2 of the bill adds a subdivision in an existing statutory section. It may be a better practice for the whole section to be recited. Here, however, the effect of the new subdivision is clear because of the preceding section in the bill. It is, therefore, proper.

EXAMPLE — AMENDATORY BILL (Containing a statutory repealer)

A bill for an act

relating to public welfare; transferring certain authority relating to county nursing homes to the state board of health; amending Minnesota Statutes 1978, Section 144.584; repealing Minnesota Statutes 1978, Section 144.583.

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

Section 1. Minnesota Statutes 1978, Section 144.584, is amended to read:

144.584 [STATE BOARD OF HEALTH; POWERS AND DUTIES TRANSFERRED.] All authority granted to the commissioner of public welfare under Laws 1953, Chapter 574, relating to the licensing of county nursing homes established under the authority of Laws 1951, Chapter 610, and the authority relating to the establishment by rule and regulation of minimum standards for the construction, equipment, and maintenance ~~and operation~~ therefor is hereby transferred to, vested in, and conferred upon the state board of health.

Sec. 2. Minnesota Statutes 1978, Section 144.583, is repealed.

Title contains description of the statutes which the bill amends and repeals.

In section 1 note that coding now exists in the statutes so it is not in brackets.

Notice that the repeal in section 2 is underlined since the bill is amendatory. Compare to the example on page 101. In the repeal there is no headnote. None is needed since the repeal is not codified.

EXAMPLE — AMENDATORY BILL (Containing a session law repealer)

A bill for an act

relating to the city of Duluth; reducing the period of service required for firemen's service pensions and survivor benefits; amending Laws 1965, Chapter 179, Section 1; repealing Laws 1955, Chapter 188, Section 8.

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

Section 1. Laws 1965, Chapter 179, Section 1, is amended to read:

Section 1. [DULUTH, CITY OF; FIREMEN'S RELIEF ASSOCIATION.] A member of the firemen's relief association in the city of Duluth who has completed a period , or periods of service on the fire department equal to ~~20~~ 18 years or (etc.).

Sec. 2. Laws 1955, Chapter 188, Section 8, is repealed.

Notice that the repeal is underlined since the bill is amendatory. Compare this to the example on page 101. The repealer has no headnote since it is not codified.

EXAMPLE — BILL FOR NEW LAW WITH REPEAL

A bill for an act

relating to public welfare; transferring authority relating to county nursing homes to the state board of health; repealing Minnesota Statutes 1978, Section 144.583.

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

Section 1. [144.584] [STATE BOARD OF HEALTH; POWERS AND DUTIES TRANSFERRED.] All authority granted to the commissioner of public welfare under Laws 1953, Chapter 574, relating to the licensing of county nursing homes established under the authority of Laws 1951, Chapter 610, and the authority relating to the establishment by rule and regulation of minimum standards for the construction, equipment, maintenance and operation therefor is hereby transferred to, vested in, and conferred upon the state board of health.

Sec. 2. Minnesota Statutes 1978, Section 144.583, is repealed.

Proposed statutory coding is enclosed in brackets; existing coding is not.

Note that headnotes end with a period, but coding does not.

Repeal is contained in separate section. Note that it is not underlined. It is not underlined since the remainder of the bill only adds new law and does not amend an existing law. Compare to previous two examples.

EXAMPLE — AMENDATORY BILL (Amending the supplement to Minnesota Statutes)

A bill for an act

relating to certain counties; requiring the filing of certain surveys with (etc.); amending Minnesota Statutes, 1979 Supplement, Section 389.08.

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

Section 1. Minnesota Statutes, 1979 Supplement, Section 389.08, is amended to read:

389.08 [COUNTY SURVEYORS; FILING OF SURVEYS IN CERTAIN COUNTIES.] In any county in which ~~the office of~~ there is a county surveyor ~~is a full time position~~ and the surveyor ~~has~~ maintains an office on a full time basis in a building (etc.).

EXAMPLE — AMENDATORY BILL (Amending the supplement to Minnesota Statutes by adding a subdivision)

A bill for an act

relating to crimes and criminals; exempting guards from pistol permit requirements when on duty; amending Minnesota Statutes, 1979 Supplement, Section 624.714, by adding a subdivision.

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

Section 1. Minnesota Statutes, 1979 Supplement, Section 624.714, is amended by adding a subdivision to read:

Subd. 13. [EXEMPTIONS; PRISON GUARDS.] A permit to carry a pistol is not required of a guard at a state adult correctional institution when on guard duty or otherwise engaged in an assigned duty.

EXAMPLE — AMENDATORY BILL (Amending session laws)

A bill for an act

relating to the city of Duluth; liquor license for the arena-auditorium complex; amending Laws 1967, Chapter 406, Section 1, Subdivision 1.

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

Section 1. Laws 1967, Chapter 406, Section 1, Subdivision 1, is amended to read:

Section 1. [DULUTH; ARENA-AUDITORIUM COMPLEX LIQUOR LICENSE.] Subdivision 1. In addition to the licenses now authorized by law, and notwithstanding any provision of law to the contrary contained in the charter or ordinances of such city, or statutes applicable to such city, the city of Duluth is authorized to issue an "on sale" liquor license for the premises known and used as the Duluth arena-auditorium complex . The fee for such license shall be (etc.).

Sec. 2. This act shall become effective upon approval by the governing body of the city of Duluth, and upon compliance with the provisions of Minnesota Statutes, Section 645.021.

The effective date provision has no headnote since the section will not be placed in the Statutes.

EXAMPLE — AMENDATORY BILL (Amending session laws as amended)

A bill for an act

relating to the city of Mound; firemen's service pensions; amending Laws 1973, Chapter 175, Section 1, as amended.

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

Section 1. Laws 1973, Chapter 175, Section 1, as amended by Laws 1975, Chapter 117, Section 1, is amended to read:

Section 1. [MOUND, CITY OF; VOLUNTEER FIREMEN'S RELIEF ASSOCIATION PENSIONS.] Notwithstanding any provision to the contrary of Minnesota Statutes, Section 69.06, ~~after the effective date of this act~~ the Mound volunteer fire department relief asssociation shall pay to ~~any~~ retired firemen and newly retiring firemen qualifying with 20 years of service and having attained the age of 50, a monthly annuity not to exceed $120 per month. Payments may be made retroactive to January 1, 1975.

Sec. 2. This act is effective upon approval by the governing body of the city of Mound and upon compliance with the provisions of Minnesota Statutes, Section 645.021.

In section 2 note the underlining. Because the remainder of the bill is amendatory, this effective date provision is also underlined. There is no headnote because the section is temporary and, thus, not codified.

EXAMPLE — AMENDATORY BILL (Amending Minnesota Statutes, supplement and laws)

A bill for an act

relating to municipalities; clarifying (etc.); amending Minnesota Statutes 1978, Section 471.616, Subdivision 1; Minnesota Statutes, 1979 Supplement, Section 471.561 and Laws 1976, Chapter 44, Section 19.

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

Section 1. Minnesota Statutes, 1979 Supplement, Section 471.561, is amended to read:

471.561 [COUNTIES, CITIES AND SCHOOL DISTRICTS; INVESTMENT OF FUNDS.] Subdivision 1. In addition to other investments authorized by law, a city, county ~~or~~ , school district , or an agency or instrumentality thereof, may (etc.).

Sec. 2. Minnesota Statutes 1978, Section 471.616, Subdivision 1, is amended to read:

471.616 [GROUP INSURANCE; GOVERNMENTAL UNITS.] Subdivision 1. [BIDDING REQUIRED.] No governmental subdivision ~~, political subdivision,~~ or any other body (etc.).

Sec. 3. Laws 1976, Chapter 44, Section 19, is amended to read:

[410.015] [DEFINITIONS RELATING TO CITIES.] The term "statutory city" means any city which has not adopted a home rule charter pursuant to the constitution and laws; the words "home rule charter city" mean any city which has adopted such a charter. In any law adopted after July 1, ~~1975~~ 1976 , the word "city" when used without further description (etc.).

Sec. 4. This act is effective the day following final enactment.

EXAMPLE — REPEALS (Only repealers, no substantive sections)

A bill for an act

relating to (etc.); repealing Laws 1923, Chapter 77, Section 10, as amended; and Laws 1969, Chapter 838, Sections 1 to 6, as amended.

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

Section 1. Laws 1923, Chapter 77, Section 10, as amended by Laws 1955, Chapter 581, Laws 1959, Chapter 551, Laws 1969, Chapter 799, and Laws 1974, Chapter 322, Section 18; and Laws 1969, Chapter 838, Sections 1 to 6, as amended by Laws 1974, Chapter 322, Sections 22 to 24, are repealed.

EXAMPLE — REPEAL (subdivision)

```
                    A bill for an act

    relating to game and fish (etc.); repealing
    Minnesota Statutes 1978, Section 98.50,
    Subdivision 3.

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

    Section 1.  Minnesota Statutes 1978, Section 98.50,
Subdivision 3, is repealed.
```

EXAMPLE — REPEAL (section)

```
                    A bill for an act

    relating to (etc.); repealing Minnesota Statutes
    1974, Section 138.04, as amended.

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

    Section 1.  Minnesota Statutes 1974, Section 138.04, as
amended by Laws 1975, Section 4, is repealed.
```

EXAMPLE — REPEAL (chapter)

```
                    A bill for an act

    relating to (etc.); repealing Laws 1973, Chapter
    713.

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

    Section 1.  Laws 1973, Chapter 713, is repealed.
```

EXAMPLE — BILL CONTAINING LAND DESCRIPTION

A bill for an act

relating to Independent School District No. 624 and Independent School District No. 12; providing for the exchange of territory between the districts.

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

Section 1. The following described tracts of land now situated within Independent School District No. 624 are (etc.).

The Northwest one-quarter, Section 25, Township 31, Range 22 except that portion of the Southeast one-quarter (etc.);

The East one-half of the Northeast one-quarter of Section 26, Township 31 (etc.).

Sec. 2. (Insert text).

Sec. 3. (Insert text).

EXAMPLE — CONSTITUTIONAL AMENDMENT TO MINNESOTA CONSTITUTION

A bill for an act

proposing an amendment to the Minnesota Constitution, Article XIII, Section 3; providing for two student members of the board of regents of the University of Minnesota.

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

Section 1. The following amendment to the Minnesota Constitution, Article XIII, Section 3, is proposed to the people. If the amendment is adopted the section will read as follows:

Sec. 3. All the rights, immunities, franchises and endowments heretofore granted or conferred upon the university of Minnesota are perpetuated unto the university. Two regents of the university shall be selected in addition to those otherwise provided. They shall be students at the university at the time of their election, serve for two years, and be elected in the same manner and have the same power as other regents.

Sec. 2. The proposed amendment shall be submitted to the people at the 1976 general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to add two student members to the University of Minnesota board of regents?

"Yes.....

No....."

NOTE: Section 2 is not underlined despite the fact that the bill is amendatory. This is due solely to the fact that section 2 is an administrative provision on a bill proposing a constitutional amendment.

EXAMPLE — BILL ANALYSIS

BILL ANALYSIS

This special law authorizes the county board of commissioners of either Marshall or Kittson counties to impose an occupation tax upon the removal of gravel from any gravel pit located in those counties. The amount of the tax is determined by each county board but cannot exceed ten cents per cubic yard of gravel removed.

Payment of the tax is enforced by requiring persons engaging in the gravel supply business to file quarterly reports with the county auditor. If a report is not filed or the report is erroneous the auditor independently determines the tax due. The persons assessed such a tax retain the right to object and appeal the finding of the tax due.

Funds derived from occupation taxes may only be used to repair roads used by gravel trucks and for the restoration of abandoned gravel pits on county or state lands.

The state of Minnesota and its contractors are exempt from the payment of occupation taxes for gravel used in the construction of trunk highways.

The act is effective only upon local approval.

This is an example of the form and suggested detail necessary in a bill analysis. The bill itself appears on pages 248 to 250.

EXAMPLES — APPROPRIATION PROVISIONS

1. Regular Biennial (odd-numbered year session)

"Sec. 10. The sum of $50,000 is appropriated from the general fund to the commissioner of administration for the purpose of administering sections 1 to 9, and shall be available until June 30, 1981."

2. Regular Single Year (even-numbered year session):

Same as for an odd-numbered year except that the drafter should ensure that the date when availability is not for two years, but only for one and terminates on the last day of the biennial appropriations period.

3. Special Purpose

"Section 1. The sum of $100,000 is appropriated from the general fund to the commissioner of natural resources for the purpose of paying the state's share of the costs of repair and reconstruction of King's Mill Dam on the Cannon River in Rice county and shall be available until expended."

4. Annual Standing

"Sec. 6. The sum of $20,000 is appropriated annually from the general fund to the commissioner of agriculture for the purpose of paying travel expenses of employees of the department."

5. Revolving Account

"Sec. 16. All license fees and penalties thereon collected by the board pursuant to sections 1 to 15 shall be deposited by the secretary in an electrician's licensing account in the general fund, and the same are appropriated to the board for expenditure in the administration of sections 1 to 15."

6. Anti-lapse Provision (added to appropriation)

"This appropriation is available until expended."

7. Multiple appropriations

"Sec. ... . [APPROPRIATIONS.] Subdivision 1. The sums set forth in this section are appropriated from the general fund (or any other fund designated) to the commissioner of ....., for the purposes specified in the subsequent subdivisions of this section, and shall be available until June 30, 19...

Subd. 2. For ....., as provided in section .... $.....

Subd. 3. For ....., as provided in section ... $.....

This appropriation is from the trunk highway fund.

Subd. 4. For ....., as provided in section ... $....."

EXAMPLE — REPEALER (For a bill containing substantive sections)

Sec. ... . [REPEALER.] Minnesota Statutes 1978, Sections 51.02, 51.04 and 51.06 are repealed.

EXAMPLES — EFFECTIVE DATE PROVISIONS

1. General

Sec. 10. [EFFECTIVE DATE.] Sections 1 to 9 are effective the day following final enactment.

Sec. 10. [EFFECTIVE DATE.] Sections 1 to 9 are effective September 1, 1980.

Sec. 10. [EFFECTIVE DATE.] Sections 1 to 9 apply to proceedings instituted on or after July 15, 1979.

2. Multiple effective dates

Sec. 10. [EFFECTIVE DATES.] Sections 1, 3 to 5, and 9 are effective the day following final enactment. Section 2 is effective January 1, 1980.

(Sections 6 and 7, then, would be effective August 1 following enactment, as no other effective date is set for those sections.)

3. Income tax act

Sec. 10. [EFFECTIVE DATE.] This act is effective for taxable years beginning after December 31, 1980.

4. Property tax act

Sec. 10. [EFFECTIVE DATE.] This act is effective for taxes levied in 1980, payable in 1981 and thereafter.

5. Special laws

Sec. 10. [EFFECTIVE DATE.] Sections 1 to 9 are effective on its approval by the [local government unit affected] and upon compliance with Minnesota Statutes, Section 645.021.

5
RESOLUTIONS

5.1 Generally
5.2 General Format
(a) Title
(b) Resolving Clause
(c) Preamble, Statement of Purpose or Policy
(d) Basic Provisions
(e) Miscellaneous Provisions
5.3 Types of Resolutions
(a) Simple
(b) Concurrent
(c) Memorial
(d) Joint
5.4 Forms

5.1 Generally

In addition to bills, resolutions are a vehicle by which the legislators can express policy. Unlike bills, resolutions do not result in a new law. Rather, they express policy in a non-binding way. Resolutions also differ from an ordinary motion but the difference can be only the fact that a resolution has greater weight since it is written. Motions are oral. As will be seen, however, some matters must be dealt with by resolution.

While there is no real limit on the type of subject matters which may be dealt with in a resolution, in practice resolutions are routinely used for several purposes. Each will be discussed and examples will be furnished.

5.2 General Format

Resolutions are somewhat similar to bills in style and form. The rules and practice on drafting them follows that set out for bills with the exceptions noted below.

(a) Title

The title to a resolution is abbreviated. It consists only of the first two of the five title elements for bills. These two elements are: the opening boilerplate and the general subject. A title to a resolution seldom includes the object or specific subject. Since a resolution cannot enact law it never contains a list of sections amended or repealed. The opening boilerplate is either "A senate (house) resolution" or "A house (senate) concurrent resolution".

(b) Resolving Clause

The constitutional enacting clause is not utilized for resolutions. Rather, a resolving clause is used. The exact wording varies with the type of resolution. For simple resolutions, it is: "BE IT RESOLVED, by the Senate (House of Representatives) of the State of Minnesota, ..." For concurrent

resolutions, it is: "BE IT RESOLVED, by the House of Representatives (Senate) of the State of Minnesota, the Senate (House of Representatives) concurring therein, ..." For memorial resolutions, it reads: "BE IT RESOLVED, by the Legislature of the State of Minnesota, ...". For joint resolutions, it is: "BE IT RESOLVED, by the House of Representatives and Senate of the State of Minnesota in joint convention ....". Second or subsequent resolving clauses begin "BE IT FURTHER RESOLVED, ..."

(c) Preamble, Statement of Purpose or Policy

The use of a preamble which effectively states the reason, purpose or policy of the resolution, is the one area of resolutions where the drafting is more elaborate and extensive than for bills. As indicated in the section of this manual on bills, the use of a preamble has all but disappeared on bills and a statement of purpose or policy section is rarely used. Often the preamble of a resolution may be longer than the body of a resolution.

Typically, a preamble will consist of from one to ten clauses indented as if they were separate paragraphs. Each clause begins with the word "WHEREAS".

Each clause, except the last clause, ends with a semicolon and the word "and". For instance "... blind throughout the union; and, ..."

The last clause of a preamble ends with a semicolon and the capitalized words "NOW, THEREFORE,". For example: "... that citizens not so disadvantaged possess; NOW, THEREFORE,". The first period in the text will be after the first "resolving clause".

The substance of the preamble clauses obviously varies with the substance of the resolution. However, as indicated earlier, the resolutions tend to follow a repetitive topic. The drafter may, therefore, turn to the examples at the end of this chapter for assistance in finding language for a resolution. A drafter is cautioned, however, not to adopt boilerplate language even for resolutions with identical subject matter. This is particularly true of resolutions extending congratulations or extending condolences. In such situations, obvious boilerplate language may be taken as insulting by the person who is the subject of the resolution.

(d) Basic Provisions

The basic provisions of a resolution, unlike a bill, are often extremely rudimentary. It may only be to direct or authorize an action by an officer of the House or to extend congratulations or sympathy to someone. For examples of the more common types see the samples at the conclusion of this chapter.

(e) Miscellaneous Provisions

Many resolutions direct the Secretary of the Senate or Chief Clerk of the House of Representatives to prepare and "present an enrolled copy" of the resolution to the person or persons it concerns.

Those resolutions which "memorialize" the President, the congress or some national officer contain a provision directing the Secretary of State to "transmit" copies.

For examples of both see the end of this chapter.

5.3 Types of Resolutions

There are four distinct types of resolutions: Simple Resolutions, Concurrent Resolutions, Memorial Resolutions and Joint Resolutions. The boundaries between one type and the others are somewhat blurred. However, there are several indicia of which kind should be used.

The source of the key method of distinction is article IV, section 24 of the Minnesota Constitution. It provides:

> "Sec. 24. [PRESENTATION OF ORDERS, RESOLUTIONS, AND VOTES TO GOVERNOR.] Each order, resolution or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his veto as prescribed in case of a bill."

Furthermore, Senate Rule 53, in pertinent part, provides:

> "Memorial resolutions addressed to the President or the Congress of the United States, or a house or member of Congress, or a department or officer of the United States, or a state or foreign government, and resolutions requiring the signature of the Governor shall follow the same procedure as bills before being adopted."

House Rule 5.2, in pertinent part, provides:

> "Any memorial shall be introduced in the same manner and take the same course as a bill. No resolution shall authorize the expenditure of monies from any source other than the legislative expense fund."

Memorial resolutions should be reserved for those matters which, under the constitutional mandate, must be presented to the Governor. For that reason the rules of each house require the processing of a memorial resolution be the same as for bills.

Concurrent resolutions are those resolutions which do not require the Governor's assent. Although passed by both houses they are exempt from the

constitutional requirement either because they relate "to the business or adjournment of the legislature" or, although the resolution may have received the concurrence of both houses, such concurrence is not required. An example of the latter are concurrent resolutions commending some person for winning a national award. Either house might have passed such a resolution on its own and the fact that they used a concurrent resolution was solely a matter of convenience.

The Minnesota Supreme Court has acknowledged that administrative matters are not submitted to the governor. *Duxbury v. Donovan,* 272 Minn. 424, 138 N.W.2d 692 (1954). Nor do matters outside the lawmaking function have to be submitted. *Gardner v. Holm,* 241 Minn. 125, 62 N.W.2d 52 (1954). The legislature may, by law, reserve approval of administrative activities to itself, *Gardner v. Holm, supra.*

As noted above some concurrent resolutions which need not be presented to the Governor have, in fact, been presented to the Governor and the Governor indicated his approval to them. Such presentation has been by special arrangement — such as giving the Governor an opportunity to join in the congratulations. His approval (or disapproval), of such concurrent resolution is of no legal effect.

The lowest echelon of resolution is that of the simple resolution. Such resolutions neither require nor do they receive the approval of both houses. They are never sent to the governor for his approval and veto.

Somewhat related in subject matter to the simple resolution is the joint resolution. A joint resolution is adopted when both houses are meeting in joint convention. Adoption in such a joint session is not "concurrence of the two houses" and such resolutions are never sent to the governor for his concurrence.

Typically all resolutions contain a provision requiring an officer (either the Secretary of the Senate, Chief Clerk of the House or Secretary of State) to deliver enrolled copies of the resolution to the person or institution which is the subject of the resolution.

The uses of each of the types of resolutions and the handling procedures of each will now be set out.

(a) Simple

A simple resolution is proposed by a senator or representative and considered only by that house. The rules of procedure are relaxed. For instance, in the senate there is usually no referral to a committee and a vote on the resolution is held without debate unless a member requests debate. (Senate Rule 53.) Record votes are not constitutionally required for passage and usually not held.

The following are the usual occasions for the use of a simple resolution:

(1) Matters pertaining to the internal operation of either the house or the senate. For example; employment of personnel, payment of expenses, mileage, rules, et cetera.

(2) Expression of concern because of the action of some state agency or state department or some private situation which some state agency or state department could effect.

(3) Offering congratulations to or commending an individual, institution or school for a statewide honor or winning a statewide competitive event.

(4) Proclaiming a special observance day.

(5) Commemorating the life and work of a person.

Typical examples of each are furnished at the end of this chapter.

(b) Concurrent

Concurrent resolutions are proposed by a senator or representative and considered by both the Senate and House of Representatives. As for simple resolutions the procedure they follow is relaxed.

The following are the usual occasions for the use of concurrent resolutions:

(1) Matters pertaining to the joint operation of the two houses. Examples are the scheduling of joint sessions, the setting of adjournment, authorizing adjournment for more than three days.

(2) Authorizing the establishment of a special study committee on a specific topic.

(3) Offering congratulations to or commending an individual, institution or school that has won a national or international honor or won a national or international competitive event.

(4) Proclaiming a special observance day.

Typical examples of each are furnished at the end of this chapter.

(c) Memorial

Although memorial resolutions are prepared in a form similar to that of a concurrent resolution, they are considered and adopted by both houses. The process of consideration is virtually the same as for a bill. It is not, however, a bill and nothing adopted by resolution is a law.

A memorial resolution is used in three very identifiable situations. They are:

(1) A formal petition or remonstrance to the President, Congress, a national officer, a sister state or a foreign government requesting either to take certain action or to refrain from taking certain action.

(2) A request to Congress pursuant to Article V of the U. S. Constitution that a constitutional convention be held to propose certain specified amendments to the U. S. Constitution.

(3) To ratify an amendment to the U. S. Constitution which has been proposed by Congress.

Memorial resolutions are not used to propose amendments to Minnesota's Constitution. Instead, a bill is used. The use of a bill to propose amendments to Minnesota's Constitution is discussed in chapter 4 and a form is provided on page 110.

Copies of each type of memorial resolution are found at the end of this chapter.

(d) Joint

Joint resolutions are proposed by either a senator or representative while the Senate and House meet together in joint session. The process of consideration is similar to that of the simple resolution. There is no referral to committee and no debate. A record vote is not required and usually not taken.

The introduction of a joint resolution is extremely rare. Joint conventions of the Senate and House are rare to begin with and the conduct of business at a joint convention other than that required by the constitution (such as to hear the Governor's state-of-the-state message or electing members of the Board of Regents) is even more rare. Only when business other than that which is constitutionally required is conducted would a joint resolution be used.

The sole use of the joint resolution has been to commend an officer of the state on his long, effective, and devoted service to the state.

The format for a joint resolution would be that found on page 139-140.

5.4 Forms

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EXAMPLE — SIMPLE RESOLUTION (Internal operation of the House)

A house resolution

providing payment of salary to the widow of a deceased member of the legislature.

WHEREAS, Mr. ....., died while being a member of the House of Representatives of the State of Minnesota and would have been entitled to receive $... per month for the balance of the term for which he was elected; and,

WHEREAS, it is the desire of the House of Representatives that an amount equal to the compensation that would have been due the deceased member be paid to his widow; NOW, THEREFORE,

BE IT RESOLVED, by the House of Representatives of the State of Minnesota, that an amount equal to the sum of the compensation that would have been due to ..... be paid to his widow and the Chief Clerk of the House is directed to furnish such clerical assistance to Mrs. ..... as shall be necessary to properly conclude Mr. .....'s business with the House of Representatives.

EXAMPLE — SIMPLE RESOLUTION (Internal operation of the Senate)

A senate resolution

relating to the adoption of temporary rules for the 69th session of the legislature.

BE IT RESOLVED, by the Senate, that the permanent rules of the Senate for the ..... session are adopted as the temporary rules of the ..... session to be effective until the adoption of permanent rules by a majority vote of the Senate, subject to the following conditions:

(1) Rules 33 and 69 shall not be operative.

(2) Any resolution or other question before the Senate may be brought to a vote at any time by a majority vote of the members present.

(3) No bill shall be introduced the first day.

(4) That the rules as herein made reference to be amended as follows:

(etc.)

Note the absence of preamble clauses in this resolution. They may be omitted where the subject of the resolution is an obviously routine matter.

EXAMPLE — SIMPLE RESOLUTION (Congratulations to an athletic team)

A house resolution

congratulating the ..... Team on winning the State ..... Championship.

WHEREAS, ... High School has always had one of the finest ..... teams in Minnesota; and,

WHEREAS, the ..... team exemplified excellence in athletics and sportsmanship in winning the ..... championship; NOW, THEREFORE,

BE IT RESOLVED, by the House of Representatives of the State of Minnesota that the ..... team of the city of ..... be congratulated for not only winning the championship but also for exemplary sportsmanship exemplified by both the team and its fans.

BE IT FURTHER RESOLVED, that the Chief Clerk of the Minnesota House of Representatives be instructed to prepare an enrolled copy of this resolution and transmit it to the ..... team and to the mayor of the city of ..... .

EXAMPLE — SIMPLE RESOLUTION (Congratulations for state honor)

A senate resolution

congratulating ..... for winning the honor of being named Minnesota teacher of the year.

WHEREAS, ... of the city of ..... has been selected by the Minnesota Education Association as Minnesota teacher of the year; and,

WHEREAS, ... is one of four teachers in final consideration to be chosen National Teacher of the Year; and,

WHEREAS, ...'s contribution to her students and her profession have earned the respect and gratitude of the people of Minnesota; NOW, THEREFORE,

BE IT RESOLVED, by the Minnesota Senate that its congratulations be extended to ..... .

BE IT FURTHER RESOLVED, that the Secretary of the Senate present an enrolled copy of this resolution to ..... .

EXAMPLE — SIMPLE RESOLUTION (Proclaiming a special observance day)

A house resolution

proclaiming Sunday, May 3 as ..... Day in the State of Minnesota.

WHEREAS, the Congress of the United States, in an effort to raise awareness of the present and future potential of ....., has proclaimed Sunday, May 3, ... as ..... Day; and,

WHEREAS, the policy of the State of Minnesota is consistent with the goal of the Congress of the United States; NOW, THEREFORE,

BE IT RESOLVED, by the House of Representatives of the State of Minnesota that Sunday, May 3, ... is proclaimed to be ..... Day. All citizens and residents of Minnesota are encouraged to participate and support all state and private agencies in ..... Day activities.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be enrolled by the Chief Clerk of the House of Representatives and delivered to ..... .

EXAMPLE — SIMPLE RESOLUTION (Eulogizing a person's life)

A senate resolution

eulogizing ..... for the exemplary nature of his life and work.

WHEREAS, ... dedicated his life to the pursuit of brotherhood, peace and justice for all women and men; and,

WHEREAS, ... while challenging discrimination remained devoted in principle and practice to the philosophy of non-violence; and,

WHEREAS, ... through his own dedication and eloquence was able to kindle the spirit of brotherhood in women and men of all races and creeds; and,

WHEREAS, ... gave the ultimate personal sacrifice for the cause of human rights; and,

WHEREAS, the legacy and memory of ..... will continue to inspire good men everywhere to continue the struggle for human rights and justice; NOW, THEREFORE,

BE IT RESOLVED, by the Senate of the State of Minnesota on behalf of all the people of the State of Minnesota, that recognition and tribute be given to the memory of ..... .

BE IT FURTHER RESOLVED, that the Secretary of the Senate of the State of Minnesota, transmit an enrolled copy of this resolution to his wife, ...

EXAMPLE — CONCURRENT RESOLUTION (establishing a study commission)

A senate concurrent resolution

establishing a commission on .....

WHEREAS, the legislature is concerned about .....

.....

.....

.....; NOW THEREFORE,

BE IT RESOLVED, by the Senate, of the State of Minnesota, the House of Representatives concurring, that:

(1) A commission on ..... is established. The commission shall be composed of .....

..... who shall be appointed by.....

(2) The commission report to the legislature on its first day in session in 1980 recommendations on:

(a) .....

(b) .....

(c) .....

(d) .....

(3) The expenses of the commission shall be paid from appropriations to the legislature for its functioning.

Note the simplified form used in this draft. Different provisions are divided into separate paragraphs and each paragraph is numbered. The use of "BE IT FURTHER RESOLVED" is removed as surplusage.

EXAMPLE — CONCURRENT RESOLUTION (recognizing outstanding service by a public employee)

A senate concurrent resolution

expressing the appreciation of the Legislature to ..... for many years of loyal and efficient service to the state of Minnesota.

WHEREAS, ... was born in ..... on .....,

was educated in the schools of ..... and graduated

from ..... high school and ..... University;

and,

WHEREAS, ... has served as ....., since

.....; and,

WHEREAS, his tenure in office has been typified by

....; NOW, THEREFORE,

BE IT RESOLVED, by the Senate of the State of

Minnesota, the House of Representatives concurring therein,

that the sincere appreciation of the Minnesota Legislature

go to ..... for his long and untiring efforts and

achievements as a public servant of the state of Minnesota.

BE IT FURTHER RESOLVED, that the Secretary of the

Senate prepare an enrolled copy of resolution and transmit

it to .....

EXAMPLE — CONCURRENT RESOLUTION (joint operation of house and senate)

A senate concurrent resolution

relating to the adoption of temporary joint rules

BE IT RESOLVED, by the Senate of the State of Minnesota, the House of Representatives concurring therein:

The joint rules of the Senate and House for the ..... session are adopted as the temporary joint rules of the sixty-ninth session to be effective until the adoption of permanent joint rules by the Senate and House, subject to the following conditions:

That joint rule .... be amended to read:

etc.

EXAMPLE — CONCURRENT RESOLUTION (joint convention of both houses)

A house concurrent resolution

providing for a joint convention of the Senate and the house of Representatives to elect members of the Board of Regents of the University of Minnesota.

BE IT RESOLVED by the House of Representatives, the Senate concurring:

(1) The House of Representatives and the Senate shall meet in joint convention on ..... at ..... in the chamber of the House of Representatives to elect members to the Board of Regents of the University of Minnesota.

(2) The Education Committee of the Senate and the Higher Education Committee of the House of Representatives in a joint meeting shall prepare a slate of nominations and to report the slate at the meeting of the joint convention.

EXAMPLE — CONCURRENT RESOLUTION (adjournment of legislature)

A house concurrent resolution

relating to adjournment until 1978.

BE IT RESOLVED, by the House of Representatives, the Senate concurring:

(1) Upon their adjournment ....., 1979, the House of Representatives may set its next day of meeting for ....., 1979 at 12:00 noon and the Senate may set its next day of meeting for ....., 1979 at 12:00 noon.

(2) This resolution is the consent of each house for the other to adjourn for more than three days following ....., 1979.

EXAMPLE — CONCURRENT RESOLUTION (proclaiming a special observance day)

A house concurrent resolution

proclaiming ..... as ..... Day.

WHEREAS, ... Day was established by an act of Congress in 1961 to be an annual observance on .....; and,

WHEREAS, citizens today enjoy more .....

.....; and

WHEREAS, in order to rededicate ourselves to the principles of the democratic form (etc.); NOW, THEREFORE,

BE IT RESOLVED, by the House of Representatives of the State of Minnesota, the Senate concurring therein, that the Governor of the state of Minnesota; (etc.); and

.....

BE IT FURTHER RESOLVED, that it is not the purpose of this resolution to declare another holiday, but only to (etc.).

EXAMPLE — MEMORIAL RESOLUTION (memorializing the President and Congress to take certain action)

A resolution

memorializing the President and Congress to
.....

.....

WHEREAS, the United States .....

.....

.....

WHEREAS, the several states have .....

.....

.....

WHEREAS, these requirements impede

....

WHEREAS, it would be of great value to .....

.....

....; NOW, THEREFORE,

BE IT RESOLVED, by the Legislature of the State of Minnesota that Congress should speedily enact legislation to

.....

.....

BE IT FURTHER RESOLVED, that the Secretary of State of the State of Minnesota be instructed to transmit copies of this resolution to the President of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives of the United States and to the Minnesota Senators and Representatives in Congress.

EXAMPLE — MEMORIAL RESOLUTION (requesting Congress to propose an amendment to the Constitution)

A resolution

concerning .....; requesting Congress to propose an amendment to the Federal Constitution to ....

WHEREAS, ...

.....

.....; and

WHEREAS, ...

.....

WHEREAS, under Article V of the Constitution of the United States, amendments to the Federal Constitution may be proposed by the Congress whenever two-thirds of both Houses deem it necessary; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota, that it proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the legislature of the state of Minnesota requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States, requiring .....

.....

.....

BE IT FURTHER RESOLVED, that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the federal Constitution.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent by the Secretary of State of Minnesota to the Minnesota Representatives and Senators in Congress.

BE IT FURTHER RESOLVED, that the Secretary of State of Minnesota is directed to send copies of this Resolution to

EXAMPLE — MEMORIAL RESOLUTION (CONT.)

the Secretary of State and presiding officers of both Houses of the Legislature of each of the other States in the Union, the Clerk of the United States House of Representatives and the Secretary of the United States Senate.

EXAMPLE — MEMORIAL RESOLUTION (ratifying an amendment to the United States Constitution)

A resolution

to ratify a proposed amendment to the Constitution of the United States of America relating to equal rights for men and women under the law.

WHEREAS, both Houses of the Congress of the United States proposed an amendment to the Constitution of the United States which reads as follows:

"ARTICLE .....

"Section 1. ....

....

....

"Sec. 2. ....

....

....

"Sec. 3. Congress shall have the power to enforce, by appropriate legislation, the provisions of this article";

NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that the proposed amendment to the Constitution of the United States is hereby ratified by the Legislature of the State of Minnesota.

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to forward enrolled copies of this resolution to the Administrator of the General Services Administration, to the presiding officer of the Senate of the United States and the speaker of the House of Representatives of the United States and transmit an official notice of this resolution to the Secretary of State of the United States as provided by the law of this state.

EXAMPLE — JOINT RESOLUTION

A joint resolution

eulogizing ..... for the exemplary nature of his life and work

WHEREAS, on the 21st of February the Honorable ..... of Minneapolis will achieve the venerable age of ninety-two; and,

WHEREAS, his long and vigorous life stands as a memorable symbol of devoted and broad-visioned public service; and,

WHEREAS, over a half century ago--in 1896--he was elected a member of the House of Representatives of the State of Minnesota, and two years later was elected a member of the Senate of the State of Minnesota, in both of which he served with eminence and distinction; and,

WHEREAS, in 1912 he was named a Regent of the University of Minnesota, became chairman of its Board in 1914 and has through the years that followed devoted himself unceasingly to furthering the growth of the University in educational influence and service; and,

WHEREAS, failing health, though no weariness of spirit, now prompts him to submit his resignation and step aside so that the burdens of University responsibility may be carried on younger shoulders than his; NOW, THEREFORE,

BE IT RESOLVED, by the House of Representatives and the Senate of the State of Minnesota in joint convention do record their admiration, their sense of gratitude, and their respect for the manifold contributions made to the welfare and the progress of the State of Minnesota and to its University by the Honorable ..... .

BE IT FURTHER RESOLVED, that there be extended to the Honorable ..... the warmest of greetings and the

EXAMPLE — JOINT RESOLUTION (CONT.)

kindest of wishes as he approaches another milestone in the notable career that has in truth made him, for the state and for the University, "a builder of the name".

BE IT FURTHER RESOLVED, that the secretary of the joint convention be and he is hereby directed to forward to the Honorable ..... an enrolled copy of this Resolution.

In the resolving clause note the reference to the senate and house "in joint convention". In the closing clause note the reference to the "secretary of the joint convention". These two differences are the sole distinction in form with the form of a simple resolution.

6

AMENDMENTS

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(d) Conference Committee Reports
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6.1 Introduction

The processes of drafting bills and drafting amendments to them cannot take place in isolation from each other. The fact that they are not isolated is well known to those involved in the engrossment and enrollment of bills.

The drafting of amendments, however, follows different forms and requires somewhat different skills than drafting of the bills themselves. For that reason, the drafting of amendments is treated separately in this chapter.

The amendment process is also affected by the fact that the engrossing and enrollment procedures are now being computerized. In order to work properly, the forms set out in this section should be followed.

Amendments have a variety of forms dictated by two separate elements. Those two elements are:

(1) the document in which the amendment will be proposed (a motion in committee, a committee report, a floor amendment or a conference committee report); and,

(2) the technique chosen for amending ("delete everything" and substitute, or amend by "page and line").

The two elements will be considered separately.

6.2 The Amending Document

Amendments can be proposed by a motion in committee, by a committee report, by a floor amendment, or by a conference committee report. The document determines the introduction and ending of the amendment but does not affect the text of the amendment itself. Each of the four different kinds of documents will be discussed separately.

(a) Motion in Committee

This is the most common document by which amendments are proposed. When a bill is "marked-up" in committee and either its author or any member of the committee desires to change the bill in any way, that change is proposed to the committee in the form of a motion to amend. The motion to amend in the Senate begins with the language: "Mr. Jones moves to amend S. F. 182 as follows:". In the House the title "Mr.", "Mrs.", "Miss", or "Ms.", is omitted from the language. For both the Senate and House, the text of the amendment follows with no ending boilerplate. The text may be in either the form of a "delete everything" or a "page and line" amendment.

(b) Committee Reports

After hearings upon and marking up a bill a committee will report its recommendation to the house considering the bill. In addition to recommending favorable action (i.e. "do pass"), the report will include the committee's recommended amendments, if any.

The committee report is a standard form that is normally completed by the committee's secretary.

The text of the amendment can be either a "delete everything" or a "page and line" amendment. These two techniques are discussed in section 6.3 of this chapter.

For examples of committee reports containing amendments see the examples at the end of this chapter.

(c) Floor Amendments

When a bill is favorably reported by a full committee and the committee amendment adopted it, is then presented for its "second reading" to the full house. The bill is then engrossed with the committee amendment. It then returns to the floor again for consideration. At this stage it is open for amendments from the floor by any member of the body.

The document used for offering floor amendments is a motion with standard introductory language, in the Senate, of: "Mrs. Jones moves to amend S.F. No. 283, as follows:". In the House the title "Mr.", "Mrs.", "Miss", or "Ms.", is omitted. There is no ending boilerplate after the substance of the amendment.

The drafter of the floor amendment will prepare the entire document ready for filing on the floor. Again, the text may be either "delete everything" or a "page and line" amendment. For examples of floor amendments see the examples at the end of this chapter.

(d) Conference Committee Reports

When one house refuses to concur in an amendment added by the other body, a conference committee is appointed consisting of an equal number of members of each house who meet jointly to reach a compromise version of the disputed bill. The conference committee report is in the form of a letter to the presiding officer of each house. It has an inside address, a paragraph indicating that an agreement has been reached, the substantive provisions, a paragraph recommending adoption of the report and re-passage of the bill and the signatures.

A conference committee report need not recommend any further amendments to the bill. Instead, it may recommend that the house of origin accede to the amendments adopted by the other house, or that the house that adopted amendments recede from its amendments. Amendments previously adopted must be acceded to or receded from in their entirety. To accede to some portions of some amendments and recede from some portions of other amendments causes unnecessary confusion.

If neither house will yield completely to the other's position, then the amendments previously adopted must either be acceded to or receded from, and futher amendments agreed to. If the previous amendments are receded from, the further amendments may either be a "delete everything" amendment or a series of page and line amendments. If the previous amendments are acceded to, the further amendments must be by page and line.

In any case, the drafter of the conference committee report will prepare the entire document ready for the signatures. For examples of conference committee reports see the examples at the end of this chapter.

(e) Common Problems with all Amending Documents

Regardless of which of the four kinds of amending documents are utilized, there are certain problem areas which are common to them all. For each of the subsequently discussed problems, examples are found at the end of this chapter.

(1) Identification of the Document Being Amended. The drafter must be careful to accurately and properly identify the document being amended. Specifically, is the original bill being amended or the first or subsequent engrossments of the bill? If an engrossment, is it an official or unofficial engrossment?

For instance, in either a motion to amend in a Senate committee or a Senate floor amendment, use of the beginning language "Mr. Jones moves to amend S.F. 444, as follows:" would refer to the original (unengrossed) bill. In the House, the title ("Mr.", etc.) is omitted but that language, likewise, would only refer to the original (unengrossed) bill.

When a bill has been engrossed, the correct opening language would be: "Mr. Jones (or, in the House, just "Jones") moves to amend S.F. 444, the first engrossment, as follows:". When using this language, the reference to the engrossment number is changed to the "second", "third", "fourth", etc., as appropriate. The drafter must refer to the latest engrossment and not to any prior engrossments.

In most cases only official engrossments are subject to amendment. Motions in committee to amend an unofficial engrossment are improper. Instead of referring to the unofficial engrossment, drafters should refer to either the unengrossed original, the last official engrossment or to the subsequent amendments to it, as appropriate. The only exception to "unofficial engrossments can't be amended" is for floor amendments to bills from the other house. This is discussed in paragraph (2) below.

(2) Amendments to Bills from the Other House. Only the house of origin can actually amend its bill. The other house can propose an amendment but the amendment must be concurred in by the house of origin before the bill is actually amended. Some complexities are created when at different stages of the amending house's process the amending house serially proposes several amendments to a bill originating in the other house. The serial amendments are created when a bill originating in the other house is, in the amending house, first proposed for amendment by a committee report and then amended again on the floor. The procedure as to how they are handled varies somewhat between the Senate and House.

In the House, the committee report is "read" and then adopted. The committee's amendment is adopted as part of adoption of the report. The committee's amendment is then unofficially engrossed into the bill. When the bill then returns to the House floor it is the unofficial engrossment under consideration, not the Senate engrossment combined with the House committee's amendment. Proposed floor amendments are drafted to the unofficial House engrossment. The engrossment is called "unofficial" because the adoption of the house committees amendment isn't officially adopted until the Senate has agreed to it.

Senate action upon House bill can follow the reciprocal path as outlined above for the House. However, the Senate does not always unofficially engross Senate committee's amendment into a House bill. Complex House bills with a complex Senate committee amendment usually are engrossed. On many other bills when it returns to the Senate floor for consideration after adoption of the Senate committee report, two documents are simultaneously before the Senate. They are the bill itself as engrossed and messaged to the Senate by the House, and the Senate committee's amendment.

In the House, the drafting of a floor amendment to a Senate bill follows the usual format except that reference must be made to the fact that the document being amended is the unofficial engrossment. For example:

> "Smith moves to amend S.F. No. 483, the unofficial engrossment, as follows:"

In the Senate, the drafter of a proposed floor amendment to a House bill must carefully consider how the proposed floor amendment will amend the previously proposed committee amendment, or amend the bill, or both.

When it is determined that a prior committee amendment will be amended, the drafter should make reference to that amendment and not just to the original bill.

For instance, an example of proper opening language to a proposed senate committee amendment to a house bill would be:

> "Mr. . . . . moves to amend the amendment placed on H.F. . . . . by the Committee on . . . . . ., adopted by the Senate on . . . . . ., 1979, as follows:"

If, however, a proposed floor amendment affects an entirely different area of the bill than a previously proposed committee amendment, the drafter may use the usual opening language to propose a new amendment.

If the drafter determines that a requested amendment will affect both portions of a previously adopted committee amendment and also other portions of the bill, then the new amendment should only be drafted to the previously proposed amendment. The new amendment will make necessary changes in the original amendment and then append new operations to the committee amendment which will make necessary changes in the remainder of the bill. Frequently a "delete everything" amendment to the committee's amendment is the most efficient drafting method.

If the Senate has prepared an unofficial engrossment of the House bill, then floor amendments are drafted to that unofficial engrossment.

(3) Numbering of Lines. The drafter should ensure that the lines of all amendments are numbered. Such numbering does not include the "form" portion of committee reports.

Such numbering is necessary for two reasons. First, such numbering will facilitate the drafting of any second degree amendments. Second, references to page and line numbers in first degree amendments by second degree amendments will facilitate the use of computers in the engrossment process. In any case, references requiring a count of paragraphs, sentences or words in a first degree amendment by a second degree amendment is highly subject to error.

6.3 The Amending Technique

In any of the four kinds of documents discussed above, one of two different amending techniques may be used. The first is to scrap the entire bill and propose a wholesale substitute for it (a "delete everything" amendment). The second is to repair and improve the bill item by item by means of individual amendments to each page and line that needs to be changed. Which technique to use is a matter of professional judgment, by the author as well as by the drafter, giving due regard to what will make the amendment most intelligible to those who will be considering it as well as what will require the least amount of paper and effort. Each technique will be discussed separately.

(a) "Delete Everything" Amendments

Amendments which are wholesale substitutes for the bills they amend are essentially bills themselves. The only differences are the opening paragraph of the text which says "Delete everything after the enacting clause and insert:", and the final paragraph, deleting the title and setting out the new title.

Since the amendment is basically a bill, all rules and procedures set out in this manual for the drafting of bills apply. For examples of "delete everything" amendments see the examples at the end of this chapter.

"Delete everything" amendments should not be used except when necessary. Such an amendment is necessary only when the bill is changed so substantially in content that many pages of page and line amendments would be necessary to change the bill.

Unlike a regular bill, a substitute bill contained in a "delete everything" amendment necessarily bypasses some of the steps in the legislative process. There is no referral and no committee hearings.

When drafting "delete everything" amendments, the drafter must be careful to always say that a bill is being amended by deleting everything and not just that the bill is deleted and something else substituted. The reason is

that court cases have periodically occurred claiming that a bill has not been "read three times" as required by the constitution when one bill is substituted for another. This claim particularly occurs with regard to "delete everything" conference committee amendments. The courts, however, have not sustained these claims where a bill has retained the identity of a single file number throughout the legislative process during which it was amended albeit by a wholesale change in the text of the bill.

(b) "Page and Line" Amendments

Amendments that change a bill by making a number of item by item changes are the most diverse in form and complex to draft. This diversity, however, should not lead a drafter to believe that any form will do as long as it "gets the job done." To insure that such amendments are correct, a drafter should utilize only the forms set out below.

Since the amendments are complex, the various elements are considered separately.

(1) Amending Operations. There are five basic operations performed by an amendment. They are:

— deleting (removing) text from a bill.

— striking (adding cancel marks to the words, viz: "~~striking~~") text in a bill.

— reinstating (removing the cancel marks) text in a bill.

— inserting new text into a bill (which may be combined with either a deleting or striking operation).

— renumbering sections of a bill, subdivisions of a section, or numbered clauses of a subdivision or numbered items of a clause.

An amendment may contain numerous paragraphs each of which contains an amending operation. Each paragraph may contain a different kind of operation.

(2) Amendment Structure. There are several specific rules for the structure of an amendment.

First, when more than one operation is specified in an amendment, the operations must be in increasing order by page and line number. The only exceptions are operations that either amend the title or that delete specified sections of the bill (then the specified sections must be in increasing numerical order). An operation that amends the title is always the last operation.

Second, the amendment must contain one of the five operational command words:

"delete"

"strike"

"reinstate"

"insert" (which may be combined with "delete" or "strike")

"renumber" (or "reletter", if appropriate)

No other operational commands should be used. So "add" cannot be used as an alternate to "insert", "restore" cannot be used for "reinstate" and "delete" and "strike" are never interchangeable.

Third, the description of each amending operation to be performed in an amendment must be self-contained within the paragraph. A drafter may not, for instance, have an opening paragraph saying that all amendments are in a specified page and in subsequent paragraphs list only line numbers.

Fourth, only one amending operation may be contained in any paragraph. A drafter may not, for instance, instruct in a single paragraph that specified words be deleted or inserted in numerous places within the bill.

Fifth, the page that is amended must be specified before the line or lines that are amended. A drafter may not, for instance, give a location as "Line 14, page 1, through line 17."

(3) Amendments of Deletion. Amendments of deletion operate to have specified text removed from the bill amended. The only proper occasions to use such amendments are as follows:

1. Delete a page ("Delete page 2").

2. Delete multiple pages in increasing numerical order ("Delete pages 2 to 4").

3. Delete a line ("Page 2, delete line 1").

4. Delete multiple lines in increasing numerical order ("Page 2, delete lines 1 to 4").

5. Delete all the words following an indicated word, figure or punctuation mark in a stated line ("Page 2, line 2, delete everything after "university"").

6. Delete all the words on a page following an indicated word, figure, or punctuation mark in a line and any number of additional lines ("Page 2, lines 2 to 4, delete everything after "plague"").

7. Delete specified words, figures, or punctuation marks following specified words, figures, or a punctuation mark in a line ("Page 2, line 2, after "computer" delete "center or other"").

8. Delete specific words, figures or punctuation marks extending over not more than three lines. ("Page 2, lines 4 and 5, delete "shall not undertake such activities when the operator knows"").

9. Delete all new (i.e. underlined) words, figures and punctuation marks in a line and any number of additional lines ("Page 2, lines 5 to 17 delete the new language").

10. Delete everything after the enacting clause.

11. Delete a section ("Delete section 4").

12. Delete multiple sections in increasing numerical order ("Delete sections 4 to 6").

When the amending operation lists the words, figures or punctuation mark affected by the operation, they must be enclosed in quotation marks.

The deletion operation may never be used to change text in an existing law. In all such cases, the "striking" operation must be utilized.

(4) Amendments of Striking. Amendments of striking technically operate to have specified text without cancel marks removed and then reinserted with cancellation marks. The operational effect is to show that words that currently are part of the law are to be removed from the law.

Some confusion may exist between the difference between amendments of deletion and amendments of striking. They are not the same and may not be used interchangeably. Amendments of deletion remove from a bill words that are not now law. Amendments of striking indicate that words that are now law are to be removed from the law.

The occasions when an amendment of striking is proper are identical to those set out immediately above in section 6.3(b)(3). However, the drafter must be sure that all words affected are now law.

(5) Amendments of Insertion. Amendments of insertion operate to add additional words to a bill. If the words to be added are to a bill no part of which is now law, the words are not underlined. If, however, the words to be added are to a bill any part of which is now law, (i.e. the bill is already amendatory), the words are underlined.

Valid types of amendments of insertion are as follows:

1. Insert one or more numbered subdivisions, paragraphs or clauses after or before a line. ("Page 2, after line 2 insert:").

2. Insert specified words after or before a line. ("Page 2, after line 2 insert "....."").

3. Insert specified words, figures or a punctuation mark after or before specified words, figures or punctuation marks in a line. ("Page 3, line 9, after "operation" insert "....."").

4. Insert one or more sections after or before a section. ("After Sec. 2. insert:").

5. Following any deletion or striking operation with specified text, insert one or more words, lines or sections in lieu thereof with specified text. ("Page 4, line 6, delete "...." and insert "...."").

6. Following any page and line deletion or striking operation, insert specified words or one or more numbered lines, subdivisions, paragraphs or clauses in lieu thereof. ("Page 6, strike lines 1 to 18 and insert "....."").

7. Following any deletion or striking operation of everything after an indicated place, insert one or more lines, words, or figures in lieu thereof. ("Page 2, line 2, delete everything after "university" and insert "....."").

Again, when the amending operation lists the words, figures or punctuation marks affected by the operation, they must be enclosed in quotation marks.

When the language to be inserted is a word, words or a sentence then the material to be inserted is contained within the amendment operation without inserting a colon and dropping to the next line and indenting. When, however, the material to be inserted is a paragraph, series of paragraphs or a larger element, then the quoted material begins on the next line, not within the paragraph operation. A colon ends the operative portion of the amendment operation. This can only occur in the above examples 1 and 4 to 7.

As indicated above, amendments of reinsertion may be combined with either the deletion or striking operations. These are the only operations which may be combined.

Amendments of deletion and insertion operate to remove certain specified text from a bill and replace it with other text. Such an amendment is used when it is desired to change the proposed wording, whether in a new law or in an amended old law, from one wording to another. When preparing such amendments, the drafter must be sure that both the words to be deleted and the words to be inserted are properly underlined or stricken through. If the language to be deleted is incorrectly stated or improperly underlined or stricken, the amendment is defective. If the language to be inserted is incorrectly stated or improperly underlined or stricken, the amendment is defective and inadequate to amend the text. This is a common area for drafting errors which is only remedied by accurate proofreading against the original text.

Amendments of striking and insertion operate to add cancellation marks to the specified text which is followed immediately by new text to be added to the law. Such an amendment is used when it is desired to change the proposed wording in an old law prepared for amendment from one wording to another. When preparing such amendments, the drafter must be sure that both the words to be stricken are properly specified and the words to be inserted are properly underlined. Again, this is a common area for drafting errors.

(6) Amendments of Reinstatement. Amendments of reinstatement are used solely to restore text to an existing law which is shown with cancellation marks (i.e., to be removed from the law if the bill is passed). In actual effect, the command is a combination of the "delete" and "insert" operation. The only difference is that the only words which can be affected by the "delete" portion of the operation are words which are stricken through.

The only proper occasions to use such amendments are as follows:

1. Reinstate specified stricken text in a line. ("Page 1, line 8, reinstate "~~.....~~"").

2. Reinstate specified stricken text in multiple lines in increasing numerical order. ("Page 1, lines 8 to 12 reinstate "~~.....~~"").

3. Reinstate all stricken text following an indicated word, figure or punctuation mark in a stated line and any number of additional lines in increasing numerical order. ("Page 4, line 12, reinstate everything after "indication"").

4. Reinstate specified stricken text following an indicated word, figure or punctuation mark in a stated line and up to two additional lines in increasing numerical order. ("Page 9, lines 12 to 14, after "property" reinstate "~~.....~~"").

5. Reinstate stricken text in a line and any number of additional lines ("Page 2, lines 17 to 21, reinstate " ~~property~~".").

6. Reinstate an entirely stricken line 1 ("Page 1, reinstate line 4.").

7. Reinstate multiple entirely stricken lines in increasing numerical order ("Page 4, reinstate lines 9 to 18.").

The words, figures or punctuation marks affected by the reinstatement operation must be enclosed in quotation marks and must have cancellation marks through them. (Example: "Reinstate "~~commissioner~~"", not "reinstate ''commissioner''').

(7) Amendments of Renumbering. Amendments of renumbering are a frequent boilerplate operation which is the last operation in an amendment just before any amendment to the title. The standard wording is "Renumber the sections, subdivisions or clauses as may be required by this amendment."

6.4 Amendments to Amendments

The discussion in sections 6.2 and 6.3 assumes that only first degree amendments are ever proposed. Although infrequent in the Minnesota Legislature, amendments to amendments, also called second degree amendments, must sometimes be drafted. When drafting such amendments, several requirements must be kept in mind.

First, all rules regarding the drafting of first degree amendments apply equally to the drafting of second degree amendments.

Second, second degree amendments are necessarily complex and great care should be taken in their drafting. Frequently, the use of multiple quotation marks are necessary. The improper or inaccurate use of quotation marks in second degree amendments is a frequent source of error.

The format for an "ordinary" second degree amendment is simple enough.

For example:

1 "Mr. Smith moves to amend the amendment of Mr. Jones to S.F.
2 111, proposed to the Senate on Jan. 15, 1979, as follows: Page 1,
3 line 11, delete "quality of life" and insert "the essential amount of
4 energy to residential customers"."

In this amendment note the precise identification of the document being amended by sponsor, bill file and proposal date. Note also the amendment by reference to page and line number and not to paragraph count, sentence count or word count.

Drafting suddenly becomes more complex when material was quoted in the first degree amendment.

For example, a first degree amendment reading:

1 Mr. Jones moves to amend S.F. 182 as follows: Page 7, line 11,
2 delete "quality of life" and insert "the essential amount of energy
3 to residential customers".

might have a second degree amendment to it proposed which reads:

1 Mr. Smith moves to amend the amendment of Mr. Jones to H.F.
2 182, proposed to the House on January 18, 1979, as follows: Page

3 1, lines 2 and 3, delete "delete 'quality of life' and insert 'the
4 essential amount of energy to residential customers' "and insert
5 "insert 'as indicated by such essential amount of energy to resi-
6 dential customers' ".

When the second degree amendment is engrossed into the first degree amendment, lines 2, and 3 will read:

> insert "as indicated by such essential amount of energy to residential customers".

The possible confusion because of the multiplicity of quotation marks is evident. However, it is greatly resolved by two rules. First, when a second degree amendment proposes to amend quoted matter in the first degree amendment, then the entire quoted matter from the first degree amendment must be set out. This quotation will include matter which will not be changed by the second degree amendment. The result will be that second degree amendments will always have pairs of quotation marks. A second degree amendment will never result in an odd number of quotation marks.

In the above example, note that the words "essential amount of energy to residential customers" are recited without change in the second degree amendment. The sole reason for doing so is to preserve the entire quoted text from the first degree amendment.

Second, consistent with American usage, the double quotation marks in the first degree amendment are converted to single quotation marks in the second degree amendment. Also, the reverse is true. Text in the second degree amendment which includes quotation marks to be inserted in the first degree amendment is shown with single marks. Single quotation marks must always be in pairs.

While it is technically possible to draft third degree amendments, such amendments are prohibited by the rules of both houses. (Mason's Manual, Sec. 409(1)). Such amendments are hopelessly confusing and should be resisted even if the requester proposes to suspend the rules. The alternative to a third degree amendment is another second degree amendment which deletes the entirety of the first degree amendment and substitutes new text.

Samples of second degree amendments are found at the end of this chapter.

6.5 Amendments and the Engrossing and Enrolling Process

The process of drafting amendments is an integral part of the engrossing and enrolling process. Only if an amendment is "engrossable" is it really correct. The chapter on Engrossing and Enrolling should, therefore, be consulted.

6.6 Forms

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EXAMPLE — MOTION IN COMMITTEE (Senate Form)

Mrs. ..... moves to amend H.F. ...., the third engrossment, as follows:

Page 1, line 19, after the period insert "No members of the Minnesota Legislature shall serve on the subcommittee."

The language of motions in committee is the same as for floor amendments.

For the House form, omit the title "Mr.", "Mrs.".

See other examples on pages 162 to 168.

EXAMPLE — SENATE COMMITTEE REPORT (page and line amendment; no title amendment)

Mr. ..... from the Committee on Local Government, to which was referred

S. F. No. 170: A bill for an act relating to political subdivisions; regulating certain interests in contracts by public officials; amending Minnesota Statutes 1978, Section 471.88, Subdivisions 2, 5, and 8.

Reports the same back with the recommendation that the bill be amended as follows:

Page 2, line 11, delete "$3,000" and insert "$5,000 "

Page 2, line 16, delete "$3,000" and insert "$2,000 "

Page 2, after line 16, insert:

"Sec. 4. This act is effective the day following final enactment."

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chairman)

.....
(Date of Committee recommendation)

Only the amendment would be prepared by drafter. The committee secretary would complete the report by assembling it in committee report form.

EXAMPLE — SENATE COMMITTEE REPORT (Delete everything amendment with page and line title amendment)

Mr. ..... from the Committee on Taxes and Tax Laws, to which was referred

S. F. No. 267: A bill for an act relating to taxation; defining "common carrier" for certain purposes in connection with the sales and use tax; amending Minnesota Statutes 1978, Section 297A.01, by adding a subdivision.

Reports the same back with the recommendation that the bill be amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 1976, Section 297A.211, Subdivision 1, is amended to read:

297A.211 [COMMON CARRIERS AS RETAILERS.] Subdivision 1. Every person, as defined in this chapter, who is engaged in ~~the transportation of property as a common carrier in interstate commerce~~ interstate for-hire transportation of tangible personal property by motor vehicle may at their option, under rules and regulations prescribed by the commissioner, register as retailers and pay the taxes imposed by this chapter in accordance with this section. Persons referred to by this subdivision are:

(1) persons possessing a certificate or permit

Only the amendment would be prepared by the drafter. The committee secretary would complete the report by assembling it in committee report form.

EXAMPLE — SENATE COMMITTEE REPORT (Cont.)

authorizing for-hire transportation of property from the Interstate Commerce Commission or the Minnesota Public Service Commission; or,

(2) persons transporting commodities defined as "exempt" in for-hire transportation in interstate commerce; or,

(3) persons who, pursuant to contracts with persons described in clauses (1) or (2) above, transport tangible personal property in interstate commerce.

Persons qualifying under clauses (2) and (3) must maintain on a current basis the same type of mileage records that are required by persons specified in clause (1) by the Interstate Commerce Commission.

Sec. 2. [EFFECTIVE DATE.] This act is effective the day following final enactment. "

Amend the title as follows:

Page 1, line 5, delete "297A.01, by adding a subdivision" and insert "297A.211, Subdivision 1"

And when so amended the bill do pass. Amendments adopted. Report adopted.

.....
(Committee Chairman)

.....
(Date of Committee recommendation)

EXAMPLE — HOUSE COMMITTEE REPORT (page and line amendment; no title amendment)

Mr. ....., from the Committee on GOVERNMENTAL OPERATIONS to which was referred:

H. F. No. 2224, A bill for an act

relating to the city of Nashwauk; police relief pensions and widow's benefits; officers of association; amending Laws 1943, Chapter 196, Sections 4, as amended; and 8.

Reported the same back with the following amendments:

Page 2, line 11, after "department" insert " , plus an additional $3 per month for each year of service "

Page 3, line 20, after the period insert " The increases provided for in section 1 of the act shall apply to service pensioners or widows who are receiving service pensions or widow's benefits on the effective date of this act. The increases shall begin to accrue on the first day of the month next following the effective date of this act. "

[ ] With the recommendation that when so amended the bill pass.

[XX] With the recommendation that when so amended the bill pass and be placed on the Consent Calendar.

[ ] With the recommendation that when so amended the bill pass and be re-referred to the Committee on

[ ] And without further recommendation.

This Committee action taken_____, 19____

_____, Chairman

Form 107 2

Only the amendment would be prepared by the drafter. The committee secretary would complete the report by assembling it in committee report form.

EXAMPLE — HOUSE COMMITTEE REPORT (Delete everything amendment with a delete everything title amendment)

Mr. ..... from the Committee on GENERAL LEGISLATION AND VETERANS AFFAIRS to which was referred:

H. F. No. 2451, A bill for an act

relating to elections; providing that public facilities be available for precinct caucuses; fixing the charge for their use; amending Minnesota Statutes 1976, Section 202A.15, by adding a subdivision.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 1976, Chapter 202A, is amended by adding a section to read:

[202A.192] [USE OF PUBLIC FACILITIES.] Every statutory city, home rule charter city, county, town, school district and other public agency, including the University of Minnesota and other public colleges and universities, shall make their facilities available for the holding of precinct caucuses and legislative district or county conventions required by chapter 202A. A charge for the use of the facilities may be imposed in an amount that does not exceed the lowest amount charged to any public or private group.

Sec. 2. Minnesota Statutes 1976, Section 202A.65, Subdivision 3, is amended to read:

Subd. 3. [NOMINATING PETITIONS, TIME FOR FILING.] In all cases other than those provided in subdivision 2, nominating petitions shall be filed ~~not later than the seventh day~~ during the filing period preceding the election at which the vacancy is to be filled.

Sec. 3. [EFFECTIVE DATE.] This act is effective the day following its final enactment."

EXAMPLE — HOUSE COMMITTEE REPORT (Cont.)

Delete the title and insert:

"A bill for an act

relating to elections; providing that public facilities be available for precinct caucuses; fixing the charge for their use; providing for the filing of certain nominating petitions; amending Minnesota Statutes 1976, Chapter 202A, by adding a section; and Section 202A.65, Subdivision 3."

[XX] With the recommendation that when so amended the bill pass.

[ ] With the recommendation that when so amended the bill pass and be placed on the Consent Calendar.

[ ] With the recommendation that when so amended the bill pass and be re-referred to the Committee on

[ ] And without further recommendation.

This Committee action taken_____, 19____

_____, Chairman

Form 107 Rev. 2

Only the amendment would be prepared by the drafter. The committee secretary would complete the report by assembling it in committee report form.

EXAMPLE — SENATE FLOOR AMENDMENT (page and line amendment; page and line title amendment)

```
1       Mr. ..... moves to amend S.F. No. 1234, as
2  follows:
3       Page 1, line 10, after the period insert "These
4  licenses shall not expire until January 1, 1981."
5       Amend the title, as follows:
6       Page 1, line 3, after "valid" insert "; extending the
7  expiration date of certain licenses"
```

Entire amendment prepared by the drafter.

EXAMPLE — SENATE FLOOR AMENDMENT (delete everything amendment with delete everything title amendment)

Mr. ..... moves to amend S.F. No. 1286 as follows:

Delete everything after the enacting clause and insert:

"Section 1. [GENERAL OBLIGATION NURSING HOME BONDS.] Subdivision 1. [AUTHORIZATION.] The board of commissioners of Chisago county may by resolution sell and issue general obligation bonds of the county in the amount of $1,500,000 to finance the acquistion and betterment of additional facilities for the county nursing home, comprising apartment units.

Subd. 2. [ADMINISTRATION AND RENTAL OF APARTMENT UNITS.] The apartment units shall be constructed in close proximity to existing county nursing home facilities, and administered together with the existing facilities as part of an overall program for the care of aged and infirm persons. The board of commissioners may rent such apartment units to persons applying for entrance to the county nursing home, or to other elderly persons of low and moderate income who may require use of nursing home facilities, upon such terms and conditions as the board shall deem advisable.

Subd. 3. [ELIGIBILITY.] The county may by ordinance adopt regulations establishing age, health and income eligibility requirements for the rental of such apartment units. The regulations may provide different rental terms and conditions for persons of different ages, health conditions and incomes.

Subd. 4. [BOND SECURITY; REFERENDUM PETITION.] The bonds shall be issued and secured in accordance with Minnesota Statutes, Sections 445.45 to 445.50 and Chapter 475, except that in authorizing the bonds the board of commissioners shall adopt an initial resolution stating the amount, purpose and, in general, the security to be provided

EXAMPLE — SENATE FLOOR AMENDMENT (Cont.)

for the bonds; and shall publish the resolution once each week for two consecutive weeks in the official newspaper. The bonds so authorized may be issued without the submission of the question of their issuance to the electors unless within 30 days after the second publication of the resolution a petition requesting such election signed by more than ten percent of the qualified electors voting in the county at the last general election is filed with the county auditor. In the event a petition is filed, no bonds shall be issued under this subdivision unless authorized by a majority of the electors voting on the question.

Sec. 2. This act is effective upon approval by a majority of the board of commissioners of Chisago county, and upon compliance with Minnesota Statutes, Section 645.021."

Delete the title and insert:

"A bill for an act

relating to Chisago county; authorizing the issuance of general obligation bonds to finance the cost of facilities for the county nursing home; providing for the administration and rental of such facilities."

Entire amendment prepared by the drafter.

EXAMPLE — HOUSE FLOOR AMENDMENT (page and line amendment; page and line title amendment)

..... moves to amend H.F. No. 1234, as follows:

Page 31, lines 28 to 30, reinstate the stricken language

Page 59, line 29, delete " 60A.13, Subdivisions 3 and 4; "

Amend the title as follows:

Page 1, line 36, delete "60A.13,"

Page 1, line 37, delete "Subdivisions 3 and 4;"

Entire amendment prepared by the drafter.

EXAMPLE — HOUSE FLOOR AMENDMENT (page and line amendment; page and line title amendment)

1 ..... moves to amend H.F. No. 438, as follows:

2 Page 2, line 28, delete " This act " and insert "

3 Section 1 "

4 Page 2, after line 30, insert:

5 "Sec. 3. [LEOTA, TOWN OF; DETACHED BANKING FACILITY;

6 AUTHORIZATION.] With the prior approval of the commissioner

7 of banks, a bank doing business in this state may establish

8 and maintain not more than one detached facility in the town

9 of Leota in Nobles county. Any bank desiring to establish a

10 detached facility shall follow the approval procedure

11 prescribed in Minnesota Statutes, Section 47.54. The

12 establishment of a detached facility in the town of Leota

13 shall be subject to the provisions of Minnesota Statutes,

14 Sections 47.51 to 47.57.

15 Sec. 4. Section 3 takes effect when approved by the

16 town board of the town of Leota and upon compliance with

17 Minnesota Statutes, Section 645.021. "

18 Amend the title, as follows:

19 Page 1, line 2, after "to" insert "banking;"

20 Page 1, line 7, after the semi-colon insert:

21 "authorizing the establishment of a detached banking

22 facility in the town of Leota in Nobles county;"

EXAMPLE — FLOOR AMENDMENT TO ENGROSSED BILL (House form)

```
1        .......... moves to amend S.F. 1616, the second
2  engrossment, as follows:
3        Page 1, line 17, strike "four" and insert " six "
4        Amend the title as follows:
5        Page 1, line 4, after the semicolon insert "increasing
6  the number of citizen board members;"
```

In the opening language, note the reference to the second engrossment when that is being amended.

Unofficial engrossments may not be amended in committee. Rather, amend the last official engrossment or the amendments pending to it.

Note the numbering of lines to make subsequent amendments easier.

For the Senate form, insert "Mr.", "Mrs.", "Ms.", "Miss", as appropriate, before the sponsor's name.

EXAMPLE — AMENDMENT TO COMMITTEE AMENDMENT TO BILL ORIGINATING IN THE OTHER HOUSE (Senate form)

Mr. ..... moves to amend the amendment placed on H.F. ..... by the committee on ....., 1979, as follows:

After section 2, insert:

"Sec. 3. [150A.091] [RULES.] The board shall make rules establishing the minimum standards for the construction of high-pressure steam generators to be operated in high density population areas."

Page 2, line 28, delete " make rules and "

In the opening language note the reference to the previously adopted committee amendment. This is necessary to insure coordination of the new amendment to the old one.

These amendments are really secondary amendments and for variants in the drafting of the text see other examples on pages 169 and 170.

This form will not be used in the House where the amendment will be drafted to the unofficial engrossment of the Senate committee's amendment into the House file.

EXAMPLE — AMENDMENT TO AMENDMENT (simple)

Mr. ..... moves to amend the amendment of Mr. ..... to H.F. ....., proposed to the Senate on ....., 1977, as follows:

Page 1, line 11, delete " quality of life " and insert " the essential amount of energy to residential customers ".

Page 1, line 13, after " encouraged " insert " and the quality of life protected ".

Page 2, delete line 1.

Page 2, line 3, reinstate "revenue".

Page 2, line 7, strike "and any lost revenues".

Renumber the sections, subdivisions or clauses and correct all internal cross references as may be required by this amendment.

In the opening language note the precise identification of the amendment by sponsor, bill number and date of proposal.

In the text, note that all the various operations available in a first degree amendment are available in the second degree amendment.

Note that all lines are numbered.

EXAMPLE — AMENDMENT TO AMENDMENT (complex)

Mr. ..... moves to amend the amendment of Mr. ....., proposed in the ..... on ....., 1977, as follows:

Page 1, line 3, delete "strike 'four' and insert ' six ' " and insert "after 'four' insert ' -hundred ' ".

Page 2, after line 4, insert:

"Page 7, after line 21, insert:

" Subd. 2. The board shall make rules establishing the minimum standards for the construction of high pressure steam generators to be operated in high density population areas. ".".

In the operation beginning on line 4 note the equal number of quotation marks.

In the operation beginning on line 7 note that it is effectively inserting a new operation in the first degree amendment. Some confusion may be engendered because of the similarity of the language of the amendment and of the language to be inserted. This is clarified by reference to the quotation marks.

Also, note the necessary repetitive periods and quotation marks necessary to end the second operation.

This amendment amends the amendment appearing on page 167.

EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (delete everything amendment; delete everything title amendment)

CONFERENCE COMMITTEE REPORT ON H. F. NO. 2466

A bill for an act

relating to privacy of data on individuals; definitions, determination and emergency classification; amending Minnesota Statutes, 1977 Supplement, Sections 15.162, Subdivision 2a; and 15.1642, Subdivisions 3 and 5; repealing Minnesota Statutes, 1977 Supplement, Section 15.1642, Subdivision 4.

March 12, 1977

The Honorable .....
Speaker of the House of Representatives

The Honorable .....
President of the Senate

We, the undersigned conferees for H. F. No. 2466, report that we have agreed upon the items in dispute and recommend as follows:

The Senate recede from its amendment and that H.F. No. 2466 be further amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes, 1977 Supplement, Section 15.162, Subdivision 2a, is amended to read:

Subd. 2a. "Confidential data on individuals" means data which is (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force and effect with regard to the state agencies,

EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (Cont.)

political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant an emergency classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, ~~1978~~ 1979, whichever occurs first.

Sec. 2. Minnesota Statutes, 1977 Supplement, Section 15.1642, Subdivision 5, is amended to read:

Subd. 5. [EXPIRATION OF EMERGENCY CLASSIFICATION.] All emergency classifications granted under this section and still in effect shall expire on July 31, ~~1978~~ 1979. No emergency classifications shall be granted after July 31, ~~1978~~ 1979.

Sec. 3. Minnesota Statutes, Chapter 15, is amended by adding a section to read:

[15.1643] [INTERNATIONAL DISSEMINATION PROHIBITED.] No state agency or political subdivision shall transfer or disseminate any private or confidential data on individuals to the private international organization known as Interpol.

Sec. 4. [REPEALER.] Minnesota Statutes, 1977 Supplement, Sections 144.151, Subdivisions 8 and 9; and 144.175, Subdivision 2, are repealed.

Sec. 5. Subdivision 1. Sections 1, 2, and 4 are effective the day following final enactment.

Subd. 2. Section 3 is effective April 1, 1980."

Delete the title in its entirety and insert:

"A bill for an act

relating to departments of state; concerning confidential data on individuals; regarding emergency classification of data; prohibiting the release of certain data to the international organization known as Interpol; amending Minnesota Statutes, 1977 Supplement, Sections 15.162, Subdivision 2a; 15.1642, Subdivision 5; and Minnesota Statutes 1976, Chapter 15, by adding a section; repealing Minnesota Statutes, 1977 Supplement, Sections 144.151, Subdivisions 8 and 9; and 144.175, Subdivision 2."

EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (Cont.)

```
 1
 2       We request adoption of this report and repassage of the
 3  bill.
 4
 5  House Conferees:  (Signed)
 6
 7  ..................  ..................  ..................
 8
 9  Senate Conferees:  (Signed)
10
11  ..................  ..................  ..................
```

Entire amendment prepared by the drafter.

EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (page and line amendment; no title amendment)

CONFERENCE COMMITTEE REPORT ON H. F. NO. 921

A bill for an act

relating to public employees; designating the number of arbitrators to resolve labor dispute; amending Minnesota Statutes 1976, Section 179.72, Subdivision 6.

May 10, 1977

The Honorable .....
Speaker of the House of Representatives

The Honorable .....
President of the Senate

We, the undersigned conferees for H. F. No. 921, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate recede from its amendments and that H.F. No. 921 be further amended as follows:

Page 2, lines 8 to 12, reinstate the stricken language

Page 2, line 11, strike "$100" and insert " $180 "

Page 2, line 13, after "All" insert " fees, "

Page 2, line 14, after the period insert " In those cases where a single arbitrator is hearing a dispute, the fees, expenses and costs of the arbitrator shall also be shared and assessed equally by the parties to the dispute. "

We request adoption of this report and repassage of the bill.

House Conferees: (Signed)

....

Senate Conferees: (Signed)

....

EXAMPLE — SENATE CONFERENCE COMMITTEE REPORT (page and line amendment; no title amendment)

CONFERENCE COMMITTEE REPORT ON S. F. NO. 274

A bill for an act

relating to natural resources; authorizing additions to and deletions from certain state parks; authorizing land acquistion in relation thereto; amending Laws 1945, Chapter 484, Section 1, as amended.

April 18, 1977

The Honorable .....
President of the Senate

The Honorable .....
Speaker of the House of Representatives

We, the undersigned conferees for S. F. No. 274, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate concur in the House committee amendment adopted May 6, 1977, and the house recede from the other amendments it adopted May 12, 1977, and that S.F. No. 274 be further amended as follows:

Page 6, after line 14, by inserting:

" Subd. 7. [BIG STONE STATE PARK; DELETION.] The following area is deleted from Big Stone State Park: The Northeast Quarter of the Northwest Quarter of Section 20 in Township 123 North, Range 48 West and that part of Government Lot Two (2), Section Ten (10), Township One Hundred Twenty-two (122), Range Forty-seven (47) lying south of Highway No. 7 and west of the following described line: Commencing at a point on the westerly boundary line of Government Lot Two (2), Section Ten (10), Township One Hundred Twenty-two (122), Range Forty-seven (47) which is 189.75 feet due South of the intersection of the Westerly boundary line of said Government Lot 2 and the Southerly right of way line of Trunk Highway No. 7; thence due East

EXAMPLE — SENATE CONFERENCE COMMITTEE REPORT (Cont.)

853.3 feet to an iron stake; thence deflect to the left at a delta angle of 71 degrees 41 minutes 371.9 feet to the intersection of said line with the Southerly right of way line of said Trunk Highway No. 7 which is the starting point of said line above referred to; thence in a Southwesterly direction back along said line just described for a distance of 1081.4 feet to the shores of Big Stone Lake. "

We request adoption of this report and repassage of the bill.

Senate Conferees: (Signed)

....

House Conferees: (Signed)

....

Entire report is prepared by the drafter.

EXAMPLE — PAGE AND LINE AMENDMENT REQUIRING RENUMBERING OF SECTION IN BILL

..... moves to amend H.F.No. 1702, as follows:

Page 1, after line 13, insert

"Sec. 2. Minnesota Statutes 1978, Section 330.02, is amended to read:

330.02 [BOND.] Every auctioneer, before making sales, shall give a corporate surety bond to the ~~county~~ state in ~~a~~ the penal sum of ~~not less than $1,000 nor more than $3,000 to be fixed by the treasurer and with sureties approved by the treasurer~~ $5,000, conditioned that he will pay all sums required by law and in all things conform to the laws relating to auctioneers. ~~The treasurer shall endorse his approval upon such bond, and file it in his office~~ The bond shall be approved and filed as provided in chapter 574."

Renumber the remaining section

Further, amend the title

Page 1, after line 2, insert "modifying bond requirements;"

Page 1, line 3, delete "Section" and insert "Sections"

Page 1, line 4, before the period insert "; and 330.02"

On line 15 note the directive to renumber the sections. In the course of engrossing this directive will be carried out.

7

PARTICULAR SUBJECT MATTERS

7.1 Appropriations
- (a) General Method of Drafting
- (b) Specific Problem Areas

7.2 Bonding
- (a) General Considerations
- (b) Method of Drafting Bonding Bills
- (c) Specific Problem Areas

7.3 Crimes and the Courts
- (a) Substantive Law of Crimes
- (b) Law of Criminal Procedure
- (c) State Components of Criminal Justice System
- (d) Local Components of the Criminal Justice System
- (e) Courts' Role in the Criminal Justice System
- (f) Fixed Sentencing

7.4 Special Laws
- (a) Prohibition
- (b) Local Laws
- (c) Specific Problem Areas
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7.5 Taxes
- (a) Cross-references to Federal Laws
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7.6 Organization of State Government
- (a) General Considerations
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7.7 Organization of Counties, Cities and Metropolitan Government
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- (e) Other Local Government Units

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- (a) Generally
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- (c) Sectarian or Parochial Schooling Under the First Amendment

(1) Transportation
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(5) Tuition Grants, Reimbursements or Tax Credits
(6) Teachers' Salaries or Supplements
(7) School Lunches
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(10) Construction Grants
(11) Non-categorical Grants to Colleges
(d) Religion in Schools Under the First Amendment
(1) Bible Reading
(2) School Prayer
(3) Teaching of Evolution
(4) Release Time for Religious Instruction
(5) Compulsory Attendance
(e) Religious Issues Under the Minnesota Constitution
7.10 Forms

7.1 Appropriations

This section discusses only general appropriations bills. Information on appropriations contained in substantive bills can be found in section 4.3 of this book.

(a) General Method of Drafting

The Minnesota Constitution provides, in Article XI, Section 1, that:

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

Unlike a bill imposing a tax, which must originate in the House, a bill appropriating money may originate in either body of the legislature. The bulk of the money appropriated by the legislature is contained in twelve general appropriations bills adopted by the legislature during the session held in odd-numbered years.

The content of these appropriations bills are provided for by Joint Rule 2.02. It provides:

> Rule 2.02. The same bill shall not appropriate public money or property to more than one local or private purpose.
>
> No clause appropriating money for a local or private purpose shall be contained in a bill appropriating money for the State government or public institutions. All resolutions authorizing the

issuing of abstracts by the Secretary of the Senate or the Chief Clerk of the House for the payment of money shall be upon the call of "yeas" and "nays."

At least twenty calendar days prior to the adjournment of the legislature, the Committee on Finance of the Senate and the Committee on Appropriations of the House shall report to their respective houses, unless directed by concurrent resolution to report different appropriation bills, eight separate appropriation bills as follows:

(a) A bill appropriating money for the general administrative and judicial expenses of the State government for the succeeding two fiscal years including salaries, office expenses and supplies and other necessary expenses connected therewith;

(b) A bill covering all appropriations relating to public welfare, health and corrections for the support and maintenance of all State penal and charitable institutions, and other institutions of the State except educational for the two succeeding fiscal years;

(c) A bill appropriating money for the support and maintenance of all State educational institutions for the two succeeding fiscal years;

(d) A bill covering all appropriations providing for the payment of claims against the State of Minnesota which may have been allowed by the Finance Committee of the Senate or the Appropriations Committee of the House;

(e) A bill covering all appropriations made for semi-state activities;

(f) A bill covering all appropriations for construction and major rehabilitation of public buildings to be financed by issuance of bonds;

(g) A bill covering all appropriations for maintenance, repair, and minor rehabilitation and construction of public buildings; and

(h) A bill covering appropriations for the department of transportation.

No other appropriations shall be contained in any of said bills but all other appropriations shall be contained in separate bills.

These bills are drafted as part of the legislative appropriations and budget process.

A typical general biennial appropriations bill would begin as follows:

> "Section 1. [STATE GOVERNMENT; ADMINISTRATION; APPROPRIATIONS.] The sums set forth in the columns designated "APPROPRIATIONS" are appropriated from the general fund, or any other fund designated, to the agency indicated in the column opposite of it and for the purposes specified in that section of this act. The sums are available for the fiscal years indicated for each purpose. The figures "1979", "1980", and "1981", wherever used in this act, mean that the appropriation or appropriations listed thereunder are available for the year ending June 30, 1979, June 30, 1980, or June 30, 1981, respectively."

Following this section would be the numerous "line items" of appropriations to the various departments, agencies, programs or projects.

The appropriations in each bill answer the following questions:

(a) From where? Consistent with legislative objective in recent years of eliminating special funds, the general fund remains as the principal source of appropriations. Money may also be appropriated from the trunk highway fund for highway purposes and possibly from other funds or accounts within the general fund. The source of appropriations if not specified is the general fund. See: Minn. Stat., Sec. 3.25.

(b) To whom? Name the official, department, board, agency, or institution of state government that is to administer or spend the appropriation. Money is never appropriated to a private individual, corporation or group. If the object of the appropriation is in fact to benefit or indemnify private parties, it should nevertheless be appropriated to a governmental agency for distribution in accordance with standards prescribed or purposes specified in the bill. Even when "program budgeting" is used, the actual appropriation is to the department operating the program. Within a department there may be appropriations to the department for a variety of separately listed programs.

(c) How much? The dollar amount is stated. If unascertained at the time of drafting, the amount may be left blank for later insertion by amendment. This is the only instance where a blank space in a bill is permitted.

(d) What for? The purpose of the appropriation is concisely stated. If the appropriation is for establishment of a new program created in another bill, a statement "for the purpose of administering sections 1 to . . . of chapter . . . of the Laws of Minnesota 19.." will suffice. If the appropriation is a single section bill, a statement of the purpose is included in the same sentence as the appropriation itself.

(e) When? General appropriations bills provide funds for the next two fiscal years, with each year listed separately. In some cases the bill may also

provide funds for the current fiscal year. These are "deficiency appropriations" and are infrequent. No appropriation should finance beyond the end of the next biennium in an off-year session or of the current biennium in an even-year session.

Unless otherwise specified, an appropriation is available on July 1 following enactment. See: Minn. Stat., Sec. 645.02. If it is desired that the funds for the coming biennium be available at an earlier or later date it must be specifically stated. However, a deficiency appropriation is always available for the current year. Similarly, Minnesota Statutes, Section 16A.28, provides that an appropriation remaining unexpended or unencumbered at the end of a fiscal year shall lapse. Thus, if the appropriation is one for a specific project which may not be completed by the end of the fiscal year, an anti-lapse provision must be added.

Examples of various appropriation provisions can be found at the end of this chapter.

(b) Specific Problem Areas

General appropriations bills are also bound by the same constraints that govern the drafting of an appropriations section of a general bill. However, there is one characteristic unique to appropriations bills that requires separate examination.

Because they deal with a temporary matter, that is the appropriation of money for a limited period of time, rather than substantive law, general appropriations bills are usually not considered for coding. Nevertheless, it is not uncommon to find within general appropriations bills sections that constitute substantive law of both temporary and permanent nature. Temporary sections may conflict with permanent law on the same subject matter that is already in the Minnesota Statutes.

In *State v. City of Duluth,* 238 Minn. 128, 56 N.W.2d 416 (1952), the Minnesota Supreme Court ruled that the effect of a substantive law provision in a general appropriations bill was to completely repeal existing statutory language with which the provision was in conflict. Considering the effect to be given the substantive law provision of the general appropriations bill, the court noted that the bill:

> "... discloses no express words of repeal. Therefore, if it did amend or repeal, it would have to be by implication." (238 Minn. at 131)

The court noted that a prospective repeal by implication faced a stern test:

> "Repeals by implication are not favored in this state. A law is not repealed by a later enactment if the provisions of the two laws are not irreconcilable or necessarily inconsistent." (238 Minn. at 131)

Nonetheless, the court found the substantive law provision to meet the test of irreconcilability and necessary inconsistency, and to constitute an implied repealer.

Consequently, temporary substantive law provisions in general appropriations bills are not desirable and are discouraged. They are difficult to separate for codification from the uncodified general body of the appropriations bill. Being uncodified, these substantive law provisions are difficult to locate in later years. Most important, however, the uncodified nature of these provisions creates confusion as to their effect on existing substantive law and may result in an implied repeal of this existing law. When such temporary sections must be inserted in appropriations bills, then they must clearly indicate their effect (as either permanent specific exception or general exception for a limited period of time), on the existing permanent law. This will help preserve against implied repeal.

In the examples of appropriations provisions found at the end of this chapter the proper use of substantive law provisions in appropriations bills is demonstrated.

Another problem area deals with the necessary drafting techniques to provide for the governor's item veto power.

It is clearly recognized that the appropriation item veto power of a governor is strictly limited to items of appropriation. As such, the governor may not veto clauses, sentences or sections containing limitations or conditions on the use of the appropriation. His ability to selectively veto is restricted to distinct items of appropriation and:

> ". . . . he has no right to strike out separate clauses of limitation which were integral parts of the bill and retain the appropriation to be disposed of in some manner other than the legislature had in mind when it was made." *People v. Tremaine,* 226 App. Div. 331, 235 N.Y. Sup. 555 (1929)

A condition attached to an appropriation is considered to be part of the same item of appropriation. (See generally 99 A.L.R. 1277) As affirmed by the Iowa Supreme Court, an item is:

> ". . . . something that may be taken out of a bill without affecting its other purposes and provisions." *State ex. rel. Turner v. Iowa*

> *State Highway Commission,* 186 N.W.2d 141 at 151 (1971); (citing *Commonwealth v. Dodson,* 176 Va. 281, 290, 11 S.E.2d 120, 124 (1940))

The Iowa court went on to cite a Wisconsin case (*State ex. rel. Wisconsin Telephone Co. v. Henry,* 218 Wis. 302, 260 N.W. 486 (1935)), for the proposition that a constitutional grant of item appropriation veto power does not:

> ". . . . grant power to him [governor] to approve the appropriation and disapprove a proviso or condition inseparably connected to the appropriation, nor to disapprove parts of an appropriation bill that are not an appropriation." 186 N.W.2d at 151

In drafting general appropriations bills it is sometimes necessary to lump several appropriations together so that they constitute one "item" for the purposes of the governor's item veto. This is frequently done when it is known that the governor disapproves of a particular expenditure but would have trouble vetoing it out if to do so will necessarily take with it programs that he or she desires.

7.2 Bonding

(a) General Considerations

Acts providing for issuance of bonds by the state or its subdivisions have special drafting and practical problems.

Article XI of the Minnesota Constitution regulates state finances and is largely concerned with public debt. A limited list of proper purposes for public debt appears in Section 5. Debt for the state highway system is separately treated in Article XIV. (See: Section 3.3 (k) of this book for the text of these constitutional provisions.)

Over the history of the state, court construction of Article XI has not been entirely consistent. That fact, together with the concern of bond purchasers that bonds be secure, cause most innovations in state bond issues to be tested in court before debt is incurred. A recent example is the test of an agency's bond authority in *Minnesota Pollution Control Agency v. Hatfield,* 294 Minn. 260, 200 N.W.2d 572 (1972).

Innovations are often made in the purpose of an issue or the nature or priority of the state's obligation to pay. The innovations in state law occur to meet changes in economic conditions and changes in requirements of federal law. In drafting bond legislation, however, the best advice is to not be innovative. Unless specifically instructed to the contrary by the requester, the drafter's goal is to ensure the salability of the bonds, and not to innovate. In order to ensure the salability, it is best to follow the pattern of existing state laws.

Bond issues by subdivisions of the state are governed by various general laws. Most important are Minnesota Statutes, Chapter 475, and, to a lesser extent, Chapters 472, 472A, and 474. There are also many special local laws.

(b) Method of Drafting Bonding Bills

The basic consideration in all bond drafting is, "Will anybody buy the bonds?". Bond issues are usually managed and sold or resold by investment bankers. The bankers are advised by their lawyers about the legality of the bonds and, to some extent, about the practical ability of the issuer to pay them. It is often helpful for the drafter to consult a bond lawyer at an early stage. Indeed, it is the standard practice of the Revisor of Statutes to refer bill drafts of bonding legislation to a bond counsel for advice prior to delivery of the bill draft to the requesting legislator.

When examining a bonding bill, bond counsel are looking primarily at four areas which are the chief sources on selling bonds.

First, the authority to issue bonds is constitutionally and legally clear. Nothing makes potential bond investors more reluctant to invest than the possibility that someone will attack the entire bond issue in court and the issue found unconstitutional or illegal.

Second, the procedure required to issue the bonds is clear. This includes clarity as to any requirement for the public hearings and a vote by local electors. If a necessary "step" to valid issuance of the bonds is omitted, the issuance could be invalidated. To avoid this problem, a drafter is best advised to draft bond legislation so that all the necessary steps to issue the bonds are clear. This includes stated cross-references to other laws with which there must be compliance.

Third, the bond issue must be free of other legal prohibitions or restraints. Specifically, it must be clear whether the amount of bonds to be issued are either within any constitutional or legal bonding limits or are an exception to the bonding limit. It must also be clear that the purpose for which the proceeds of bonds will be used is otherwise legal and constitutional. For instance, Article XI, Section 3 of Minnesota's Constitution forbids "carrying on works of internal improvements" (See: Section 3.3 (i) of this book.) The drafter must be sure that the bond issue does not run afoul of this or other prohibitions.

Fourth, the method by which the bonds will be paid must be clear. Preferably, it should be clear that the governmental unit issuing the bonds is obliged to pay the debt service on the bonds before any other debts are paid. It should also be clear that the governmental unit either has sufficient revenue to pay the debt service or an easy means at its disposal to raise additional revenue to pay the bonds.

An example of a typical bonding bill which demonstrates these considerations is found at the end of this chapter.

(c) Specific Problem Areas

New political subdivisions are sometimes created to accomplish a limited purpose and are given bonding authority to accomplish that purpose. Authorizations of water improvements are a continuing source of such legislation. A weakness of some new subdivisions is a lack of financial resources, usually taxing authority, to discharge their purpose. When creating a new subdivision with bonding authority the draftsman should try to follow the pattern of a successful existing subdivision.

The creation of new political subdivisions is also used to avoid bonding limitations on existing units of government.

Conventional local government bodies are regular issuers of bonds and often desire to vary one or more of the procedures or restrictions provided by general law. Each volume of session laws has a variety of laws changing the conditions for bonds of particular local government bodies.

Mastery of this specialized part of public law probably requires more time than most drafters can give it. Consultation with available sources of information can make it manageable. Minnesota last defaulted on state bonds about 120 years ago. It recovered the best credit rating after 110 years. Careful drafting remains fundamental although institutional obstacles now exist to make unlikely a default like that after the railroad boom of the 1850's.

7.3 Crimes and the Courts

Before attempting to draft legislation in the area of crimes the drafter should be familiar with Minnesota's substantive law of crimes and law of criminal procedure. The drafter should also be knowledgeable about the court's role in the criminal justice system and state and local components of the system.

(a) Substantive Law of Crimes

Minnesota's substantive law of crimes is found in Minnesota Statutes, Chapter 609, the Criminal Code of 1963. The code is a comprehensive revision of substantive criminal law.

The drafter will find that most legislation in the area of crimes involves amendment to the criminal code.

There are no common law crimes in Minnesota. Minnesota Statutes, Section 609.015, Subdivision 1, provides:

> "Common law crimes are abolished and no act or omission is a crime unless made so by this chapter or by other applicable statute..."

In addition to the main body of substantive crimes found in the criminal code, enactments creating crimes are scattered throughout the statutes. These crimes range from prohibition of greased pig contests, section 346.34, to the law of obscenity, sections 617.23 to 617.297. In recent years consumer legislation, much of it found in chapter 325, has often included regulatory penalty provisions.

(b) Law of Criminal Procedure

McCarr, Minnesota Practice, Criminal Law and Procedure, Volume 7, Section 1, states:

> "Criminal practice and procedure in Minnesota is governed by the United States Constitution and the Minnesota Constitution, enactments of the Minnesota Legislature, decisions of the United States and Minnesota Supreme Courts, and (effective July 1, 1975) the Rules of Criminal Procedure." (footnote deleted)

The enabling legislation for the rules of criminal procedure is Laws 1971, Chapter 250, codified as Minnesota Statutes, Section 480.059. An advisory committee appointed by the supreme court and composed of attorneys and judges drafted the rules. After holding hearings, the supreme court adopted the rules, giving Minnesota a comprehensive set of criminal procedural rules.

Laws 1974, Chapter 390, amended the enabling legislation to provide that except for certain designated statutes the new rules would supersede conflicting statutory law.

Section 480.059, subdivision 8, provides:

> "This section shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto."

The practical result of subdivision 8 is to create a "leapfrog" effect with both the legislature and the supreme court involved in amendment of criminal procedural law, the latest amendment in time to the statute or rule governing.

If requested to draft legislation relating to criminal procedure, the drafter should:

First, locate the governing statute and/or rule. Pursuant to section 480.059, subdivision 7, the supreme court has published a list of statutes which have been modified or superseded by the criminal rules of procedure. The list appears in an appendix to the rules of criminal procedure. Some statutes have been completely superseded while some statutes have only been superseded "to the extent inconsistent." The drafter can locate statutes by use

of the statutory index found in Volume 4 of Minnesota Statutes and locate rules by using the index to the rules of criminal procedure found in West's Minnesota Rules of Court.

Second, upon location of a statute or rule the drafter should consult the list of superseded statutes.

Third, if the drafter finds a statute has been completely superseded by a rule, he or she may repeal the obsolete statute and draft a new statute indicating that the new statute is intended to supersede the rule. If the drafter finds a statute has been only superseded in part by a rule, he or she may amend it but care should be taken to preserve the unsuperseded part of the statute to the extent that to do so is consistent with his amendment. Of course, the drafter must always take into account the applicable rule and might find it advisable, for purposes of clarity and notice, to make reference in the amendment to the rule.

(c) State Components of Criminal Justice System

(1) Bureau of criminal apprehension, a division of the department of public safety. The bureau's chief function is to assist local law enforcement agencies in criminal investigations. Bureau crime investigators have the same powers of arrest as sheriffs. Investigators are primarily occupied with narcotics and organized crime investigations.

See: Minn. Stat., Ch. 299C, especially Sec. 299C.03

(2) Division of highway patrol, department of public safety. The highway patrol's primary duty is to enforce traffic laws on trunk highways.

See: Minn. Stat., Ch. 299D

(3) Division of enforcement, department of natural resources. The division enforces all natural resource laws in the state. Conservation officers enforce hunting, fishing and trapping laws and also investigate complaints about nuisance wildlife, misuse of public lands and waters, violations of state park rules and unlawful appropriation of state owned timber.

See: Minn. Stat., Secs. 84.028 and 97.50

(4) Office of the attorney general. The criminal division of the attorney general's office prosecutes criminal cases upon the request of the governor or any county attorney. The division is especially involved in prosecution of organized and white collar crime.

See: Minn. Stat., Ch. 8

(5) Department of corrections. A sentence of a person to imprisonment for more than one year results in commitment to the commissioner of corrections. Minn. Stat., Sec. 609.105. In addition, the juvenile court in its discretion may commit children adjudicated delinquent under Minnesota Statutes, Chapter 260, the juvenile courts act, to the commissioner. Minn. Stat., Sec. 260.185. The mission of the department is to protect society and to attempt to rehabilitate offenders.

Governing organizational and other law related to the department: Minn. Stat., Ch. 241 (organizational provisions); ch. 242 (juvenile corrections); ch. 243 (adult corrections); ch. 244 (criminal sentences); ch. 401 (community corrections); and ch. 402 (human services act).

(6) Minnesota corrections board. The boards primary responsibility is to grant and revoke parole and grant discharge over persons convicted of felonies.

See: Minn. Stat., Sec. 241.045

(7) Board of pardons. The board grants pardons and may commute the sentence of any person convicted of an offense against the laws of the state.

See: Minn. Const. art. V, sec. 7. Minn. Stat., Ch. 638

(8) Crime victims reparations board. The board makes payment of reparations to innocent victims of crime.

See: Minn. Stat., Ch. 299B

(9) Crime control planning board. The board is a state agency empowered with broad planning, administrative and funding authority. It is involved in criminal justice planning and distributes funds to state, regional and local agencies.

See: Minn. Stat., Sec. 299A.03

(10) Minnesota public defender. The state public defender provides representation to indigents in criminal appeals to the supreme court. The state public defender is appointed by the judicial council.

See: Minn. Stat., Secs. 611.22 to 611.25

(11) Minnesota board of peace officer standards and training. The board regulates peace officer training. Peace officers employed by local units of government must receive training and be licensed. Laws 1978, Chapter 681, extended training and licensing requirements for peace officers to communities of under 1,000 persons.

See: Minn. Stat., Secs. 626.84 to 626.855

(d) Local Components of the Criminal Justice System

(1) County sheriff. A county sheriff has the duty to preserve the peace of his county and he generally enforces criminal laws outside the jurisdiction of municipalities within his county which have police departments. The sheriff may contract with units of local government to provide police service. In larger municipalities the law enforcement duties of the sheriff are of a restricted nature.

See: Minn. Stat., Ch. 387, and Sec. 436.05

(2) Local police

(a) Home rule charter cities. The organization of a charter city police department is governed by the city's charter and ordinances implementing the chapter.

See: Minn. Const. art. XII, sec. 4. Minn. Stat., Ch. 410

(b) Statutory cities. Any city which has not adopted a home rule charter is governed by a uniform code of statutes defining the organization and powers of such city. Most statutory cities have established police departments by ordinance pursuant to the city council's statutorily specified general welfare power.

In addition, the mayor and council are authorized to act as peace officers under certain circumstances specified by statute.

See: Minn. Stat., Secs. 412.016, 412.101, and 412.221, Subd. 32

(c) Towns. Towns are authorized to elect up to three law enforcement officials. A town may also decide to have no law enforcement officials. The officials may be any combination of peace officer, constable or deputy constable. Peace officers and constables have full arrest powers. Deputy constables have only the arrest power of a private citizen.

See: Minn. Stat., Secs. 367.03, Subd. 3, and 367.40, Subd. 4. (Laws 1978, Chapter 681, Sections 2 and 3)

(3) University of Minnesota peace officers. The university of Minnesota has considerable governmental autonomy. The university has its own peace officers on its campuses in the Twin Cities, Duluth, Morris and Crookston. University peace officers have full arrest power.

See: Univ. Charter, Sec. 9. Minn. Const. art. XIII, sec. 3. Minn. Stats., Sec. 137.12

(4) Prosecuting attorneys. Generally, the county attorney prosecutes felonies, gross misdemeanors, and if there is no municipal prosecuting attorney, misdemeanors. Municipal prosecuting attorneys prosecute violations of state law which are misdemeanors and violations of municipal charter provisions, ordinances and rules.

Statutory provisions governing who will be authorized to prosecute offenses in a given court are:

Minn. Stat., Sec. 487.25, Subd. 10 — county court prosecutions.

Minn. Stat., Secs. 488A.10, Subd. 11, and 488A.101 -Hennepin county municipal court prosecutions.

Minn. Stat., Sec. 488A.27, Subd. 11 — Ramsey county municipal court prosecutions.

Minn. Stat., Sec. 388.05 — district court prosecutions.

(5) Public defender system. Minnesota is divided into ten judicial districts. The fourth judicial district, Hennepin county, has a special trial court public defender system. Laws 1973, Chapter 317. The second judicial district, Ramsey county, also has a special trial court public defender system. Laws 1975, Chapter 258, Section 6. Two judicial districts, the eighth and the third, still use the method of providing counsel to indigents by judicial assignment. Minn. Stat., Sec. 611.07. The remaining six judicial districts have trial court public defenders under state-wide public defender legislation. Minn. Stat., Secs. 611.14 to 611.27. The public defenders provide representation from time of arrest through trial.

(e) Courts' Role in the Criminal Justice System

The judicial branch of government plays a central role in law enforcement. Judicial involvement in the criminal justice system is comprehensive and complex; it begins with the issuance of arrest and search warrants and proceeds through preliminary criminal proceedings, trial, sentencing, and appeal, including post-conviction appeal.

An overview of the court's role in the criminal justice system requires a coordinated reading of the statutes, rules of criminal procedure and case law. The drafter should remember that while the judiciary, under the principle of comity, defers to procedural law enacted by the legislature, it also has asserted its inherent rule making authority with respect to procedural law. For a judicial analysis of the rules of criminal procedure in relation to the court's rule making authority with respect to its appellate jurisdiction. See: *State v. Wingo,* 266 N.W.2d 508 (1978)

Criminal jurisdiction in the courts is as follows:

(1) Supreme Court. The supreme court has criminal appellate jurisdiction. Minn. Const. art. VI, sec. 2. Rule 29 of the rules of criminal procedure governs appeals to the supreme court. However, see the court reorganization act, Laws 1977, Chapter 432, Section 13, which changes county court and county municipal court appeal procedures. This legislative change of appeal procedures is an example of the "leapfrog" effect mentioned in subsection (6) with regard to legislative and judicial amendment to criminal procedural rules.

In addition to appealing a conviction after trial, a defendant may appeal to the supreme court under Minnesota Statutes, Chapter 589, habeas corpus, and Chapter 590, post-conviction remedies.

The supreme court has adopted rules of evidence regulating all evidentiary matters in civil and criminal actions in all courts of the state pursuant to Minnesota Statutes, Section 480.0591.

(2) District court. The district court has original criminal jurisdiction. Minn. Const. art. VI, sec. 3. Minn. Stat., Sec. 484.01. The district court also has appellate jurisdiction to hear appeals from county court and county municipal court. Minn. Stat., Sec. 484.63. (Laws 1977, Chapter 432, Section 13)

The district court normally hears gross misdemeanors and felonies. For its role in preliminary criminal proceedings. See: The rules of criminal procedure.

*(3) County court and county municipal court.*Minnesota Statutes, Chapter 487, governs county courts which are found in all counties except Hennepin and Ramsey. Minnesota Statutes, Sections 487.16 and 487.18 specify the court's criminal jurisdiction.

Minnesota Statutes, Sections 488A.01 to 488A.119 governs Hennepin county municipal court. Minnesota Statutes, Section 488A.01, Subdivision 6, specifies the court's criminal jurisdiction.

Minnesota Statutes, Sections 488A.18 to 488A.287 governs Ramsey county municipal court. Minnesota Statutes, Section 488A.18, Subdivision 7, specifies the court's criminal jurisdiction.

The county courts and municipal county courts have criminal jurisdiction over violations of law which are petty misdemeanors, misdemeanors and certain criminal proceedings. See: The rules of criminal procedure for the extent of the court's jurisdiction in such proceedings.

(4) Juvenile court. In Hennepin and Ramsey counties, the district court is the juvenile court with the chief judge of the judicial district designating a district judge to hear juvenile cases arising under Minnesota Statutes, Chapter 260. Minn. Stat., Sec. 260.019

In all other counties juvenile cases arising under chapter 260 are tried in the family court division of the county court. Minn. Stat., Sec. 487.27

(f) Fixed Sentencing

Persons convicted of felonies on or after May 1, 1980 may be sentenced to fixed sentences. In place of sentencing a convicted offender to an indeterminate term ranging from 0 to 5 years, for example, a court may, after May 1, 1980, sentence a person to a fixed term of years.

Laws 1978, Chapter 723, codified as Minnesota Statutes, Sections 244.01 to 244.11, established a sentencing guidelines commission composed of members of the judiciary, other members of the criminal justice system and the public. Minn. Stat., Sec. 244.09, Subd. 1. The commission has been directed to promulgate sentencing guidelines for the district court for offenders which shall be advisory to the court and subject to review by the supreme court. Minn. Stat., Sec. 244.09, Subd. 5

The guidelines must be submitted to the legislature by January 1, 1980 and shall be effective May 1, 1980 unless the legislature provides otherwise. Minn. Stat., Sec. 244.09, Subd. 12

The Minnesota corrections board's authority has been curtailed and sections 244.01 to 244.11 contain provisions altering the supervision and release of offenders entering the correctional system after May 1, 1980.

In drafting legislation relating to crimes and corrections, the drafter must be familiar with the complex ramifications of sections 244.01 to 244.11.

7.4 Special Laws

(a) Prohibition

The Minnesota Constitution, Article XII, Section 1, contains a variety of prohibitions and restrictions on local or special laws.

> "Section 1. [PROHIBITION OF SPECIAL LEGISLATION; PARTICULAR SUBJECTS.] In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces;

> exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated."

This article of Minnesota's Constitution draws a distinction between general legislation and special legislation and, with one exception, prohibits all special legislation. It is important, therefore, for a drafter to know how the courts have defined "special laws" and "general laws".

Almost all legislation sets up classes and affects people and other entities differently depending on their class. (e.g. taxpayers with different incomes, handicapped persons, cities of the third class, psychiatrists). These kinds of classifications do not automatically mean the laws are "special laws".

A law which does not apply to everyone will be deemed "special" only if it applies to a particular member of a class, or if the classification made is arbitrary and not germane to the purpose of the law. As one court stated:

> "The classification must be based upon 'substantial distinctions' — those which make one class really different from another. The distinction must be based 'on some natural reason, — some reason suggested by necessity, by some difference in the situation and circumstances of the subjects placed in the different classes, suggesting the necessity of different legislation with respect to them'." *Visina v. Freeman,* 252 Minn. 177, 196, 89 N.W.2d 635, 651 (1958)

A law remains "general", then, even when it divides the subjects of its operation into classes and applies different rules to different classes as long as the classification made is a proper one and the law applies to every member of the class. Even one alone may constitute a class. The fewer there are in a class, however, the more closely will courts scrutinize an act to see if its classification constitutes an evasion of the constitution. *Minneapolis Gas Company v. L. P. Zimmerman,* 253 Minn. 164, 91 N.W.2d 642 (1958)

Even after strict scrutiny a statute will not be held invalid as "special" legislation unless it appears very clearly that the basis of classification is purely arbitrary. *Arens v. Village of Rogers,* 240 Minn. 386, 61 N.W.2d 508, appeal dismissed 347 U.S. 949 (1954)

The following types of statutes have been voided because they constituted "special" legislation with arbitrary classifications:

— a statute related to bridges in counties with populations between 28,000 and 28,500. *State v. Mower County,* 185 Minn. 390, 241 N.W. 60 (1932);

— a statute related to liquor stores in cities of the fourth class situated in a county having between 100 and 110 congressional townships and having a population of 13,000 to 15,000. *State ex. rel. Paff v. Kelley,* 235 Minn. 350, 50 N.W.2d, 703 (1952); and,

— a statute providing for a county examiner of townships in counties having a population of over 100,000 and an area of more than 5,000 square miles. *State v. Wasgatt,* 114 Minn. 78, 130 N.W. 76 (1911).

Statutes which have not been voided when challenged as special legislation included the following types of classes:

— unorganized territories having assessed valuation over $3 million and area greater than 3,500 square miles (authorizing issuance of school bonds). *Board of Education for the Unorganized Territory of St. Louis County v. Borgen,* 193 Minn. 525, 259 N.W. 67, (1935);

— any two contiguous cities of the first class (authorizing creation of Metropolitan Airports Commission). *Monaghan v. Armatage,* 218 Minn. 108, 15 N.W.2d 241, appeal dismissed 323 U.S. 681 (1944);

— counties with population over 200,000 (juror selection). *State v. Wasgatt,* 114 Minn. 78, 130 N.W. 76 (1911);

— cities with population over 450,000 (authorizing 1½ mill tax levy for recreational programs). *Leighton v. City of Minneapolis,* 222 Minn. 523, 25 N.W.2d 267 (1947); and,

— boroughs of not more than 10,000 population (liquor store regulation). *Arens v. Village of Rogers,* 240 Minn. 386, 61 N.W.2d 508, appeal dismissed 347 U.S. 949 (1954).

Drafters should note from the above examples that neither classes with population limits nor classes with limits based on two factors are automatically approved or disapproved. The classification scheme must merely be related to the purpose of the statute. Then the law is general even if the class it applies to is a class with only one member.

The prohibition against special legislation admits of one exception. That exception is for special laws relating to local units of government. Such "local laws" are quite common.

(b) Local Laws

Special laws relating to local government units are excepted out of the general prohibition against special legislation. Article XII, Section 2 of the Constitution reads:

> "Sec. 2. [SPECIAL LAWS; LOCAL GOVERNMENT.] 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. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject. 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 this section."

Minnesota Statutes, Sections 645.023 and 645.024, were enacted in 1967 pursuant to the italicized language in the above constitutional provision. It is, therefore, not necessary in drafting a special law applicable to a local government unit or units to provide for its approval by the voters or the governing body of the local unit. These sections read:

> "645.023 [SPECIAL LAWS; ENACTMENT WITHOUT LOCAL APPROVAL; EFFECTIVE DATE.] Subdivision 1. A special law enacted pursuant to the provisions of the Constitution, Article 12, 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 on August 1 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."

In the 1969 legislative session, the legislature informally requested that drafts of local law bills incorporate some kind of local approval section. The policy is, therefore, to draft each bill for a local law with a local approval section unless the requester specifically asks that the local approval section be omitted. The most common local approval section is approval by the local unit of government.

A local approval section activates the provisions of Minnesota Statutes, Section 645.021.

> "645.021 [SPECIAL LAWS; LOCAL APPROVAL, CERTIFICATES.] Subdivision 1. The chief clerical officer of a local government unit shall, as soon as the unit has approved a special law, file with the secretary of state a certificate stating the essential facts necessary to valid approval, including a copy of the resolution of approval or, if submitted to the voters, the number of votes cast for and against approval at the election. The form of the certificate shall be prescribed by the attorney general and copies shall be furnished by the secretary of state. If a local government unit fails to file a certificate of approval before the first day of the next regular session of the legislature, the law is deemed to be disapproved by such unit unless otherwise provided in the special law.
>
> Subd. 2. Laws 1959, Chapter 368, does not apply to any special law heretofore enacted, whether or not it has been approved by the local government unit affected, but such unit shall file with the secretary of state a certificate of approval for such law as required in subdivision 1."

There is a wide variety of local approval methods. Samples of the correct drafting form to accomplish each method are set out at the end of this chapter.

(c) Specific Problem Areas

A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question. (Minn. Const., art. XII, sec. 3).

Special care should be taken in amending laws applicable to local government units that were enacted prior to the adoption of what is now Article XII, Section 2 of the Constitution. Prior to the time of the adoption of section

2, local government units could not be named by reason of the prohibition against special legislation, and local laws were enacted in the form of a general act ("Any city of the third class having a population of more than 14,000 and less than 15,000 according to the 1950 federal census", etc). In amending local laws enacted in the form of a general law, be sure that the law you are amending initially applied to the local government unit you are now naming. In the illustration quoted, the city to which it initially applied had grown, and in the 1970's its population was greater than 15,000. In the amendment, the quoted language was stricken, and the name of the city inserted. If you cannot determine with certainty the local government unit to which the initial law applied, do not amend it, but, rather, draft a new special law naming the unit to which it applies.

(d) Laws Relating to Specific Courts

A law relating to a specific court, such as the municipal court of Ramsey county or the probate court of Hennepin county, is a special law under authority of Article VI (the Judicial Article), of the Constitution and not under the authority of Article XII. A court is not a local government unit and a law affecting the court cannot be made effective upon approval of that court as the "local government unit".

Furthermore, no bill prepared pursuant to the authority of the Judicial Article of Minnesota's Constitution requires the approval of the county board of supervisors, city council or other governmental unit. A bill should not be prepared with such local approval required unless the requester insists.

The special considerations in drafting special laws relating to the courts embraces all activities of a court including maintenance of records et cetera.

7.5 Taxes

The tax laws are one of the most complex and technical areas in the Minnesota Statutes. Drafting bills dealing with tax matters requires a thorough understanding of the entire tax system. Such an education is not attempted by this manual. However, two continuing problem areas will be discussed.

(a) Cross-references to Federal Laws

A drafter will often be asked to make reference to or tie Minnesota laws into the federal Internal Revenue Code. Be sure not to tie Minnesota laws into an open-ended reference to an Internal Revenue Code section. Such a tie is delegation of state legislative functions to the Congress, which is impermissible. Instead, refer to the Internal Revenue Code section as amended through a certain year. The reference must then be updated annually.

(b) Effective Dates

Every tax bill, with the exception of a few administrative bills, needs an effective date which fits with the existing tax system. Income tax laws should be effective for taxable years beginning after a certain December 31. Property tax laws should be effective for taxes levied in one specific year, payable the next year, and thereafter. Sales tax laws should be effective for sales made after a specific date. Inheritance tax laws should be effective for estates of decedents dying after a specific date.

7.6 Organization of State Government

(a) General Considerations

Bills which create a new agency or department to administer a new program are quite common. New agencies cannot be created in isolation from the remainder of the state government.

If requested to draft legislation which creates a new agency, the drafter has several primary considerations.

First, the drafter must insure that provision is made for all necessary statutory elements for a well functioning agency. If some necessary feature is left out, a "lame" agency may be created necessitating additional legislation just for correction.

Second, the drafter must determine if identical or similar programs or functions already exist in other agencies. Such similar or identical programs or functions may be split up among and concealed in the statutory authority for other agencies (which may be unimplemented). The drafter must ensure that necessary repeals, amendments or distinctions are provided to coordinate the old agency and new agency.

Third, the drafter must be familiar with those statutory elements which are common to all agencies. Among such common statutory elements are provisions for administrative rule making, budgeting, and employment and compensation of employees. The drafter must ensure that the agency will fit within these common provisions or that suitable exceptions from them is stated.

(b) Basic Provisions for New Agency

While it would be inappropriate to say that an agency can be created with a fill-in-the-blank bill form, a drafter should consider the following provisions in any bill creating a new agency:

(1) Creation of the agency including some indication of whether it is within the executive, legislative or judicial branches or is "independent".

(2) Specification of who controls the agency whether a single person, a multiple person board or commission or some combination of both.

(3) Specification of the qualifications of either the person or the members of the board or commission which controls the agency.

(4) Specification of the manner of election, selection or appointment of the person or the members of the board or commission which controls the agency.

The provision should also include provision as to how such person can be terminated, fired, laid-off or have his or her job terminated.

(5) Specification of any compensation or restriction or compensation of the person or board or commission members who control the agency.

(6) A statement of the duties or responsibilities of the agencies. A drafter should specifically avoid splitting up such matters in a number of separate sections.

(7) A statement of the powers of the agency. A drafter should ensure that there is some relationship between the powers granted and the duties stated in other sections.

If the agency includes any special authority, such as empowering it to levy taxes or issue bonds or contract debt, such provisions must be given separate consideration. They have drafting difficulties in and of themselves.

(8) A statement of the powers of the person or board or commission which controls the agency. The relationship of the agency head to any assistants or employees should be specifically set out. Whether or not any of the powers may be delegated to subordinates should be included.

(9) If several compartmentalized functions will exist within the agency, the drafter may wish to consider whether separate divisions within the agency should be specified by law.

(10) If the agency will "make money" in some fashion by charging fees or selling some product, the manner in which the fees or prices are determined and the disposition of funds received should be provided for. Among the alternatives are appropriating funds received for the agency's use or deposited in the state's general fund.

(11) Specification of the status of employees of the agency. Are they subject to civil service, exempt or have some special status?

(12) Provision should be made for administrative rule making. This may include merely the power to make such rules and indicating that the agency is (or, if necessary, is not) subject to the provisions of the administrative rule making provisions of the statutes.

(13) If the agency will be heavily involved with regulating the activities of individuals, it may be best to set out the outlines of its procedures or the limitations on its authority. Such matters should not be left solely to administrative rule making.

(14) If the agency deals in an area which grants some new "right" or regulates or prohibits some activity of individuals, the substantive "rights" or the prohibitions or regulations must be set out.

(15) The location of offices should be provided for, particularly if multiple local offices are contemplated.

(16) The relationship, as appropriate, to the governor, the legislature or the supreme court, as the ultimate "supervisor", might be stated.

(17) Any sanctions or penalties for either persons dealing with the agency or for agency officers or employees should be stated.

(18) Any temporary provisions, such as initial terms of office or temporary powers should be indicated.

(19) If it is necessary to implement different provisions of the act at different times, a schedule of the implementation dates should be provided.

(20) Any necessary appropriations of state funds to set up or operate the agency should be set out.

(c) Alterations of Existing Agencies

When a requested bill draft calls for modifications to existing agencies, a drafter must use care in determining what sections must be changed. Faulty changes to a law governing the agency may make the agency lame. Some of the more important problem areas will be indicated.

First, as should be apparent from the above discussion relating to the creation of a new agency, there may be a surprising amount of interrelationship between the sections establishing an agency. When making single or "bullet' changes to an agency, the drafter should examine at least the entire chapter to ensure that changes to other sections are not necessitated by the requested change.

Second, a drafter should ensure that proper references are made to the agency's statutory name and to its statutory head. Guessing as to whether an agency is a "Commission", "Board" or "Agency" or whether it is headed by a "director", "commissioner", or "supervisor", frequently leads to unfortunate results. Check the list in section 7.6(d).

Third, a popular change to multiple member boards and commissions is to add or subtract members. When the existing members have staggered terms, artful drafting is required to clearly indicate what disposition is to be

made of existing members' terms or to coordinate new members' terms with the staggered expiration of existing members' terms. The length of terms is indicated in section 7.6(d), but the statute or administrative rules may have to be examined to determine the exact expiration date of each member's term.

Fourth, care should be exercised when dealing with changes regarding the appointment and confirmation of officials. Specifically, provisions calling for "appointment by the governor subject to subsequent senate confirmation", "appointment by the governor upon the consent of the senate", and "nomination by the governor and appointment upon senate confirmation" have widely disparate effects upon the governmental process. A drafter should ensure which type is intended by the requester and not use them interchangeably.

(d) Table of Governmental Agencies and Agency Heads

ELECTED OFFICIALS

Official	Citation
Attorney General	Const. Art 5 s4
Auditor	Const. Art 5 s4
Governor	Const. Art 5 s2
Judicial District Court	Const. Art 6
10 Judicial districts	
72 Judges	2.722
Supreme Court	
Chief Justice and 8 Associate Justices	Const. Art 6 480.01
Appoints:	
Administrator	480.13
Board of Law Examiners (7 members)	481.01
Clerk	Const. Art 6 s2
Continuing Legal Education	Court Orders
Law Librarian	Const. Art 6 s2 480.09
Professional Responsibility Board	Court Orders Rules of Board of Professional Responsibility
Reporter	Const. Art 6 s2
Judicial Council (16 members)	483.01,483.02
State Public Defender	611.22, 611.23
Legislature	
House of Representatives (134 members)	Const. Art 4 s4 2.021
Senate (67 members)	Const. Art 4 s3 2.021
Lieutenant Governor	Const. Art 5 s2
Secretary of State	Const. Art 5 s4
Treasurer	Const. Art 5 s4

DEPARTMENTS

Department	Administrative Heads	Citation
Administration Department	Commissioner	16.01
Agriculture Department	Commissioner	17.01
Commerce Department		
Banking Division	Commissioner	45.02
Insurance Division	Commissioner	45.02, 60A.03
Securities Division	Commissioner	45.02
Consumer Services Section	Commissioner	45.15
Corrections Department	Commissioner	241.01
Economic Development Department	Commissioner	362.07, 362.09
Economic Security Department	Commissioner	268.011
Education Department	Commissioner	121.16
Energy Agency	Director	116H.03
Finance Department	Commissioner	16A.01
Health Department	Commissioner	15.01
Health Facilities Complaints, Office of	Director	144A.52
Housing Finance Agency	Director	462A.04
Human Rights Department	Commissioner	363.04
Iron Range Resources and Rehabilitation, Office of Commissioner of	Commissioner	298.22
Labor and Industry Department	Commissioner	175.001
Workers' Compensation Court of Appeals	3 Judges	175.006
Boiler Inspection Division		175.16
Labor Standards Division		177.26
Occupational Safety & Health Division		175.16
Statistics Division		175.16
Steamfitting Standards Division		175.16

Department	Administrative Heads	Citation
Voluntary Apprenticeship Division		178.03
Workers' Compensation Division		175.006, 175.16
Legislative Auditor	Appointed By Legislative Coordinating Commission	
Legislative Reference Library	Director	3.304
Mediation Services, Bureau of	Director	179.02
Military Affairs Department	Adjutant General	190.07
Natural Resources Department	Commissioner	84.01
Enforcement and Field Service	Director	84.081
Game and Fish Division	Director	84.081
Lands and Forestry Division	Director	84.081
Parks and Recreation Division	Director	84.081
Water, Soils, and Minerals	Director	84.081
Personnel Department	Commissioner	43.001
Pollution Control Agency	9 members	116.02, 116.03
Office of the Director	Director	116.02, 116.03
Public Defender, State	Public Defender	611.22, 611.23
Public Safety Department	Commissioner	299A.01
Capitol Complex Security, Division of	Director	299E.01
Criminal Apprehension, Division of the Bureau of	Superintendent	299C.01
Driver's License, Division of	Director	171.015
Emergency Services, Division of	Director	12.04
Fire Marshal, Division of	State Fire Marshal	299F.01
Highway Patrol, Division of	Chief Supervisor	299D.01

Department	Administrative Heads	Citation
Motor Vehicles, Division of	Director	168.325
Public Service Department	Director	216A.06
Legislative Division (Public Service Commission)	5 Commissioners	216A.03
Public Welfare Department	Commissioner	245.03
Alcohol and other Drug Abuse Section	Director	254A.03
Revenue Department	Commissioner	270.02
Revisor of Statutes, Office of	Revisor of Statutes	3.304
State Planning Agency	Director	4.10 to 4.17
	State Planning Officer (Governor)	4.11
Transportation Department	Commissioner	174.01, 174.02
Veterans' Affairs Department	Commissioner	196.01, 196.02

BOARDS, COMMISSIONS, AND OTHER BODIES

Board, Commission or Body	Membership	Citation
Aging, Minnesota Board on	25 members	256.975
Agricultural Commodity Advisory Boards		17.54
Agricultural Employment Advisory Council		268.12, Subd.6
Airport Zoning Board		360.063
Alcohol and other Drug Abuse Advisory Council	11 members	254A.04
Apprenticeship Advisory Council	3 members	178.02
Armory Building Commission, Minnesota State	Corporation with Adjutant General, general officers of the National Guard	193.142
Arts Board, State	11 members	139.08
Assessors, State Board of	9 members	270.41
Boxing, Board of	7 members	341.01, 341.02
Building Code Standards Committee	9 members	16.853
Cable Communications Board	7 members	238.04
Canvassing Board	Secretary of State, two Supreme Court justices, two District Court judges	Const. Art VII, s 8, 204A.53
Capital Area Architectural and Planning Board	7 members	15.50
Child Care Services Advisory Committee	35 members	245.84
Community Colleges, State Board for	7 members	136.60, 136.603 136.61
Community Health Services Advisory Committee		145.919
Community School Advisory Council, State	25 members	121.87
Comprehensive Health Association, Board of Directors	7 members	62E.10
Controlled Substances, Advisory Council on	13 members	152.02

Board, Commission or Body	Membership	Citation
Correctional Facilities, Citizens Advisory Task Force on	9 members	241.021
Corrections Advisory Board	20 members	401.02
Corrections Board	5 members	241.045
County Attorneys Council	87 members & Attorney General	388.19
Credit Union Advisory Council	5 members	52.061
Crime Control Planning Board	19 members	299A.03
Crime Victims Reparations Board	3 members	299B.05
Dairy Research and Promotion Council	22 members	32B.03, 32B.04
Designer Selection Board, State	7 members	16.823
Early Childhood and Family Education Programs, Advisory Task Force on		3.9272
Economic Development Advisory Committee	21 members	362.09, Subd. 3
Economic Status of Women, Advisory Council on	18 members	L76,C337, S1
Education, Board of	9 members	121.02
Education Commission	Governor, one state senator, one state representative, four members appointed by the Governor	121.81, 121.82
Education Council	Members of Education Commission and 16 members appointed by the Governor	121.83
Education, Council on Quality	17 members	3.924
Emergency Shelter Services and Support Services to Battered Women, Advisory Task Force on	9 members	241.64
Employees Suggestion Board, State	7 members	16.71
Employment Agency Advisory Council	9 members	184.23

Department	Administrative Heads	Citation
Employment Services, State Advisory Council		268.12, Subd.6
Environmental Education Board	6 members and one from each regional council	116E.02
Environmental Education Councils, Regional	12 in each council	116E.02
Environmental Quality Board	12 members	116C.03
Environmental Quality Board, Citizens Advisory Committee	11 members	116C.05
Equalization Aid Review Committee	Commissioners of Education, Revenue and Administration	124.212, Subd. 10
Equalization, State Board of	Commissioner of Revenue	270.12
Ethical Practices Board	6 members	10A.02
Evidence, Advisory Committee on Rules of	11 members	480.0591, Subd. 2
Executive Council	Governor, Lieutenant Governor, Attorney General, State Auditor, State Treasurer, Secretary of State	9.011
Family Farm Advisory Council	7 members	41.54
Fluctuating School Enrollments, Advisory Council on	14 members	L74, C355, S68
Gillette Hospital Board	9 members	250.05
Great Lakes Commission	Two state senators, two state representatives, one member appointed by the Governor	1.21
Handicapped, Council for the	30 members	256.482
Health Facility Complaints, Office of, Advisory Task Force	15 members	144A.55

Department	Administrative Heads	Citation
Health, State Board of (Department of Health)	15 members	15.01
Higher Education Advisory Council	5 members	136A.02, Subd. 6
Higher Education Coordinating Board	11 citizen members appointed by the Governor	136A.02
Higher Education Facilities Authority, Minnesota	7 members	136A.26
Hospital Administrators Registration Advisory Council	6 members	144.63, Subd. 2
Hospital Licensing Advisory Council	9 members	144.571
Human Rights Advisory Committee	15 members	363.04, Subd. 4
Human Services Board		402.02
Human Services Board, Advisory Committees to	25 members	402.03
Human Services Occupations Advisory Council	11 plus members from various councils	214.14
In-Service Training in Techniques of Education of Handicapped Pupils, Advisory Council for	12 members	123.581
Indian Affairs Intertribal Board	31 members	3.922
Indian Education Advisory Committee, Minnesota	15 to 25 members	124.215, Subd. 6
Information Systems Advisory Council, State		16.91
Intergovernmental Information Systems Advisory Council	25 members	16.911
Interstate Cooperation, Minnesota Commission on	Senate, House and Governor's Committees on Interstate Cooperation, Governor, President of the Senate, Speaker of the House	3.29

Department	Administrative Heads	Citation
Investment Advisory Council	Commissioner of Finance, officers of three public pension systems, 10 appointed members	11.117
Investment, State Board of	Governor, State Auditor, State Treasurer, Secretary of State, Attorney General	Const. Art XI, S8
Iron Range Resources and Rehabilitation Board	Five state senators, five state representatives, Commissioner of Natural Resources	298.22, Subd. 2
Judicial Standards, Board on	9 members	490.15
Land Exchange Board	Governor, Attorney General, State Auditor	Const. Art XI, S10; 94.341
Legislative Advisory Commission	Chairman of Senate Committee on Taxes and Tax Laws, Senate Committee on Finance, House Committee on Taxes, House Committee on Appropriations	3.30
Legislative Audit Commission	8 senators, 8 representatives	3.97
Legislative Commission on Minnesota Resources	7 senators, 7 representatives	86.07
Legislative Commission to Review Administrative Rules	5 senators, 5 representatives	3.965

Department	Administrative Heads	Citation
Legislative Commission on Pensions and Retirement	5 senators, 5 representatives	3.85
Legislative Commission to Study Public Broadcasting	5 senators, 5 representatives	L77, C445, S3
Legislative Coordinating Commission	6 senators, 6 representatives	3.303
Levy Limitations Review Board	3 members	275.551
Livestock Sanitary Board	5 members	35.02
Meat Advisory Council	10 members	31.60, Subd. 2
Medical Examiners Board, Examiners, Committee of	5 members	148.67
Medical Malpractice Insurance, Joint Underwriting Association	11 members	62F.02
Medical Policy Directional Committee on Mental Health	7 members	246.017
Mentally Ill and Dangerous and Psycopathic Personalities, Special Review Board for	3 members	253A.16, Subd. 5
Mentally Retarded and Physically Handicapped, Advisory Council for	11 members	252.31
Minnesota Braille and Sight-Saving School, Advisory Council	8 members	128A.03
Minnesota Life and Health Insurance Guaranty Association	5 to 9 members	61B.04
Minnesota School for the Deaf, Advisory Council	8 members	128A.03
Minnesota-Wisconsin Boundary Area Commission	5 members	1.31, 1.33
Minnesota-Wisconsin Boundary Area Commission, Legislative Advisory Committee	5 senators, 5 representatives	1.34
Minnesota-Wisconsin Boundary Area Commission, Technical Advisory Committee	10 members	1.35
Mississippi River Parkway Commission	10 members	161.1419
Mortuary Sciences, Committee of Examiners	4 members	149.02
Municipal Board, Minnesota	3 members	414.01
Nursing Education, Advisory Task Force on	11 members	148.191

Department	Administrative Heads	Citation
Nursing Home Advisory Council	15 members	144A.17
Nursing Registration, Advisory Task Force on	15 members	148.231, Subd. 2
Occupational Safety and Health Advisory Council	12 members	182.656
Occupational Safety and Health Review Board	3 members	182.664
Office of Volunteer Services	21 members	4.31
Outdoor Recreation Advisory Council	one member from each regional development commission, one from Metropolitan Council	86A.10
Pardons, Board of	Governor, Chief Justice of the Supreme Court, Attorney General	Const. ArtV, S7, 638.01
Peace Officers Standards and Training, Board of	11 members	626.841
Personnel Board	7 members	43.03
Pharmacy Task Force on Continuing Education	10 members	151.13
Physical Therapists Examining Council	5 members	148.67
Pilot Dental Program, Advisory Task Force	7 members	256B.58
Plumbing Code and Examinations, Advisory Council	7 members	326.41
Police Civil Service Commission	3 members	419.01
Port Authorities Commission	3 commissioners	458.09, 458.10
Private Trade, Business and Correspondence Schools, Advisory Council on	16 members	141.24
Public Employment Relations Board	5 members	179.72
Public Service Commission	5 members	216A.03
Real Estate Advisory Council	7 members	82.30

Department	Administrative Heads	Citation
Residential and Daycare facilities and services for mentally retarded children and adults, Advisory Board on		252.28, Subd. 2
Resources, Legislative Commission on Minnesota	7 senators, 7 representatives	86.07
Retirement Board, Public Employees	15 members	353.03
Retirement, Minnesota State Retirement System, Board of	9 members, retired member	352.03, 352.03
Retirement Fund, Teachers	Commissioners of Education, Finance, Insurance, four members of fund, 1 retired	354.06
Scenic Area Board	5 members	173.04, Subd. 17
Seed Potato Certification Advisory Committee	6 members	21.112, Subd. 2
Small Business Advisory Task Force	11 members	362.42
Soil and Water Conservation Board, State	12 members	40.03
Soybean Research and Promotion Council		21A.03
Steamfitting Examinations, Advisory Council for	7 members	326.49
Tax Court of Appeals	3 judges of Tax Court of Appeals	271.01
Tax Study Commission	7 senators, 7 representatives	3.86
Turkey Research and Promotion Council	15 members	29.14, 29.15
Uniform Conveyancing Forms, Advisory Committee on		507.09
Uniform Financial Accounting and Reporting Standards, Advisory Council on	13 members	121.901
Uniform State Laws, Commission on	4 commissioners	3.251

Department	Administrative Heads	Citation
University Board, State	9 directors and Commissioner of Education	136.02, 136.12
Urban Indians, Advisory Council on	5 members	3.922, Subd. 8
Veterans Advisory Committee	11 members	198.055
Vietnam Bonus Board of Review	3 members	197.978
Vocational Education, State Board for	Board of Education	124.53
Vocational Rehabilitation, Consumer Advisory Council on	9 members	129A.02
Voyageurs National Park, Citizen Committee on	12 members, 2 senators, 2 representatives	84B.11
Water Conditioning Advisory Board	9 members	326.66
Water Planning Board	7 members	105.401
Water Resources Board	5 members	105.71
Water Supply and Wastewater Treatment Operators Certification Council	6 members	115.74
Water Well Contractors Advisory Council	9 members	156A.06
Watershed Districts, Advisory Committees	5 members	112.44
Workers' Compensation, Advisory Council on	13 members	175.007
Workers' Compensation Court of Appeals	3 members	175.006
Zoological Board	12 members	85A.01

EXAMINING AND LICENSING BOARDS

Board	Membership	Citation
Abstracters', Board of	7 members	386.63
Accountancy, Board of	7 members	326.17
Architecture, Engineering, Land Surveying and Landscape Architecture, Board of	16 members	326.04
Barber Examiners, Board of	4 members	154.22
Chiropractic Examiners, Board of	7 members	148.02
Cosmetology, Board of	4 members	155.04, 155.05
Dentistry, Board of	9 members	150A.02
Electricity, Board of	9 members	326.241
Law Examiners, State Board of	7 members	481.01
Medical Examiners, Board of	11 members	147.01
Nursing, Board of	11 members	148.181
Nursing Home Administrators, Board of Examiners for	11 members	144A.19
Optometry, Board of	7 members	148.52
Pharmacy, Board of	7 members	151.02
Physical Therapists, Examining Committee	5 members	148.67
Podiatry, Board of	7 members	153.02
Private Detective and Protective Agent Services, Board of	5 members	326.33
Psychology, Board of	11 members	148.90
Teaching, Board of	17 members	125.183
Veterinary Medicine, Board of	7 members	156.01
Watchmaking, Board of Examiners in	7 members	326.541

INDEPENDENT STATE AGENCIES

Agency	Membership	Citation
Agriculture Society, Minnesota State	A president and 9 other members	37.01, 37.04
Historical Society, Minnesota	A director and 6 state officers	138.01
Horticultural Society, Minnesota State	An executive board and 10 members	
Humane Society, Minnesota	7 directors appointed by the Governor, and the Governor, Commission of Education, and Attorney General ex officio	343.01
Sibley House Association of the Minnesota Daughters of the American Revolution	Officers of the Minnesota D.A.R.	
University of Minnesota	12 Regents elected by Legislature in joint convention	Const. Art 13 s 3 Territorial Laws 1851, Chapter 3

MISCELLANEOUS REGIONAL AGENCIES

Agency	Membership	Citation
Metropolitan Airports Commission		473.603,473.604
Metropolitan Council	17 members	473.123
Metropolitan Land Use, Advisory Committee on	16 members	473.853
Metropolitan Mosquito Control Commission	12 members	473.701, 473.703
Metropolitan Parks and Open Space Commission	9 members	473.303
Metropolitan Sports Facilities Commission	7 members	473.553
Metropolitan Transit Commission	9 members	473.141, 473.404
Metropolitan Waste Control Commission	9 members	473,141, 473.503
Minnesota Area Potato Council	8 members	30.465
Regional Development Commissions		462.387, 462.388
Southern Minnesota River Basin Board	11 members	114A.03

7.7 Organization of Counties, Cities and Metropolitan Government

(a) Counties

All the area of the state is included in counties. Most were formed in the nineteenth century. Changes in their territory are rare although Minnesota Statutes, Chapter 370 still provides for transfers of territory and establishment of new counties. A change in a boundary or the location of a county seat may be made only with approval of the affected voters. Minn. Const., art. XII, sec. 3

The general powers of a county are set out in Minnesota Statutes, Chapters 373 and 375. The governing body of a county is its board of commissioners, usually of five but sometimes seven members.

Counties are a catch-all of local government powers and duties. Many officers are required by statute and most of them are elected. The county auditor, treasurer, recorder, sheriff, attorney and surveyor each have a chapter in Minnesota Statutes in the series of chapters 370 to 402.

The profusion of general laws does not inhibit the passage of special laws for counties.

Individual counties find it easier to meet special problems by special laws than by seeking to amend the general laws that affect all the counties. As a result, the general law in chapters 370 to 402 does not change frequently.

(b) Cities

City governments fall into the two classes, statutory cities and home rule charter cities.

Statutory cities were formerly called villages and are organized under Minnesota Statutes, Chapter 412. Several optional forms of organization of each city's government are permitted under chapter 412. The effect of Minnesota Statutes, Section 410.015, should be noted:

> 410.015 [DEFINITIONS RELATING TO CITIES.] The term "statutory city" means any city which has not adopted a home rule charter pursuant to the constitution and laws; the words "home rule charter city" mean any city which has adopted such a charter. In any law adopted after July 1, 1976, the word "city" when used without further description extending the application of the term to home rule charter cities means statutory cities only.

In view of this section, all drafters should be cautious as to the use of the term "city". If it is intended that every city-like entity be included then the reference must be to "city and home rule charter city".

Home rule charters are permitted by the Minnesota Constitution, Article XII, Section 4, and provision is made in chapter 410 for their adoption by cities.

Many cities were organized under special laws. Some of the special laws were repealed by section 412.018 which expressed a desire to have cities organized under the statutory city law or under a home rule charter. The old special laws were sometimes called "the city charter" in conversation and their profusion was confusing. The desire to simplify produced section 412.018 and related legislation. The effort has not been entirely successful. On a superficial plane it is apparent that "statutory city" is a longer term than "village". More serious, the meaning of "city" in a particular context is ambiguous without recourse to the history of the section or other language in it. Cities and uniformity seem to be antithetical.

The entire series of chapters 410 to 477A applies to various kinds of cities but the particular application of each law must be ascertained from its own terms. The development of city laws is parallel to that of county laws. Each session of the legislature produces scores of laws relating to individual cities.

Most cities have city councils for their governing bodies. Most, but not all, have mayors. Their primary concern is police and fire protection, street maintenance, health, sewers and public safety in general. Minnesota cities have lost most of the traditional involvement with welfare and education.

(c) Towns

Towns are often called "townships". The latter term is ambiguous since it may also refer to a township in the United States survey. Towns are the appropriate rural form of local government where there is thorough settlement. Large parts of northern Minnesota are not organized into towns.

The basic authority in a town is the town meeting. The town board is the routine town administration. The activity of a town is in direct proportion to its population. Occasionally a town silently becomes defunct. Often a town becomes quite urban with enormous town meetings.

Towns have an economical set of laws for their government in chapters 365 to 368. However, they are referred to in many other laws. Individual towns seek special legislation and each session produces a number of special local laws for them. When drafting a local law for a town the provision for approval should refer to "the town board" or "the town meeting" since either may be "the governing body" referred to in Article XII, Section 2. Usually the town board is given the responsibility of approving a local law.

The general town laws, like those of counties and cities, evolve rather slowly. The most urgent responsibility of towns is maintenance of town roads but they possess many other powers. The exercise of many of the other powers is needed in urbanized territory but urbanization is usually followed by incorporation of the territory as a city. However, the transition is not inevitable and towns will be found operating in the full range of demographic possibilities from wilderness to city.

(d) Metropolitan Government

The unique condition in Minnesota of the Twin Cities has caused the development of a unique set of laws for their metropolitan government. The metropolitan government laws are collected in chapter 473. Several commissions have authority over parks, transit, sewer and waste control, airports and other subjects. The commissions are subject to supervision by the metropolitan council. The establishment of this system was made easier by the adoption of Minnesota Statutes, Section 645.023, which made approval by the hundreds of preexisting local governments unnecessary. See section 7.4 (b) of this book. The commissions, particularly the airports commission and the waste control commission have been characterized by some observers as successful. Their relationship with the local government units and the public at large is not settled and is liable to extensive further development.

The governor appoints the metropolitan council and, with important exceptions, the council appoints the various commissions. The council and the commissions do not readily fall into the familiar categories of state agency or municipal corporation although both terms have been used for them. The courts have consistently upheld their powers. Metropolitan government is the subject of important legislation although the number of bills is few since just one area is affected.

(e) Other Local Government Units

Other units exist with various powers. Examples are transit authorities, port authorities, regional commissions and so forth. These units are a blend of the unique and the unfamiliar. These units are an attempt to deal with new and different demands placed upon local governments. In general, they consist of combining powers or local entities for limited purposes. Such units may become more popular as they already have in more urbanized states. The creation of such units puts a drafter into an uncharted area of Minnesota law. However, this is an area where the experience of sister states may be of benefit.

7.8 Retirement and Pension Laws

(a) Existing Major Plans

In the area of retirement and pension laws, Minnesota has several major plans on a plethora of minor and special plans. Before attempting any drafting in this area, a drafter must be familiar with at least the principal retirement and pension programs. The principal retirement programs are:

(1) The Minnesota State Retirement System (MSRS), found in Minnesota Statutes, Chapter 352. This group includes basically all state employees who are in the classified service as well as some unclassified employees.

(2) The Public Employees Retirement Association (PERA), found in Minnesota Statutes, Chapter 353. This chapter includes all employees of municipalities or political subdivisions.

(3) The Teachers Retirement Association (TRA), found in Minnesota Statutes, Chapter 354. Included in this group are teachers and administrators in the public schools and state universities.

(4) A provision for a teachers retirement association in a city of the first class is found in Minnesota Statutes, Chapter 354. Included in the chapter are teachers in Minneapolis, St. Paul, and Duluth.

(5) The Minneapolis Municipal Employees Retirement Fund (MMERF), found in Minnesota Statutes, Chapter 422A, includes employees and officials of the city of Minneapolis.

(6) The Highway Patrolmen's Retirement Fund (HPRF), found in Minnesota Statutes, Chapter 352B, includes only state highway patrolmen.

(7) Elective State Officers Retirement (ESOR), found in Minnesota Statutes, Chapter 352C, includes elected state officers in the executive branch.

(8) Retirement provisions for legislators are found in Minnesota Statutes, Chapter 3A.

(9) State Unclassified Employees Retirement Program (SUERP), found in Minnesota Statutes, Chapter 352D, includes specified state employees in the unclassified service if they elect to participate.

(10) The Public Employees Police and Fire Fund (PEPFF), found in Minnesota Statutes, Sections 353.63 to 353.68. Included in these chapters are salaried police and firefighters not members of a local association and county sheriffs.

(11) A local police or firemen's relief fund operating under Minnesota Statutes, Chapters 69, 423 and 424, includes all police and firemen's relief associations to the extent not covered by a special law.

(12) Provisions governing the retirement of and pensions for state judges are found in Minnesota Statutes, Chapter 490.

Another chapter of Minnesota Statutes, Chapter 356, contains a variety of largely administrative provisions which relate to all or most of the retirement and pension plans provided elsewhere. If one of the specific pension plans is modified, the chances are that this chapter must be modified also.

(b) Existing Minor Plans

A drafter will also be often called upon to draft a law relating to local police or retirement associations. These laws are of two principal kinds.

(1) Those plans organized and operating under one of 55 special laws. These plans are indexed in the "Local and Special Acts" table (Table I) in the Minnesota Statutes. Each plan is indexed under the city, county or other governmental unit to which the plan applies.

(2) Those plans organized and operating under either Minnesota Statutes, Chapters 69 or 423, but which also have some special provisions or exceptions provided by a local or special law. These special exceptions or provisions to plans operating under chapters 69 or 423 are also found listed under the appropriate governmental unit name in Table I of Minnesota Statutes.

It can often be extremely difficult to locate all of the provisions affecting a particular minor pension plan. This problem is augmented by the frequent

necessity of determining whether a particular local or special law has received the required local government approval. In any case, a drafter should not begin to draft an amendment to a pension or retirement law until he or she is confident that all laws relating to that plan have been located.

(c) Problem of "Omitted Buy Back"

One instance of a drafting problem which often arises in the retirement and pension law area is that of "omitted buy back". Throughout the years, various laws have allowed many individuals or groups of public employees to buy back credit for years of service when they either did not contribute to a retirement program or took a refund of contributions. The opportunity provided to "buy back" under each law existed only for a limited time and often the law authorizing the buy back has been subsequently repealed.

A buy back law generally involves one or a limited group of individuals. As a practical matter, the legislature has discouraged proposals to permit a buy back for a specific individual. However, there is no absolute prohibition and drafting requests for individual buy back authority are not uncommon.

In drafting a bill to authorize a buy back of prior service credit, the drafter must determine:

(1) The identity of the employee(s); and,

(2) The fund membership, if any; and,

(3) The present employer and whether there was a different employer during the period for which buy back is sought.

This information can be obtained from the senator or representative requesting the bill draft and the appropriate retirement association.

Before drafting a bill, a drafter should ensure that no buy back rights presently exist. Particularly in the case of an individual, this can and does occur. This information can be given to the senator or representative making the bill request and the problem remedied without legislation.

The legislation authorizing the buy back should be carefully checked to insure that buy back rights are not to be extended to others similarly situated but not intended by the requester.

For examples of various buy back legislation, see the examples at the end of this chapter.

7.9 Religious Issues Including Use of Public Funds for Religious Institutions

(a) Generally

Both the federal and state constitutions deal with freedom of religion and establishment of religion. The federal constitution provides simply:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I.

This amendment is applicable to the states through the Fourteenth Amendment.

The state constitution provides:

> Art. I, Sec. 17. FREEDOM OF RELIGION. ".... The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries." Minn. Const. art. I, sec. 16.
>
> "No religious test or amount of property shall be required as a qualification for any office of public trust in the state. No religious test or amount of property shall be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion." Minn. Const. art. I, sec. 17.
>
> "In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught." Minn. Const. art. XIII, sec. 2.

(b) Restrictions on Legislation Under the First Amendment

The federal establishment clause "prohibits something more than the establishment of a national church, since the clause does not merely prohibit Congress from making a law establishing religion, but prohibits Congress

from making a law *respecting* the establishment of religion." Kramer, Donald, "Annotation: Supreme Court cases involving Establishment and Freedom of Religion Clauses of the Federal Constitution." 37 L.Ed.2d 1160. A law may be one respecting an establishment of religion if it is a step which would lead to such establishment. The court has said that the clause prohibits acts by the government which prefer one religion over another or which prefer religion over nonbelief, or nonbelief over religion. It has indicated that Congress may not legislate either religious beliefs or their expression. Under the establishment clause, laws giving direct aid to religion are not permitted, but laws which incidentally benefit religion are not necessarily invalid. This is because "... under the establishment clause, the proper relationship of government *vis a vis* religion and religious institutions in this country is not one of hostility but neutrality and ... the neutrality which is required need not stem from a callous indifference to religion, but may at times be benevolent." *op. cit.* 1165. To be constitutionally valid under the federal establishment clause, a law which incidentally aids religious institutions must pass a three-part test: (1) it must have a secular purpose; (2) it must have a primary effect that neither advances nor inhibits religion; and (3) it must avoid excessive entanglement between government and religion.

The court has given great deference to a legislature's statement of intent when determining if a law has a secular purpose. It has given little guidance about the relative importance a particular secular purpose must have to label an enactment as essentially nonreligious when the act has multiple purposes.

The meaning of primary effect is unclear. Some cases indicate that "primary" means "principal" and that some impact on religion will not violate the primary effect test. *Hunt v. McNair,* 413 U.S. 734, 743, 37 L.Ed.2d 923, 93 S.Ct. 2868 (1973), says that aid has the "primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting." This suggests that *any* aid to some institutions might be unconstitutional. The court in *Committee for Public Education and Religious Liberty v. Nyquist,* 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1973), suggests that "primary" means direct and immediate, as opposed to remote and incidental. The nature of the recipient of aid may in some cases be an influencing factor in determining if the primary effect of the aid given is to advance or inhibit religion. For example, it might matter whether a law provided that the aid be given to a nonparochial school directly or to the student or his parents.

The excessive entanglement standard may have both a qualitative and quantitative aspect. To determine excessive entanglement the court examines the character and purposes of the institutions benefited, the nature of the state aid and the resulting relationship between the government and the religious

institution. It may take into account whether there are sustained and detailed administrative relationships and whether the involvement calls for official and continuing surveillance. The court particularly disfavors laws which tend to create political devisiveness along religious lines. Any such laws which require annual appropriations are particularly dangerous.

The First Amendment's provision prohibiting Congress from making a law interfering with the free exercise of religion protects both individuals and organizations. It protects both orthodox and unorthodox beliefs and practices. The protection it gives to beliefs is absolute; that given to acts motivated by those beliefs is not. Cases have held that "the government has the inherent police power to regulate religious activities in a reasonable and nondiscriminatory manner in order to protect the safety, peace, good order and comfort of all members of society". Kramer, *op. cit.,* 37 L.Ed.2d 1173. Although laws which *directly* inhibit lawful acts done in the name of religious freedom are unconstitutional, those necessary for the order of society and which place only an *incidental* burden on the free exercise of religion may be upheld. The court must balance the competing interests, and the more important one, on a case by case basis, must prevail. An important question in every case is whether the state may accomplish its purpose by means which do not impose a burden on religion. Regulation may not be equated with infringement of religious freedom. "...Any infringement of the free exercise of religion beyond the mere regulation of religious activities justified by the government's duty to keep peace and good order in a community, can be tolerated only when the infringement is necessary to serve a *compelling state interest."* Kramer, *op. cit.,* 37 L.Ed.2d 1176. However, under the free exercise clause the government may go further in regulating the religious practices of children than of adults.

The free exercise clause does not give the right to commit crimes in the name of religion. Therefore, where the government's designation of an act as criminal is constitutional, it is no defense to a criminal charge that the act was motivated by one's religious beliefs.

(c) Sectarian or Parochial Schooling Under the First Amendment

The First Amendment, as applied to sectarian or parochial schooling, has led to the following decisions:

(1) Transportation. The expenditure of tax funds for transportation of nonpublic school students to and from school, as part of a general state law providing such transportation for all students, is constitutionally permissible as a health and safety measure. Such funds may not be used for field trip transportation because the school rather than the child is the true recipient, the meaningfulness of the trip depends on the teacher; and to insure secular use of the funds would require excessive entanglement between church and state. *Everson v. Board of Education of Ewing Township,* 330 U.S. 1, 67

S.Ct. 504 91 L.Ed.2d 711 (1974); *Wolman v. Walter,* 433 U.S. 229, 97 S.Ct. 2593 53 L.Ed.2d 914 (1977). The Minnesota Supreme Court has also upheld transportation legislation under the Minnesota Constitutional provisions. *American United, Inc. v. Independent School District No. 622,* 288 Minn. 196, 179 N.W.2d 146 (1970), appeal dismissed, 40 U.S. 945 29 L.Ed.2d 854, 91 S.Ct. 2275 (1971).

(2) Textbooks. State statutes under which secular textbooks (meaning books or book substitutes limited to reusable workbooks or manuals) are loaned to all students in certain grades throughout the state, including parochial school students, have been upheld, on the ground that it is relatively easy to determine if a book's content is secular. Those under which states reimbursed parochial schools for the cost of providing textbooks have been found unconstitutional. *Board of Education v. Allen,* 392 U.S. 236, 88 S.Ct. (1923), 20 L.Ed.2d 1060 (1968); *Meek v. Pittenger,* 421 U.S. 349, 95 S.Ct. 1753, 44 L.Ed.2d 217 (1975); reh den 422 U.S. 1049, 95 S.Ct. 2668, 45 L.Ed.2d 702 (1975); *Wolman v. Walter,* 433 U.S. 229, 97 S.Ct. 2593, 53 L.Ed.2d 714 (1977); *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971).

(3) Instructional Materials and Equipment other than Books. The court has declared unconstitutional the expenditure of public funds for the purchase and loan to nonpublic school pupils or their parents of secular instructional materials and equipment (such as projectors, tape recorders, maps, globes and science kits). This is true even where the statute specifies that the items must be "incapable of diversion to religious use" and even if the materials are loaned to the pupil or his parent rather than the school. The rationale: In view of the impossibility of separating the secular function of the schools from the sectarian, state aid inevitably goes in part to the support of religion. *Meek v. Pittenger*, 421 U.S. 349, 95 S.Ct. 1753, 44 L.Ed.2d 217 (1975); reh den 422 U.S. 1049, 95 S.Ct. 2668, 45 L.Ed.2d 702 (1975); *Wolman v. Walter,* 433 U.S. 229, 97 S.Ct. 2593, 53 L.Ed.2d 714 (1977).

(4) Reimbursement for Testing. The court has held that religious schools may not be reimbursed for the cost of preparing teacher made tests since these constitute a means by which religion may be taught. However, a state may authorize the expenditure of public funds to supply nonpublic school pupils with standardized tests and scoring services used in the public schools where nonpublic school personnel neither draft nor score the tests, and the state does not authorize any payments to nonpublic school personnel for test administration. *Levitt v. Committee for Public Education and Religious Liberty,* 413 U.S. 472, 93 S.Ct. 2814, 37 L.Ed.2d 736 (1973); *Wolman v. Walter,* 433 U.S. 229, 97 S.Ct. 2593, 53 L.Ed.2d 714 (1977).

(5) Tuition Grants, Reimbursements or Tax Credits. These have been held unconstitutional on the ground that in the absence of an effective means

of guaranteeing that the state aid derived from public funds will be used exclusively for secular, neutral and nonideological purposes, direct aid to sectarian schools is invalid. Mere statistical guarantees are not enough. *Sloan v. Lemon,* 413 U.S. 825, 93 S.Ct. 2982, 37 L.Ed.2d 939 (1973). *Committee for Public Education v. Nyquist,* 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1973).

(6) Teacher Salaries or Supplements. The state may not assist religious institutions in paying their teachers, even if the teachers teach subjects that are considered secular, where to do so would require excessive entanglement. Generally, it would be difficult to determine if the teacher taught only from a secular point of view. *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971); *Early v. Dicenso,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971).

(7) School Lunches. As part of general legislation applicable to all students, a state may include parochial schools in a school lunch program since this is a secular, nonideological service, unrelated to the primary, religious oriented educational function of the sectarian school. *Meek v. Pittenger,* 421 U.S. 349, 95 S.Ct. 1753, 44 L.Ed.2d 217 (1975); reh den, 422 U.S. 1049, 95 S.Ct. 2668, 45 L.Ed.2d 702 (1975).

(8) Auxiliary Services. The court has found that a statute authorizing public school authorities to supply professional staff and equipment to provide auxiliary services, such as remedial and accelerated instruction, guidance counseling and testing, and speech and hearing services, to parochial as well as public school students violated the establishment clause where such services were provided on the premises of the parochial schools and required annual appropriations. The clause was not violated by a statute which authorized the use of public funds to provide speech and hearing and psychological diagnostic services to nonpublic school pupils, as well as public school pupils, when the services were to be performed at the nonpublic school by persons hired by the board of education. A state's providing guidance counseling to parochial school students as to the planning and selection of particular courses is impermissible. Under some circumstances, long-range career planning guidance is permissible. *Meek v. Pittenger,* 421 U.S. 349, 95 S.Ct. (1953), 44 L.Ed.2d 217 (1975); reh den, 422 U.S. 1049, 95 S.Ct. 266 8, 45 L.Ed.2d 702 (1975); *Wolman v. Walter,* 433 U.S. 229, 97 S.Ct. 2593, 53 L.Ed.2d 714 (1977).

(9) Maintenance Grants and Assistance. A state statute has the primary effect of advancing religion when it provides grants to nonpublic schools for the maintenance and repair of school facilities and equipment without restricting payments to the upkeep of facilities used exclusively for secular purposes, even though the grants were limited to a percentage of the amount

spent for such services at public schools. *Committee for Public Education and Religious Liberty v. Nyquist,* 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1973).

(10) Construction Grants. The court has upheld aid to church related colleges and universities for construction of buildings and facilities to be used exclusively for secular educational purposes, finding that such aid does not necessarily involve excessive entanglement, and that there are great differences in the level of academic freedom and indoctrination between the college level, on the one hand, and the elementary and secondary level on the other. *Tilton v. Richardson,* 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed.2d 790 (1971); *Hunt v. McNair,* 413 U.S. 734, 93 S.Ct. 2868, 37 L.Ed.2d 923 (1973).

(11) Noncategorical Grants to Colleges. A state statute granting annual noncategorical grants to private colleges, requiring that the funds not be used for sectarian purposes, has been upheld *Roemer v. Board of Public Works,* 426 U.S. 736, 96 S.Ct. 2337, 49 L.Ed.2d 179 (1976).

(d) Religion in Schools Under the First Amendment

The First Amendment, as applied to religion in the schools, has led to the following decisions:

(1) Bible Reading. Requiring the Bible to be read without comment each day in the classroom violates the establishment clause, even when a child may be excused from the classroom. *School District of Abington Township v. Schempp,* 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963).

(2) School Prayer. A school district may not formulate a prayer and direct that it be recited by a class, even if it allows a child to be excused from the recitation. *Engel v. Vitale,* 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d, 601 (1962).

(3) Teaching of Evolution. The state may not prohibit the teaching of evolution if it permits the teaching of other theories of the genesis of mankind. To do so would be to prefer one religious view over another or a religious view over a nonreligious one. *Epperson v. Arkansas,* 393 U.S. 97, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).

(4) Release Time for Religious Instruction. The court has approved such programs where the instruction has taken place outside the public school building and at no cost to the state and where the program has not resulted in excessive entanglement of the state in the program. It has disapproved of programs which utilized public school classrooms even though students were not required to attend such instruction. *McCollum v. Board of Education,* 333 U.S. 203, 92 L.Ed.2d 649, 68 S.Ct. 461 (1948); *Zorach v. Clauson,* 343 U.S. 306, 96 L.Ed.2d 954, 72 S.Ct. 679 (1952).

(5) Compulsory Attendance. The court has found in the case of the Amish that the state interest in compulsory education did not justify infringing upon their rights to free exercise of their religion. *Wisconsin v. Yoder,* 406 U.S. 205, 37 L.Ed.2d 15, 92 S.Ct. 1526 (1972).

(e) Religious Issues Under the Minnesota Constitution

In *Americans United Inc. as Protestants and Other Americans United for Separation of Church and State v. Independent School District No. 622,* 288 Minn. 196, 212, 179 N.W.2d 146 (1970), the court stated "...that the limitations contained in the Minnesota Constitution are substantially more restrictive than those imposed by the United States Constitution, Amendment 1." Although upholding the use of public funds to transport parochial school students to and from school, the court noted that at 288 Minn. 201, "a more effective argument can be made for holding — that the use of public funds for transporting sectarian students 'supports' a parochial school than can be advanced for holding that such use is for the 'establishment of religion'." The same reasoning would apply of course, to the provision of other types of aid to sectarian schools or students. The court itself has not yet defined other ways in which the Minnesota constitutional provisions dealing with religion might be more restrictive than the federal provisions and it has not effectively overturned the grants of any type of aid to nonpublic schools on the basis of the Minnesota Constitution, but the drafter should be aware of the possibility.

In addition to the *Americans United* case, one other Minnesota case provides some valuable assistance in interpreting the Minnesota constitutional provisions on religion. In *Minnesota Higher Education Facilities Authority v. Hawke,* 305 Minn. 97, 232 N.W.2d 106 (1975), the court held that the issuance of tax exempt revenue bonds by the higher education facilities authority to refinance the indebtedness of private religious affiliated colleges for construction of facilities used exclusively for secular education did not violate Article 13, Section 2, of the Minnesota Constitution, proscribing the use of public money for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught. The decision turned largely on the definition of public money as money raised by taxes and on the fact that the relevant statute declared that the bonds did not constitute a debt of the state.

7.10 Forms

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EXAMPLE — GENERAL APPROPRIATIONS BILL

A bill for an act

relating to the organization and operation of state government; appropriating money for the general administrative and judicial expenses of state government with certain conditions; providing for the transfer of certain moneys in the state treasury; authorizing land acquisition in certain cases; fixing and limiting the amount of fees to be collected in certain cases; amending Minnesota Statutes 1976, Sections 5.08, Subdivision 2; 5.09; 10.30; 16.025, Subdivision 1; 16A.095, Subdivision 2; 16A.10, Subdivisions 1 and 2; 16A.11, Subdivisions 2 and 3; 43.31; 85A.02, by adding a subdivision; 85A.04, Subdivision 1; 186.04; 241.045, Subdivision 4; 268.06, Subdivision 25; 326.241, Subdivision 3; 362.125; 363.14, Subdivision 1; 472.13, Subdivision 1; 490.15, Subdivision 1; 626.553; 626.846, by adding a subdivision; Chapters 16A, by adding a section and 624, by adding a section; Laws 1971, Chapter 121, Section 2, as amended; and Laws 1976, Chapter 260, Section 3; repealing Minnesota Statutes 1976, Sections 4.19; 15.61, Subdivision 3; 16.025, Subdivision 2; 16.173; 16A.095, Subdivision 1; 16A.12; 138.025, Subdivision 9; and 299D.03, Subdivision 4.

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

Section 1. [STATE GOVERNMENT; ADMINISTRATION; APPROPRIATIONS.] The sums set forth in the columns designated "APPROPRIATIONS" are appropriated from the general fund, or any other fund designated, to the agency indicated in the column opposite of it and for the purposes specified in that following section. The sums are available for the fiscal years indicated for each purpose. The figures "1977", "1978", and "1979", wherever used in this

Note that the title is set up identically to that required for substantive law bills.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

act, mean that the appropriation or appropriations listed thereunder are available for the year ending June 30, 1977, June 30, 1978, or June 30, 1979, respectively.

	APPROPRIATIONS Available for the year Ending June 30,	
	1978	1979
Sec. 2. THE LEGISLATURE		
Subdivision 1. For the House of Representatives	7,100,000	8,000,000
Subd. 2. For the Senate	5,155,350	5,539,910
Subd. 3. Legislative Coordinating Commission		
(a) Legislative Reference Library	258,910	244,460
(b) Revisor of Statutes	1,098,401	1,442,317
(c) Office of Legislative Research Science and Technology Project	47,250	47,250

In Section 1, (pages 233 and 234), note the general appropriation language. This is the only time in the entire bill this provision is stated.

In Sec. 2, note that it is divided into subdivisions and the subdivisions into paragraphs just as in a bill for substantive law.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

	Subd. 6. Mississippi River		
Parkway Commission		10,000	10,000
	For 1977 - $3,000		
This appropriation is from the trunk highway fund.			
	Sec. 3. SUPREME COURT		
	Subdivision 1. General Operations		
and Management		1,821,426	1,897,857
	Subd. 2. Supreme Court Contingent	28,750	3,750
If the appropriation for either year is insufficient, the appropriation for the other year is available for it.			
	Subd. 3. Judges' Retirement	690,000	710,000
To be disbursed by the executive director of the Minnesota state retirement system, subject to the provisions of Laws 1975, Chapter 418.			

In Subd. 6 of Sec. 2 (and Subd. 3 of Sec. 10), note the provisions that the appropriation is from the trunk highway fund and fish and game fund. These are exceptions to the general rule in Section 1 that appropriations are from the general fund.

In Subd. 6 of Sec. 2, note the deficiency appropriation for 1977.

In Sec. 3, Subd. 2, note the special authority to use either appropriation in either year.

In Sec. 3, Subd. 3, note the special restriction on the appropriation.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

```
Sec. 6.  BOARD ON JUDICIAL

STANDARDS                              105,000        104,000

Approved Complement - 2

The board on judicial standards shall
annually review the compliance of each
district, county, municipal, or probate
judge with the provisions of Minnesota
Statutes, Section 546.27.  The board
shall notify the commissioner of finance
of each judge not in compliance.  If the
board finds that a judge has compelling
reasons for noncompliance, it may decide

not to issue the notice.

Upon notification that a judge is not in
compliance, the commissioner shall not
pay the judge his salary.

The board may cancel a notice of
noncompliance upon finding that a judge
has returned his status to compliance,
but in no event shall a judge be paid
his salary for the period in which the
notification of noncompliance is in
effect.
```

In Sec. 6 note the substantive law that there be an annual review. This type of provision should be avoided. It is apparently a permanent law but yet is part of a temporary appropriation. In any case the law is uncoded and would be difficult to locate.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

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12        Sec. 10.  CONTINGENT ACCOUNTS

13  Subdivision 1.  The appropriations in
14  this section shall be expended with the
15  approval of the governor after
16  consultation with the legislative
17  advisory commission pursuant to section
18  3.30.

19    Subd. 2.  General                3,387,000      4,681,000

20  Of this appropriation, $255,468 in the
21  second year is available for the
22  Minnesota environmental education board.
23  $175,000 each year is available for the
24  resource recovery grants-in-aid program
25  in the pollution control agency.

26    Subd. 3.  Game and Fish             50,000         50,000

27  This appropriation is from the game and
28  fish fund.
```

In Sec. 10, Subd. 1, note the specific conditions on the expenditure of funds.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

	Sec. 16. ATTORNEY GENERAL		
	Approved Complement		
	1978 - 191 1979 - 187		
	General - 186 184		
	Federal - 5 3		
	Subdivision 1. General Operations		
	and Management	4,945,782	4,875,792
	Subd. 2. Special Contingent	25,000	25,000
	This appropriation shall not be available for paying the costs of special, legal, accounting, and investigative personnel retained in cases arising under Minnesota Statutes, Section 501.12, hereafter filed unless the attorney general shall decide in a case that all the beneficiaries are not adequately represented, or that there is a likelihood that the purpose of the trust may be frustrated without his intervention and that the state has a substantial interest in carrying out the purpose of the trust.		

In Section 16, note the provision for "Approved Complement". This provision is intended to control by law the number of persons on the department's payroll. The provision is common in departmental budgets.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

Sec. 33. NATURAL RESOURCES ACCELERATION

Subdivision 1. Legislative Commission on

Minnesota Resources	180,000	180,000

Together with any sums received as grants-in-aid from federal sources and any sums granted by private sources to carry out the purposes of the commission. Federal and private funds shall not cancel but remain available until expended.

The commission shall during the 1977-79 biennium review the work programs and progress reports required under subdivision 12 of this section and report its findings and recommendations to the committee on finance of the senate, committee on appropriations of the house of representatives and other appropriate committees. The commission shall establish oversight committees to continue review of a variety of natural resource subject areas as it deems necessary to carry out its legislative charge.

The commission shall continue to monitor the activities regarding establishment and development of Voyageurs National Park, and will cooperate and coordinate with the citizens advisory committee and all appropriate state, federal and local agencies and shall advise the legislature, if necessary, on matters affecting state policy related thereto.

Subd. 2. Department of

Agriculture	50,255	50,000

Framework water plan - phase II. For the department role in phase II of the framework water and related land resources planning effort. The water resources council, or board if created, shall coordinate the work programs and reports of all agencies involved.

Subd. 3. Department of

Economic Development	21,786	20,000

Framework water plan - phase II. For the department role in phase II of the framework water and related land

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

resources planning effort. The water resources council, or board if created, shall coordinate the work programs and reports of all agencies involved.

Subd. 4. Energy Agency

(a) Framework water plan -

phase II	106,927	105,000

For the agency role in phase II of the framework water and related land resources planning effort. The water resources council, or board if created, shall coordinate the work programs and reports of all agencies involved. The water management information system shall be developed consistent and compatible with the Minnesota land management information system.

(b) Alternative energy

grants	200,000	200,000

This appropriation is available for grants to implement research and demonstration projects on alternative energy sources particularly appropriate to this state. At least one fourth of this amount shall be allocated for projects with high potential for commercialization. This appropriation shall be expended with the approval of the governor after consultation with the legislative advisory commission. The legislative commission on Minnesota resources shall make recommendations to the legislative advisory commission regarding such expenditures.

(c) Energy grant monitoring	25,000	25,000

For implementation of Minnesota Statutes 1976, Section 116H.128 and to insure that federal programs are employed to the best advantage of the state.

In Subds. 2, 3 and 4 of Sec. 33, note the provisions in each of the paragraphs. These are examples of "program budgeting" as opposed to "departmental budgeting" found in other sections.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

Sec. 61. [DETAILS.] The staffs of the senate finance committee and the house appropriations committee shall, at the request of agencies receiving appropriations in this act and the commissioner of finance, provide wherever available detailed information on the activities and objects of expenditures that go into the appropriation totals.

Sec. 66. [4.191] [PLANNING PROGRAMS.] Prior to commencing a study, research, or planning program, a state agency or department shall file with the state planning agency on a form prescribed by the agency, a description of the proposed project, including title, purpose, staff assigned, consultants to be used, cost, completion date, and other information prescribed by the agency as appropriate. The agency shall develop rules to exclude from the filing requirement projects that the agency determines are of minor significance.

Upon completion of the project, a copy shall be filed with the state planning agency. The state planning agency shall review the planning programs of state departments and agencies and submit to the legisfature by November 15 of each year a report of findings and recommendations.

In Section 61, note that the language is an addition to substantive law but is unlimited as to time. The provision is uncoded despite the fact that it is permanent law.

In Section 66, note the tentative coding. This indicates the desire to place the provision in the Minnesota Statutes but is still not the preferred method of drafting.

EXAMPLE — GENERAL APPROPRIATIONS BILL (Cont.)

Sec. 69. Minnesota Statutes 1976, Section 10.30, is amended to read:

10.30 [EMPLOYEES' COMPENSATION REVOLVING FUND, REIMBURSEMENT.] In all cases where any state department owes the employees' compensation revolving fund, created by sections 176.591, 176.601 and 176.611, for claims paid its employees, and no direct appropriation is made therefor, such department shall reimburse the revolving fund from the ~~funds available to it for supplies and expense~~ money appropriated for operation of the department .

In Section 69, note the clear indication in the introductory sentence that the provision is amending existing law. This is the preferred method of drafting a permanent substantive law provision in an appropriations bill.

The preferred method to include a temporary substantive provision in an appropriations bill is to put a self-destruct date in the section or put in a repealer effective on the last day of the second fiscal year of the biennium.

EXAMPLE — BONDING AUTHORIZATION

A bill for an act

relating to ..... county; authorizing the acquisition and betterment of apartments for senior citizens of low and moderate income and the issuance of bonds to finance the cost thereof.

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

Section 1. [POLICY.] It is hereby found, and declared that there is a shortage of safe, convenient and reasonably priced housing available to persons of low and moderate income residing in ..... county; that the private building industry has not and is not likely to make the needed housing available; that elderly citizens of low and moderate income, generally of a fixed nature, are least able to provide adequate housing for themselves; and that, in order to provide the needed housing for the elderly citizens, and in order to accomplish the purposes specified in Minnesota Statutes, Section 462A.02, it is necessary to authorize ..... county to take the actions and exercise the powers hereinafter authorized.

Sec. 2. [COUNTY POWERS.] Subdivision 1. ..... county may provide for the acquisition and betterment of apartment buildings, in accordance with laws applicable to the construction of county buildings and rent the apartments therein to elderly persons of low and moderate income, upon the terms and conditions the county shall deem advisable. The apartment buildings shall be constructed in close proximity to the county nursing home, and administered together with the nursing home as part of an overall program for the care of aged and infirm persons.

Subd. 2. The county may by ordinance adopt regulations establishing age, health and income eligibility requirements for the rental of the apartments. The regulations may

See notes on page 246.

EXAMPLE — BONDING AUTHORIZATION (Cont.)

provide different rental terms and conditions for persons of different ages, health conditions and incomes, but the rentals charged for all the apartments shall be fixed so that the total amount thereof is sufficient to pay the principal of and interest on all bonds issued by the county to finance the acquisition and betterment of the apartment buildings, and, together with any moneys appropriated by the county in its budget for the purpose, sufficient to pay all costs of operation and maintenance of the apartments.

Subd. 3. The county board of commissioners may by resolution authorize the issuance of revenue bonds to finance the acquisition and betterment of the apartment buildings, and shall pledge and appropriate the revenues to be derived from the operation thereof to pay the principal of and interest on the bonds when due and to create and maintain reserves for that purpose, as a first and prior lien on all the revenues, or as a lien thereon subordinate to the current payment of a fixed amount or percentage or all costs of the operation and maintenance of the facilities. Except as herein provided, the bonds shall be issued in accordance with Minnesota Statutes, Chapter 475, and the interest thereon shall be exempt from taxation by the state and all political subdivisions.

Subd. 4. The revenues may be pledged and appropriated for the use and benefit of bondholders generally, or may be pledged by the execution of an indenture or other appropriate instrument to a trustee for the bondholders, and the site and facilities, or any part thereof, may be mortgaged to the trustee to secure the payment of the principal of and interest on the bonds when due. The county board of commissioners shall have power to make and enter into any and all covenants with the bondholders or trustees

See notes on page 246.

EXAMPLE — BONDING AUTHORIZATION (Cont.)

which are determined by it to be necessary and proper to assure the marketability of the bonds, the completion of the facilities, the segregation of the revenues and any other funds pledged, and the sufficiency thereof for the prompt and full payment of all bonds and interest. The bonds shall be deemed to be payable wholly from the income of a revenue producing convenience within the meaning of section 475.58.

Subd. 5. The county board of commissioners may also pledge the full faith and credit and taxing powers of the county to the payment of not more than $1,500,000 principal amount of the bonds and the interest thereon when due, and in this event the board shall adopt an initial resolution stating the amount, purpose and, in general, the security to be provided for the bonds, and shall publish the resolution once each week for two consecutive weeks in the official newspaper. The bonds may be issued without the submission of the question of their issuance to the electors unless within ten days after the second publication of the resolution a petition requesting an election signed by more than ten percent of the qualified electors voting in the county at the last general election is filed with the county auditor. If a petition is filed, no bonds shall be issued under this subdivision unless authorized by a majority of the electors voting on the question.

Subd. 6. The county board of commissioners may levy ad valorem taxes on all taxable property in the county to pay the costs of operation and maintenance of the apartments, and covenant and agree to levy ad valorem taxes, if needed, over the period during which any bonds issued pursuant to subdivision 3 are outstanding. The amount and rate of the taxes shall be subject to statutory limits on county tax levies for general fund purposes.

See notes on page 246.

EXAMPLE — BONDING AUTHORIZATION (Cont.)

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1       Sec. 3.  This act is effective on the day following its
2  final enactment.
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In Section 1 and Subdivisions 1 and 2 of Section 2, note that the authorization of bonding is part of a general public program. While such purpose is the key to the bill, it also establishes the bill as not merely an "internal improvement' prohibited by the constitution. If the bill merely authorized the acquisition and usage of apartment buildings by the county, a problem might have been created.

In Subd. 2 note the provision that rentals must be sufficient to pay the debt service. Subds. 4 and 5 provide additional assurances of the payment of the bonds. Subd. 6 provides the assurance of where the operating costs will be paid which keeps the rentals free to pay the debt service.

In Subd. 3 note the general authorization of the issuance of bonds and the authorization in Subd. 5 for the specific amount for which the full faith and credit of the county may be pledged. These subdivisions also set out the necessary procedures for issuance of the bonds including cross-references to the general bonding law.

EXAMPLE — SPECIAL LAW (drafting form)

A bill for an act

relating to the city of Edina; establishing terms for certain municipal offices.

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

Section 1. At the city elections in 1980 for the city of Edina, three councilmen shall be elected. The two candidates receiving the highest number of votes shall (etc.).

Sec. 2. This act is effective upon its approval by the city council of the city of Edina and upon compliance with Minnesota Statutes, Section 645.021.

Special laws, even though permanent are, by definition, not general in application. For this reason they are not codified and neither proposed coding nor headnotes are placed in a bill for a special law.

EXAMPLE — SPECIAL LAW (typical bill)

A bill for an act

relating to taxation; providing for the imposition of an occupation tax upon persons, copartnerships, companies, joint stock companies, corporations, and associations engaged in the business of removing gravel from gravel pits in Kittson County and Marshall County; and prescribing penalties.

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

Section 1. Any person engaged in the business of removing gravel from gravel pits in either Kittson County or Marshall County and subsequently selling the gravel to other persons, shall pay to the county an occupation tax. The board of county commissioners may determine the amount of the tax necessary for the purposes set forth in section 6, but it shall not exceed ten cents on each cubic yard of gravel removed from a gravel pit after the effective date of this act. The tax shall be computed and be due and payable as provided in sections 2 to 8.

Sec. 2. Subdivision 1. For the purposes of sections 1 to 8, the term "an operator" or "the operator" means a person engaging in the business of removing gravel and selling it to others.

Subd. 2. For all purposes of sections 1 to 8, the term "person" includes individuals, copartnerships, companies, corporations, and associations.

Sec. 3. Subdivision 1. Each quarter of each year an

EXAMPLE — SPECIAL LAW (Cont.)

year. In each report the operator shall state the number of cubic yards of gravel removed during the quarter and compute the amount of the tax due.

Subd. 2. The tax computed in the report shall be paid to the county treasurer on the first day of the quarter next following the quarter for which the report is filed.

Sec. 4. If an operator shall either fail to file the report required by section 3, subdivision 1, or files an erroneous report, the county auditor shall determine the amount of the tax due and shall notify such person by registered mail of the amount of the tax. The operator may, within 30 days from the date of mailing of such notice, file written statement of the objections to the amount of the taxes due. The statement of objections is a petition under Minnesota Statutes, Chapter 278, and Sections 278.02 to 278.13 shall be applicable thereto.

Sec. 5. Subdivision 1. No person shall remove any gravel from any gravel pit unless taxes due under this act have been paid or objections have been filed as provided in section 4.

Subd. 2. Violation of subdivision 1 of this section is a misdemeanor.

Sec. 6. Subdivision 1. All occupation taxes collected under this act shall be deposited in the county treasury and credited as follows:

(a) Ninety percent to the county road and bridge fund; and,

(b) Ten percent to a reserve fund for the restoration of abandoned gravel pits which shall be created in the county treasury.

Subd. 2. All occupation taxes deposited and credited to the county road and bridge fund or the reserve fund shall

EXAMPLE — SPECIAL LAW (Cont.)

be expended by the board of county commissioners only for the maintenance, construction, or reconstruction of roads traveled by trucks hauling gravel or for the restoration of abandoned gravel pits. Occupation taxes shall only be expended for the restoration of abandoned gravel pits upon lands to which the county holds title or upon lands forfeited to the state of Minnesota, as trustee, for nonpayment of taxes.

Sec. 7. No report shall be filed by nor any occupation tax paid by the state of Minnesota or its contractors when the gravel removed is used in the construction or maintenance of trunk highways.

Sec. 8. The provisions of sections 1 to 7 that relate to Kittson County shall become effective only after its approval by a majority of the members of the board of county commissioners of Kittson County and upon compliance with the provisions of Minnesota Statutes, Section 645.021. The provisions of sections 1 to 7 that relate to Marshall County shall become effective only after its approval by a majority of the members of the board of county commissioners of Marshall County and upon compliance with the provisions of Minnesota Statutes, Section 645.021.

EXAMPLES — SPECIAL LAWS (miscellaneous provisions)

(1) If the bill pertains to a single local government unit, the approval section should take substantially the following form:

> Sec. ... [EFFECTIVE DATE.] Section 1 (or sections 1 to 5, of this act) is effective upon its approval by the governing body of the city (county, school district) and upon compliance with Minnesota Statutes, Section 645.021.

For towns, a drafter should use "town board" or "town board of supervisors" instead of "governing body" because "governing body" in the context of a town might be construed to mean the town meeting.

(2) If the special law pertains to two or more local government units named in the law, and approval by all of the units is required in order to be effective, the approval section should take the following form:

> Sec. ... [EFFECTIVE DATE.] Sections 1 to ... are effective only after approval by the governing body of the county of ..... and by each of the governing bodies of the cities of ..... and ....., and upon compliance with Minnesota Statutes, Section 645.021.

(3) If the intent is to have the law apply separately to each of the units, who desire to come under the law, then the approval section may be drafted as follows:

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

(4) If the request requires that a special law be submitted for the approval of the voters of the local government unit, the approval section may read:

> Sec. ... [EFFECTIVE DATE.] This act is effective only upon its approval by a majority of the voters of the city of ..... voting on the question at an election therefor, and upon compliance etc.

or, if appropriate, it may read:

> Sec. ... [EFFECTIVE DATE.] This act is effective only 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 that purpose, and upon compliance, etc.

EXAMPLES — SPECIAL LAWS (Cont.)

(5) If the request requires submittal of the question to the voters in the event that the governing body refuses or neglects to approve the law within a given time, the approval section may read:

```
Sec. ... [EFFECTIVE DATE.] This act is effective
upon approval by the governing body of the county
of ..... . If the governing body does not
approve this act within ... days after its passage
the governing body shall submit the question of
approval to the voters of the county at the next
general election in the county. If approved by a
majority of the voters voting on the question,
this act shall be effective upon compliance with
etc.
```

If the local government unit does not have power to call an election, the bill must provide the necessary authority and procedures. For an example, see Laws 1959, Chapter 456. Most local government units have the necessary authority to call an election.

(6) If the request requires the bill to contain the question to be submitted to the voters, the question should be drafted so as to give a brief description of the subject of the bill. For example:

```
"Shall the 1979 legislative act authorizing the
city of ..... to provide ambulance service be
approved?

                                Yes.....

                                No....."
```

Do not use "shall this act" etc. or "shall Laws . . . , Chapter . . ." etc.

(7) A variant on local approval is the reverse referendum. Under such provision, a special law is effective without local approval unless a petition is filed requesting that the act be submitted to the voters for local approval. A typical example would be:

```
Sec. .... . [EFFECTIVE DATE.] Pursuant to section
645.023 of the Minnesota Statutes, Sections 1 to
... shall be effective without local approval
unless the voters of the city of ..... shall
request a referendum on approval of sections 1 to
.... .

The voters may request a referendum by filing a
petition with the city council of the city of
..... . Such petition must state the text of
sections 1 to .... and indicate that those who
signed the petition are residents of the city of
..... and are eighteen years of age. The
petition must be signed by a number of persons not
less than 10 percent of the number of persons who
cast votes for governor within the city of
..... at the last general election.
```

EXAMPLES — SPECIAL LAWS (Cont.)

Drafters are cautioned that the validity of the use of options (5) and (7) have been questioned although their validity has not been tested in court. It would be best to use a regular local approval section unless specifically requested by the requestor of the bill draft.

(8) A request may require a local law to contain a provision for a public hearing on the matter proposed before the governing body takes action either approving or disapproving the proposal. Such a hearing provision might read:

Sec. ... . [PUBLIC HEARING REQUIRED.] Before approval of this act by the city council of the city of ....., the city council shall hold a public hearing on the question. Notice of the time and place of said hearing shall be published in a newspaper of general circulation in the city once in each week for two successive weeks prior to said hearing. The published notice shall be in a form determined by the council, which form shall be sufficient in size and prominent in format in order to attract the attention of the reader. In any event the notice shall be of a size at least two columns in width by six inches in length. The notice shall set forth the intent of the city council to consider approval of this act. The text of sections 1 to ... of this act shall be stated in the notice.

EXAMPLES — PENSION BUY-BACK PROVISIONS (miscellaneous)

(a) Bill authorizing an individual to buy back.

A bill for an act

relating to retirement; authorizing purchase of service credit by certain members of the Minnesota state retirement system.

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

Section 1. An employee covered by the Minnesota state retirement system who was employed in the maintenance and improvement of Camp Ripley during the period from 1936 to 1940 may obtain allowable service credit for not more than 13 months of such service by paying to the Minnesota state retirement system an amount equal to four percent of the member's current annual salary rate. Such payment shall be made either in a lump sum or by payroll deductions prior to the termination of state service.

Sec. 2. Section 1 is effective the day following final enactment.

Note that this provision is a special law and will not be codified. The drafting form follows that for special laws.

EXAMPLES — PENSION BUY-BACK PROVISIONS (Cont.)

(b) Section authorizing new members of group to buy back.

Sec. ... Minnesota Statutes 1974, Chapter 353, is amended by adding a section to read:

[359.019] [RETIREMENT; PUBLIC EMPLOYEES RETIREMENT ASSOCIATION; MINNESOTA MUNICIPAL UTILITIES ASSOCIATION EMPLOYEES.] Subdivision 1. From and after July 1, 1976, employees of the Minnesota Municipal Utilities Association, hereinafter referred to as the association, shall become coordinated members of the public employees retirement association unless specifically exempt under section 353.01, subdivision 2b, and the association shall be deemed to be a governmental subdivision for purposes of this chapter.

Subd. 2. A person who becomes a member of the public employees retirement association pursuant to subdivision 1 may purchase prior service credit with respect to full time employment with the association subsequent to October 19, 1975 by (a) paying to the public employees retirement association prior to August 1, 1976 an employee contribution in an amount equal to four percent of his or her salary at the time the prior service was rendered, as certified by the association, plus interest at the rate of six percent per annum; (b) the member at the same time shall pay additionally an amount equal to five and one-half percent of salary at the time the prior service was rendered, plus interest at the rate of six percent per annum; provided the association may, in its sole discretion, for all employees included hereunder, pay the public employees retirement association the obligation under (b).

Note that this provision does affect existing permanent law and so the drafting format follows the form for permanent not special laws.

EXAMPLES — PENSION BUY-BACK PROVISIONS (Cont.)

(c) Section authorizing individual to buy back as exception to general law.

Sec. ... [WINONA POLICE CHIEF; PENSION COVERAGE.]

Subdivision 1. Notwithstanding Minnesota Statutes, Section 353.64, Subdivision 1 or any other law to the contrary, the person employed by the city of Winona on the effective date of this section as chief of police shall be a member of the public employees police and fire fund established by sections 353.63 to 353.68 and not of the local policemen's relief association established pursuant to sections 423.801 to 423.815. An amount equal to the employer and employee contributions which would have been required pursuant to section 353.65, had the person been a member of the public employees police and fire fund from the commencement of his employment with the police department of the city of Winona, plus interest at the rate of six percent per annum compounded annually from the year the payment would otherwise have been made to the year the payment is made, shall be paid to the public employees police and fire fund, which shall credit the chief of police with service as a member for this period upon the receipt of the payments required under this section. An amount equal to the employer contributions plus interest as herein specified shall be transferred from the Winona policemen's relief association to the public employees police and fire fund. An amount equal to the employee contributions plus interest as herein specified shall be paid by the chief of police to the public employees police and fire fund. The chief of police shall be entitled to receive, upon making written application, a refund of his accumulated contributions to the Winona policemen's relief association plus interest at the rate actually received by the relief association as determined by the board of trustees of the relief association.

EXAMPLE — PENSION BUY-BACK PROVISIONS (Cont.)

Subd. 2. This section is effective upon approval by the Winona city council and upon compliance with Minnesota Statutes, Section 645.021.

EXAMPLES — PENSION BUY-BACK PROVISIONS (Cont.)

(d) Section authorizing limited group to buy back.

Sec. 11. Any person who was employed by the city of Minneapolis between February 15, 1972 and March 15, 1972, who attained the age of 65 years on December 17, 1974, who was excluded from membership in the Minneapolis municipal employees retirement fund during the period of his employment, and who was terminated from employment by the city of Minneapolis on December 30, 1976, shall be entitled to purchase four years and ten months of service credit in the Minneapolis municipal employees retirement fund. To purchase the prior service credit, the person shall be required to make an employee contribution to the executive secretary of the Minneapolis municipal employees retirement fund in an amount equal to the employee contribution rate in effect and on the salaries in effect during the period of prior service plus interest at the rate of six percent per annum compounded annually from the date the contribution would otherwise have been made to the date the payment is made. Upon the completion by the person of the payment required by this action, the city of Minneapolis shall make an employer contribution to the executive secretary of the Minneapolis municipal employees retirement fund in an amount equal to the employer and employer additional contribution rates in effect and on the salaries in effect during the period of prior service plus interest at the rate of six percent per annum compounded annually from the date the contributions would otherwise have been made to the date the payment is made. In addition, the person making the purchase of prior service pursuant to this section shall be entitled to receive a proportionate annuity pursuant to Minnesota Statutes, Section 356.32, Subdivision 1, notwithstanding the fact that the person did not retire at age 65. The annuity shall be payable on the first day of

EXAMPLE — PENSION BUY-BACK PROVISIONS (Cont.)

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1  the month next following the completion of the purchase of
2  prior service, and the first check or warrant shall include
3  payment retroactive to January 1, 1977.
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8

PRACTICAL AIDS TO DRAFTING

8.1 Preliminary Research
8.2 Successive Drafts
8.3 Team Drafting
8.4 Photocopies or Computer Printouts
8.5 Tables and Reference Cards
  (a) Table 1. Session Laws Amended or Repealed
  (b) Table 2. Coded Laws Amended, Repealed or New
  (c) Local Law Tables (Session Laws)
  (d) Local Law Table (Statutes)
8.6 Internal Reference File
8.7 Subject Cards for Bill Requests
8.8 Model and Uniform Acts; Miscellaneous Material
8.9 Comparison Tables
8.10 Engrossing Files
8.11 Computer Searches
8.12 Other Aids
  (a) House and Senate Index and Bill Status Systems
  (b) Legislative Reference Library
  (c) Statutes from Other Jurisdictions
  (d) Personal Files

There are a number of devices that may be used to speed up the drafting process and at the same time aid the drafter in providing a better product. An alert drafter, with experience, will develop his or her own particular aids in addition to those set out here, but familiarity with and use of the materials, sources and devices listed will be of immeasurable help in drafting legislation.

8.1 Preliminary Research

Bill drafting cannot take place in an ivory tower where the drafter is alone solely with his or her own thoughts. Rather, a drafter must spend up to 50 percent of the total effort in preliminary research and marshalling of facts. This is particularly true of complex legislation.

Only rarely is a drafter assigned to a project which is totally new. The chances are that somebody, somewhere in the United States, if not within Minnesota, has already created a draft which is either exactly on point or can be used in creating the new draft. A drafter who spends time on locating an existing draft or law and then "improves" it, is far more likely to have a quality product than a drafter who tries to re-invent a law that has already been invented.

The drafter should also ensure that he or she accurately understands the intention of the requester of the draft. (Often bill drafting requests are

received with only the sketchiest of information.) Yet the completion of a complex draft will require many policy decisions. When policy decisions are necessary the person requesting the bill draft should always be consulted.

8.2 Successive Drafts

A drafter should accept the fact that in order to "perfect" a draft, numerous preliminary drafts will be required. Some drafters, particularly those caught up in the need for speed, feel that repetitive drafting wastes time. They feel it should be "done right the first time". Outside of the obvious inability of persons with normal human failings to do a complex task perfectly the first time, the correctness of a draft is usually not an objective but rather a subjective standard. The drafter must give great care to the subjective standard which the requester will impose on the draft to see whether it is "right". A great portion of the standard is whether a draft provides for everything that needs providing for and in the manner the requester wants it provided for.

As stated elsewhere in this book, the best method of insuring clarity in drafting is to read a draft from the viewpoint of someone who is hostile to its subject. Repetitive readings of a draft as a hostile reader will discover areas needed for improvement on each draft.

The bill files in the Revisor's Office have space for up to seven rough or preliminary drafts of a bill as part of routine bill drafting. Not infrequently, that number of drafts is undertaken.

8.3 Team Drafting

Several people working together are smarter than any of the individuals. The drafter that has others examine and comment upon a draft is much more likely to produce a quality product than a "lone wolf" drafter.

Unfortunately, most drafters sooner or later develop an unfortunate quality called "pride of authorship". When this quality is fully developed, a drafter is likely to believe that his or her product is perfect and any suggestions for improvement are insults.

Drafters are encouraged to seek out the advice of others. On some major projects it may be best to have several people draft separable portions to exchange drafts and then put them together. A meeting of the drafters to jointly discuss and improve the draft can also help.

8.4 Photocopies or Computer Printouts

In drafting a bill requiring amendments to existing law, use a photo copy of the law, indicating on the copy the desired amendments. If the existing law is coded in the statutes, always copy from the latest compilation of the statutes (or the supplement). If there have been amendments enacted to the law since the last compilation and the data base has been updated to include the latest amendments, a computer printout may be obtained and used for drafting

purposes. If the computer data base has not been updated and there are amendments made since the latest compilation, it will be necessary to photo copy the session law or laws amending the particular law to be again amended and fit the new amendments into that copy. Whether or not changes have been made in coded sections may be determined from Table 2 of the session laws.

In amending uncoded law, use a photo copy of the session law, making sure to use the latest amended version of the law. Local law tables should be checked to determine if the local law has been amended.

Use of photo copies or computer printouts reduces the margin of error, permits rapid identification of coded law on the computer terminals, and permits proof reading of local laws without the cumbersome use of the session law book.

8.5 Tables and Reference Cards

Tables and reference cards are worked on during each session and completed shortly after the session ends by the Revisor of Statutes. In preparing the tables, entries are first put on cards prepared for that purpose, and later tabulated. The tables are published in the session laws, but are available in typed form or on cards long before publication. The local law tables published in the session laws are incorporated into Table 1 of the statutes. Each table is a useful aid to the drafter.

(a) Table 1. Session Laws Amended or Repealed.

This table, as the name implies, shows all session laws amended or repealed during the preceding legislative year. It is arranged by year. The amendments are mostly to law that is not coded (local laws, effective date sections, and the like) but includes amendments to laws passed in the session and not yet coded, or to coded laws amended earlier in the session.

(b) Table 2. Coded Laws Amended, Repealed or New.

Table 2 shows numerically all of the coded laws amended or repealed during the session year, and also shows tentative coding of newly created laws of a general and permanent nature together with the session law chapter and section derivation. This table is a basic tool for all drafters, since it is an easy reference to determine, between statutory compilations, whether or not an existing coded law has been amended or repealed. It is also important to check the table, if drafting new law between compilations, to be sure that proposed tentative coding has not already been allocated to an earlier enacted law. The table (or the cards) should always be checked between compilations before drafting a bill involving amendments to coded law or in the initial coding of a draft of a new law of a general and permanent nature.

(c) Local Law Tables (Session Laws)

These tables show uncoded laws passed during the specified year affecting local governmental units, and courts. Local governmental units affected are shown alphabetically followed by a brief description of the legislation affecting them. If the law is effective upon its approval by the affected governmental unit and the filing of the approval with the secretary of state, the table so indicates. Approval and filing dates are also shown. The local law enacted may be new law, or it may be amendatory to prior session law. In drafting local legislation always check the local law tables (or the entry cards) and the cumulative local law table in the statutes.

(d) Local Law Table (Statutes)

This is the cumulative local law table mentioned earlier. It is cumulative from 1955. The local governmental units are shown alphabetically followed by a brief description, also arranged alphabetically, of the subject matter of the legislation affecting them and the session law derivation. Any action of the legislature amending or repealing a local law is also noted in the table. The table may also be helpful in drafting new legislation for a particular governmental unit, since similar legislation may have already been enacted for another local governmental unit.

8.6 Internal Reference Files

The Revisor of Statutes maintains an updated internal reference card file. The cards are indexed numerically and specify other sections of the coded laws that internally refer to the section. In repealing or making substantive changes to a section that is referenced in other sections, it may be necessary to make amendments to those other sections.

8.7 Subject Cards for Bill Requests

All bill requests are assigned a bill drafting number and are cataloged on cards under the name of the legislator requesting the bill and under the subject matter of the request. These cards are prepared for each session. The records go back as far as the 1957 session.

A legislator may specifically request a redraft of a bill request that he made at a prior session. The author card then would be the fastest method of locating the bill.

The subject card index is useful in finding a bill drafted earlier in the session or in a prior session that may fulfill the requirements of a current request, or at least provide some leads in preparing the bill draft. An old bill should be examined carefully to determine whether changes in the law have been made subsequent to the time it was drafted and whether or not it completely fulfills the current request. Dates must be made current. Always assume that the old bill can be improved.

8.8 Model and Uniform Acts; Miscellaneous Material

The Revisor of Statutes maintains a file on model and uniform acts and other miscellaneous bill drafts on a variety of subjects.

8.9 Comparison Tables

The Revisor of Statutes maintains a comparison table that enables the user to convert the house or senate file number assigned the bill at introduction to the Revisor's bill drafting number or vice versa. A bill drafting request specifying a particular house or senate file may thus be easily converted to the Revisor's bill drafting number and expeditiously handled. If the house or senate file has not been amended, the request can be completed by making new covered copies of the original draft. If the house or senate file has been amended, the drafter should ascertain from the requester whether he wants the original draft or a particular engrossment or variation thereof.

8.10 Engrossing Files

As bills are amended in the legislative process, they are returned to the Revisor of Statutes for engrossment. There may be multiple engrossments. Files are maintained on all engrossments. A bill request may specify a particular engrossment of a house or senate file, or the file as amended in a particular committee. Use a copy of the appropriate engrossment in drafting the request.

8.11 Computer Searches

The office of the Revisor of Statutes maintains a computer data base composed of the Minnesota Statutes 1978 and the Minnesota Constitution. The office is in the process of adding to this data base the rules of all the Minnesota Courts, the United States Constitution and all other information published in the statute books published by the Revisor. With the assistance of computer specialists, this data base may be searched for specified information. The report of this search can be indispensable to a bill drafter in two primary ways.

First, a search can find every instance in which a particular subject is dealt with in the statutes. For example, a drafter could have a search conducted for the term "legislature". Armed with this information, a drafter dealing with a requested bill draft concerning the legislature that every section of the statutes concerning the legislature has been considered for amendment.

Second, a search using multiple words in logical combinations can locate a particular narrow subject matter. For example, a drafter might desire to find every provision where an appointment by the Governor required confirmation by either or both houses of the legislature. A search would then be conducted for all sections which contain the words "director", "commissioner", "executive secretary", together with the words "confirm", "confirmation",

"approval" and either "senate", "house" or "legislature", and which section is contained in a chapter which somewhere has the words "agency", "board", "commission" or "committee".

In both cases the search can only be formed with the assistance of persons specially trained in the method of conducting such searches. A person requesting such a search should also expect to spend some time with the staff member from the Revisor's Office who is preparing the search. A search will yield useful results only if care is exhibited both by the requester and the person who prepares the search.

Persons wishing to request a search should contact the Deputy Revisor for Administration.

8.12 Other Aids

(a) House and Senate Index and Bill Status System

The system developed by the House and Senate provides a rapid means of determining the status of any bill file. It includes a subject matter index and author index. Terminals for the House are available in the many offices. The Senate system is accessed by calling the Senate Index Office.

(b) Legislative Reference Library

The Legislative Reference Library is a storehouse of material, including model and uniform acts, text books on a variety of subjects, and reports and bill drafting material from many states, that may be helpful in drafting legislation. Every drafter should be acquainted with the library.

(c) Statutes from other Jurisdictions

Do not hesitate to "borrow" from statutes of other jurisdictions. Be careful, however, to make necessary alterations so the borrowed statutes will fit with our law and our governmental organization.

(d) Personal Files

Many drafters find it convenient and helpful to keep a file or at least notations on bills they have drafted. This is usually accomplished by noting on a yellow pad the bill draft number and the subject matter for identification. It may be easier to find a particular draft using your own identification system rather than the subject index file that contains all bill drafting requests.

9

ENGROSSING AND ENROLLING

9.1 The Engrossing Process
9.2 Origin and Action upon Elements of the Engrossing Process
  (a) Motions in Committee
  (b) Floor Amendments
  (c) Conference Committee Reports
9.3 Unengrossable Amendments
9.4 Correction of Errors
9.5 Identification of Engrossments
9.6 Unofficial Engrossments
9.7 The Enrolling Process
9.8 Forms

9.1 The Engrossing Process

Engrossing is the process of incorporating amendments adopted by the legislature into a bill. Each drafter should understand the process of engrossing in order to understand the effect of amendments on bills and, therefore, to draft amendments properly.

All engrossing of bills is done at the direction and under the authority of the Secretary of the Senate and Chief Clerk of the House of Representatives. Any problems in engrossments are referred to those officers for resolution. However, it must be recognized that there are limits to what can be done to "patch-up" a bill during the engrossing process even with the authority of the Chief Clerk or Secretary. Personnel engaged in engrossing are bound by the bill amendments adopted and anything more than minor adjustments by them can lead to a court invalidating a bill because the purported text really wasn't agreed to by the legislature.

9.2 Origin and Action upon Elements of the Engrossing Process

(a) Motions in Committee

Committees amend bills and report their amendments on report forms furnished by their legislative body. Committee amendments are to either the unengrossed original or the last official engrossment, if any, of the bill.

A motion in committee to amend a bill frequently results in a request for an "unofficial engrossment" to see how the proposed amendment will look if it is adopted. While this is done on an informal basis, it should be noted that unofficial engrossments in committee are dead-end documents. An amendment in committee to amend such an unofficial engrossment is not in order. The rules of the House provide explicitly that amendments to unofficial

engrossments in committee are not in order. (House Rule 1.17). The committee report must show amendments drawn to the original bill or the last official engrossment, not to an unofficial engrossment.

(b) Floor Amendments

The Committee of the Whole, which is either the full membership of the House of Representatives or the Senate sitting as a committee, considers and adopts amendments proposed by individual legislators. Floor amendments are to the unengrossed original or last engrossment of the bill. When either house is meeting as a Committee of the Whole, bills are reported and debated by sections with the title considered last. In the course of the debate, floor amendments are proposed and voted upon. If a floor amendment is passed, the Secretary or Chief Clerk indicate the adoption on the face of the amendment. If subsequent amendments are passed, the same procedure is followed. These amendments are kept at the Secretary's or Chief Clerk's desk until the bill is voted upon. If the bill passes, the adopted amendments are attached to the bill in the order in which they were passed and sent to the Revisor's office for engrossing. The floor amendments are then "applied" to the bill in the order they were adopted on the floor. A bill originating in either house which is amended on the floor is not given its third reading by the house itself until it is engrossed and reproduced as amended. A bill is only officially engrossed for the house of origin although unofficial engrossments for the amending house are frequently requested.

(c) Conference Committee Reports

The report of a conference committee may include an amendment to the bill which "compromises" a former disagreement on the bill between the two houses. Conference committees amend the bill which has attached to it the amendments that are in controversy. The amendment is applied to the bill as a unitary amendment. That is, all parts of the amendment are applied as if it could all be done at once.

9.3 Unengrossable Amendments

In engrossing floor amendments to a bill, each adopted amendment is applied in the order each was adopted. Thus a later amendment must consider previously adopted amendments. If it fails to do so and the two amendments are in conflict, the second amendment is unengrossable.

An amendment will be unengrossable if any of the following occur:

(1) The page number, line number or locator words are erroneous; or,

(2) Words to be inserted are underlined or stricken when they shouldn't be or are not underlined or stricken when they should be; or,

(3) The amendment amends words any part of which were changed or deleted by a previously adopted amendment. (Exception — an amendment which strikes text by page and line numbers without specifying words already stricken or amended, is engrossable); or,

(4) The amendment directs the insertion of text following a locator word, line or section which was deleted by a previously adopted amendment; or,

(5) The amendment is equivocal as to what text should be stricken or deleted or as to where it should be inserted; or,

(6) The amendment directs the amendment of the wrong engrossment of the bill. For instance if an amendment directs the amendment of the unengrossed original bill and the bill has been officially engrossed once, the amendment is unengrossable.

Other amendments may be technically engrossable but because of the combined effect of two or more amendments may lead to unforeseen complications. The most typical problem is created when two amendments direct the insertion of text at the same point in a bill. Both amendments will be inserted. They will be inserted in the order adopted. The result may be that unnecessarily complex or nonfunctional sentences or paragraphs may be created.

9.4 Correction of Errors

In the Senate, the Secretary and Engrossing Secretary, in all proper cases, may correct all mistakes in grammar or spelling and in numbering the sections whether the errors occur in the original bill or are caused by amendments to it.

In the House, minor clerical errors in any bill, memorial, or resolution, such as errors in spelling or grammar, or the incorrect use of one word for another or the incorrect numbering of references, whether occurring in the original document or any amendment to it, are corrected as a matter of course by the Chief Clerk, upon the approval of the chairman of any committee to which it was referred.

In the process of engrossing, other administrative staff may correct manifest clerical and typographical errors. If there are other errors, the correction can also be made but the change should be reported to the Secretary or Chief Clerk for his disposition.

9.5 Identification of Engrossments

Bills may be amended several times at various stages of the legislative process. At each stage all amendments adopted are made part of the bill. Therefore, bills may be engrossed more than once. It is necessary to ensure that a drafter is working from the most recent engrossment of the bill. These

are readily identified by the "1E", "2E", "3E" etc. added to the file number at the very top of the page and the words "FIRST ENGROSSMENT" or whatever subsequent engrossment it happens to be, above the H.F. or S.F. number on the bill cover.

9.6 Unofficial Engrossments

Any Senate file which has been amended on the floor of the House, except at the time of final passage, and any Senate file which has been reported to the House with amendments by a House standing committee, can be unofficially engrossed and reprinted. Amendments to unofficial engrossments of a Senate file may be offered by members on the floor of the House but cannot be offered in standing committees. (House Rule 1.17). The unofficial engrossment of committee amendments which is unamended on the House floor may later become an official engrossment if the Senate concurs in the House committee amendments.

9.7 The Enrolling Process

After a bill has passed both houses in the same form, either as introduced or as finally engrossed, the bill is ready to be enrolled.

All enrollment of bills is done at the direction and under the authority of the Secretary of the Senate and Chief Clerk of the House of Representatives.

As a security measure, the bill is carefully checked on a light table to see that it matches exactly with the last engrossment prepared by the Revisor, or if the bill is unengrossed, then against the original bill. Following the checking phase, the coding and the words "A bill for an act" are removed from the master. The House/Senate file number is typed on "AN ACT" paper above the chapter number and slightly down and to the right on the second and subsequent pages of the master.

A preprinted signature page for the House or Senate is prepared, with H.F. or S.F. No. and dates of passage inserted.

The bill is duplicated on special enrollment paper, the first page of which is headed by the words "AN ACT". Subsequent pages are duplicated on plain enrollment paper. In the case of a resolution, the words "A resolution" are not removed, and plain enrollment paper is used for all pages, including the first. One extra copy is made on regular duplicating paper for delivery to the other body.

Signatures of the proper officers are obtained to the enrolled bill. After the Governor's approval and signature, it is delivered to the Secretary of State's office for filing. The Secretary of State gives each enrolled bill a chapter number. These chapters comprise the Session Laws.

Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If the Governor approves a bill, he notifies the house in which it originated of that fact. If he vetoes a bill he returns it to the house in which it originated noting his objections to it.

9.8 Forms

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EXAMPLE — COMMITTEE REPORT

Mr. ..... from the Committee Commerce, to which was referred

S. F. No. 971: A bill for an act relating to insurance; providing financial requirements for nonprofit health service plan corporations; amending Minnesota Statutes 1976, Section 62C.09, Subdivision 3.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 17, strike "calendar" and insert "fiscal"

Page 1, line 18, delete "dental" and insert "medical"

Page 1, line 20, after " specified " insert " benefits "

Page 1, line 20, after " and " insert " limits for average "

Page 1, line 21, after " benefits " insert " of not greater than $1,000 per year per insured"

And when so amended the bill do pass. Amendments adopted. Report adopted.

L. M. Chairman

.....
(Committee Chairman)

Feb 14, 1979

.....
(Date of Committee recommendation)

ADOPTED BY THE SENATE
STATE OF MINNESOTA
APR 26 1977
Patrick E. Flahaven
SECRETARY OF THE SENATE

ADOPTED BY THE HOUSE
STATE OF MINNESOTA
MAY 19 1977
Edward A. Burdick
Chief Clerk,
HOUSE OF REPRESENTATIVES

Note: double stamp indicating both houses have passed this bill. This amendment is ready to be engrossed into the bill.

EXAMPLE — COMMITTEE REPORT

Mr. ..... from the Committee on Agriculture and Natural Resources, to which was referred

S. F. No. 344: A bill for an act appropriating money to the department of natural resources for the installation of a box culvert under a highway in Stearns County, providing a waterway connection between certain lakes to enable water craft to cross from one lake to the other.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, line 11, delete "the department of natural resources" and insert "Stearns County"

Amend the title as follows:

Line 2, delete "the department of natural"

Line 3, delete "resources" and insert "Stearns County"

And when so amended the bill do pass. Amendments adopted. Report adopted.

L. M. Chairman

.....
(Committee Chairman)

2/14/77

.....
(Date of Committee recommendation)

ADOPTED BY THE SENATE
STATE OF MINNESOTA

APR 26 1977

Patrick E. Flahaven

SECRETARY OF THE SENATE

Senate has adopted this amendment. It will be engrossed and returned to Senate for further action.

EXAMPLE: Copy of bill sent to Revisor with the prior amendment attached

A bill for an act

appropriating money to the department of natural resources for the installation of a box culvert under a highway in Stearns County, providing a waterway connection between certain lakes to enable water craft to cross from one lake to the other.

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

Section 1. The sum of $47,000 is appropriated from the general fund to the department of natural resources for the purpose of installing a 12 foot by 10 foot concrete box culvert, approximately 90 feet in length, under Stearns County state-aid highway No. 71, providing a waterway connection between Big Cedar Lake and Little Cedar Lake in Stearns County, enabling boats, pontoons, and recreational water craft, up to ten feet in width, to cross back and forth between the lakes.

BILL BEFORE ENGROSSING: Note page and line number and also title amendment in report on page 274.

EXAMPLE (Cont.)

A bill for an act

appropriating money to Stearns County for the installation of a box culert under a highway in Stearns County, providing a waterway connection between certain lakes to enable water craft to cross from one lake to the other.

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

Section 1. The sum of $47,000 is appropriated from the general fund to Stearns County for the purpose of fnstalling a 12 foot by 10 foot concrete box culvert, approximately 90 feet in length, under Stearns County state-aid highway No. 71, providing a waterway connection between Big Cedar Lake and Little Cedar Lake in Stearns County, enabling boats, pontoons, and recreational water craft, up to ten feet in width, to cross back and forth between the lakes.

BILL AFTER ENGROSSING: Note new language inserted. Old language was not stricken, but deleted from bill because the bill is not amendatory.

EXAMPLE: CONFERENCE COMMITTEE REPORT

A bill for an act

relating to business or agricultural loans; rate of interest therein; amending Minnesota Statutes 1976, Section 334.011, Subdivisions 1 and 4.

April 16, 1977

The Honorable .....
President of the Senate

The Honorable .....
Speaker of the House of Representatives

We, the undersigned conferees for S. F. No. 49, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate accede to the house amendments and that S.F. No. 49, the unofficial engrossment, be further amended as follows:

Page 1, line 18, insert after " four " the words " and one-half "

We request adoption of this report and repassage of the bill.

Senate Conferees: (Signed)

Signature ..... Signature ..... Signature .....

House Conferees: (Signed)

Signature ..... Signature ..... Signature .....

ADOPTED BY THE SENATE
STATE OF MINNESOTA
APR 26 1977
Patrick E. Flahaven
SECRETARY OF THE SENATE

ADOPTED BY THE HOUSE
STATE OF MINNESOTA
MAY 19 1977
Edward A. Burdick
Chief Clerk,
HOUSE OF REPRESENTATIVES

NOTE: All conferees have signed the report — both houses have adopted the report. It is now ready for engrossing and enrolling.

EXAMPLE: CONFERENCE COMMITTEE REPORT (CONT.)

lender may , in the case of loans for business or
agricultural purposes, charge on any loan or discount made
or upon any note, bill or other evidence of debt, interest
at a rate of not more than ~~five~~ four percent in excess of
the discount rate on 90 day commercial paper in effect at
the Federal Reserve bank in the Federal Reserve district
encompassing Minnesota.

For the purposes of this subdivision, the term

BEFORE ENGROSSING: Note page and line number.

lender may , in the case of loans for business or
agricultural purposes, charge on any loan or discount made
or upon any note, bill or other evidence of debt, interest
at a rate of not more than ~~five~~ four and one-half percent
in excess of the discount rate on 90 day commercial paper in
effect at the Federal Reserve bank in the Federal Reserve
district encompassing Minnesota.

For the purposes of this subdivision, the term

AFTER ENGROSSING: Note new language of the Conference Committee report has been inserted on the proper page and line number.

Amendment on page 277.

EXAMPLE: FLOOR AMENDMENT

..... moves to amend H.F. No. 187 by deleting everything after the enacting clause and inserting the following:

"Section 1. Minnesota Statutes 1976, Section 128A.03, Subdivision 3, is amended to read:

Subd. 3. ~~The councils shall expire and~~ The terms, compensation and removal of members of the councils shall be as provided in section 15.059 however, the councils shall expire on December 31, 1977 .

Sec. 2. Minnesota Statutes 1976, Section 128A.03 is effective the day following final enactment of this act, notwithstanding Laws 1976, Chapter 271, Section 99.

Sec. 3. This act shall be effective the day following final enactment. "

Amend the title as follows:

Line 3, after "councils" insert "; amending Minnesota Statutes 1976, Section 128A.03, Subdivision 3"

EXAMPLE: FLOOR AMENDMENT — (Amendatory Title Amendment)

A bill for an act

relating to education; braille and deaf schools; providing for appointment of advisory councils.

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

Section 1. Minnesota Statutes 1976, Section 128A.03, Subdivisions 1 and 2 are effective the day following final enactment of this act, notwithstanding Laws 1976, Chapter 271, Section 99.

BEFORE ENGROSSING: Note no amendatory language in bill.

A bill for an act

relating to education; braille and deaf schools; providing for appointment of advisory councils; amending Minnesota Statutes 1976, Section 128A.03, Subdivision 3.

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

Section 1. Minnesota Statutes 1976, Section 128A.03, Subdivision 3, is amended to read:

Subd. 3. ~~The councils shall expire and~~ The terms, compensation and removal of members of the councils shall be as provided in section 15.059 however, the councils shall expire on December 31, 1977 .

Sec. 2. Minnesota Statutes 1976, Section 128A.03 is effective the day following final enactment of this act, notwithstanding Laws 1976, Chapter 271, Section 99.

Sec. 3. This act shall be effective the day following final enactment.

AFTER ENGROSSING: Note: A section of Minnesota Statutes is amended — old language stricken, new language inserted. Title must be changed because of addition of amendatory languages.

Amendment on page 279.

10

GRAMMAR, LANGUAGE, MECHANICS, AND STYLE

10.1 Abbreviations
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(b) Do Not Capitalize
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10.5 Number and Gender
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(b) Order
(c) Dates
(d) Money
(e) Fractions
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10.12 Tense
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10.1 Abbreviations

Avoid abbreviations unless the abbreviation is part of a corporate name or legal citation.

e.g. Personnel Contractors, Inc. OR P. L. 94-108

In the text of a bill, never use abbreviations when referring to or citing chapters, articles, sections, or subdivisions.

> e.g. "as described in section 290.01, subdivision 21" NOT "as described in sec. 290.01, subd. 21."

10.2 Capitalization

(a) Capitalize

Proper names

> e.g. Mexico, Wisconsin, Independent School District No. 15, Hennepin County, Mississippi River, Cedar Avenue
> (Note: Here "County", "River" and "Avenue" are part of the proper name of the entity. When referring to any county, river or avenue, the words are not capitalized.)

Derivatives of proper names.

> e.g. Vietnamese, Indian

The words Chapter, Section, Subdivision, and Clause, when used in connection with the words "Minnesota Statutes".

> e.g. Minnesota Statutes 1978, Section 171.15, Subdivision 2, Clause (2) OR Laws 1978, Chapter 785, Section 4, Subdivision 8

Institutions of higher education.

> e.g. University of Minnesota, Southwest State University, College of St. Thomas
> (Note: "University" and "College" are part of the proper name of the institution. When referring to any university or college, the words are not capitalized.

(b) Do Not Capitalize

Generic political subdivisions.

> e.g. district, state of Minnesota, county municipality, city, town, street

Boards, commissions, departments, and other bodies.

> e.g. board of regents, legislature, department of natural resources, bureau of Indian affairs

Titles of officials.

> e.g. governor, president, commissioner, representative, senator, director, executive secretary, attorney general, treasurer
> (Note: The titles are capitalized when referring to a particular person, ex. "Governor Ramsey".

10.3 Consistency

The drafter should attempt to make the bill draft consistent with the existing statutes in grammar, punctuation and style. If a law is so old that its grammar, punctuation and style are antiquated, then consult the requester about re-writing the entire law.

One of the chief sources of consistency problems is with capitalization. In former years the "down style" was used. This meant that virtually nothing was capitalized. The rule originated for economic reasons. The statutes were set in hot lead type and capital letters cost more to set than ordinary letters. To save money, capital letters were not used. The statutes are no longer set in hot lead and the reason for the "down style" having vanished, so does the rule. However, to avoid the poor appearance of nonuniform capitalization, the drafter should not capitalize words in an amendment to the statutes when the capitalization would make the provision inconsistent with existing unamended portions of the statutes.

Within a bill d-aft be consistent 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.

10.4 Mood

The indicative mood is used to state what the law is. The imperative and subjunctive moods are not used.

An example of the proper use of the indicative mood would be:

"This act does not apply to ...."

The imperative mood should be avoided.

"This act shall not apply ...."

Drafters are sometimes tempted to use the subjunctive mood in the creation of hypotheticals. (Example: "If the director shall find good cause, the certificate is issued.") This should be avoided.

The imperative mood is used to direct an official to carry out a duty. For example:

"The commissioner of administration shall administer ....."

The indicative mood should be avoided, for example:

"The commissioner of administration administrates ....."

10.5 Number and Gender

Section 645.08 (2) provides: "The singular includes the plural; and the plural, the singular; words in the masculine gender include the feminine and neuter, ..."

Despite the provisions of that section a drafter is not free to use either singular or plural and is not free to use either masculine or feminine.

Ordinarily, the singular should be used instead of plural.

Ordinarily, the drafter should prepare drafts which are sex neutral. In the selection of sex neutral terms, however, the drafter should avoid artificial or coined terms or the repeated use of "his or her" when to do so would be clumsy.

In either case, the above policy applies to new legislation. When existing law is being amended the policy applies also if the drafter can do so without working some mischief in the statute. The drafter should be careful to determine that by drafting in the singular and sex neutral in a few sections of a chapter that the impression is not created that the remaining sections concern only the plural or males.

10.6 Numbers

(a) Amounts

Numbers one through ten are written out. Numbers in excess of ten are written in figures.

Numbers in groups are in figures.

e.g. 8, 10, or 27; NOT eight, ten, or 27

Numbers beginning a sentence are expressed in words.

e.g. "Twelve days following. . . ."

Compound numbers, if expressed in words, are hyphenated.

e.g. thirty-fourth, twenty-fifth, one hundred and thirty-seventh

(b) Order

Ordinal numbers one through ten are written out.

e.g. first, second, third, fifth; NOT 1st, 2nd, 3rd, 5th

Ordinal numbers in excess of ten are expressed with numbers and letters.

e.g. 11th, 22nd, 23rd, 81st

(c) Dates

Dates are always expressed in figures only.

e.g. September 2, NOT September 2nd

(d) Money

A dollar amount that begins a sentence is expressed as a figure.

e.g. "$100 is appropriated...."

Money amounts are expressed by the dollar sign, omitting the decimal and zeros.

e.g. $7, $5,789

In running series:

$4, $9.50, $23.35, and $67

BUT in tabulations:

$ 6.00
133.58
53.29
48.00

(e) Fractions

When the denominator is ten or less, the fraction is written in words.

e.g. one-half, three-fourths, nine-tenths

When the denominator is over ten, the fraction is expressed with figures.

e.g. 3/11, 4/17, 8/31

All mixed numbers are expressed in figures with hyphens.

e.g. 1-1/2, 37-3/8, 811-1/32

10.7 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 transportation the "transportation 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.

10.8 Particular Words

(a) "Such", "Said", "Any" etc.

Avoid using "such", "said", or "same" for "the", "a", "an", "that", "it", "them", and similar words. In many instances "such", "said", and

"same" mean nothing at all and they can be omitted without other words being substituted. Do not use "any", "each", "every", "all", or "some", if "a", "an", and "the" can be used with the same result.

(b) "Shall" and "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.

(c) "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.

(d) "This act..."

The drafter 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 meaning 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.

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,* (3ed.) 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.

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.

(e) Other objectional phrases

Avoid	Substitute
is directed to	shall
is the duty to	shall
is hereby authorized and it shall be his duty to	shall
is authorized to	may
is empowered 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
is able to	may
null and void	void
per annum	a year
per day	a day
null and void and of no effect	void
order and direct	shall

full force and effect	force (or effect)
sole or exclusive	"sole" or "exclusive"
together with	and

10.9 Person

The third person (he, she, they) is used, not the first person (I) or second person (you).

10.10 Punctuation

Use punctuation consistent with modern American usage. In an amendment to an existing law, when possible change antiquated punctuation.

(a) The Period

The title of a bill always ends with a period.

The enacting clause of a bill always ends with a colon, not a period.

The first section and the first subdivision of each section is spelled out. Subsequent sections or subdivisions are abbreviated.

e.g. Section 1.
Subdivision 1.
Subd. 2.
Subd. 2a.
Sec. 2.
Subdivision 1.
Subd. 1a.
Subd. 2.
Sec. 3.

Do not use a period after statutory coding.

e.g. [325.478] NOT [325.478.]

Headnotes are capitalized, end with a period, and are enclosed in brackets.

e.g. [COMMISSIONER OF REVENUE; SALARY.]

(b) The Hyphen

The only words which may be hyphenated are those in which a hyphen is included in the proper spelling of the word. Words may not be divided at the end of a line by the use of a hyphen.

(c) Dashes, Parentheses and Brackets

Avoid the use of dashes and parentheses whenever possible. Brackets may not be used except for headnotes and proposed coding.

(d) Quotation Marks

Quotation marks are used for definitions (e.g. the word "blighted area" means....). Quotation marks may never be used in text to indicate words used in a special sense.

(e) The Comma

Commas are inserted within series of words, phrases, or clauses. Avoid the overuse of commas. The overuse or incorrect use of commas is probably the most common error in drafting.

One of the more frequent errors in drafting is the excessive and improper use of commas. The comma should be used in the following circumstances:

(a) Main clauses joined by "and", "but", "or", "nor" and "for" are separated by a comma.

(b) A subordinate clause or long phrase preceding a main clause is followed by a comma.

(c) Words, phrases, or clauses in a series are separated by commas. The comma is inserted after each element in the series including previous to the conjunction prior to the last element. (Example: Use "words, phrases, or clauses" not "words, phrases or clauses".)

(d) Nonrestrictive clauses or phrases and other parenthetical elements are set off by commas.

(f) The Semicolon

The semicolon is used in drafting only to separate a series of equal elements which themselves contain commas.

(g) The Colon

The colon is used to end an introductory clause prior to a tabulation of elements separated by either commas or lists in paragraph (indented) form. The colon is also used to set off a long quotation.

(h) The Apostrophe

In legislative drafting, the apostrophe is used largely to indicate the possessive. Contracted words should be avoided.

10.11 Spelling

Webster's Third New International Dictionary is used for spelling. Consistent with that work's own indication, the first listed spelling is *not* the preferred spelling. If there are several correct spellings, the most commonly used should be selected, but use of another spelling is not wrong.

10.12 Tense

A drafter has the temptation 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. . . ."

Also, 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.]"

10.13 Voice

The active voice is used. The passive voice is avoided. (Example: "The administrator shall issue certificates to applicants who have filed two affidavits", not "Applicants who have filed two affidavits shall be issued certificates by the administrator."

10.14 Miscellaneous

Symbols such as *, #, %, ¢, &, and @ may not be used.

BIBLIOGRAPHY

A BIBLIOGRAPHY OF MATERIALS ON BILL DRAFTING AND STATUTORY CONSTRUCTION

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