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MINNESOTA  
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**MINNESOTA  
REVISOR'S MANUAL  
with  
Styles and Forms**

**By the staff of the  
OFFICE OF THE REVISOR OF STATUTES  
State Capitol, Room 3  
St. Paul, Minnesota 55155  
edited by  
Steven C. Cross  
Revisor of Statutes**

**January 1, 1981**

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## INTRODUCTION

- 1.1 Authority
- 1.2 Functions of Manual
- 1.3 Scheme of Organization of Manual

### **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, section 482.09, clause (7) (1980). That section provides that the Revisor of Statutes shall "prepare and issue a bill drafting manual containing 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 familiar with the theory of legislative drafting, it is necessary to learn the nuances of drafting for the Minnesota legislature. Although, on the surface, the drafting systems for all the states and for Congress appear similar, once below the surface there are substantial differences.

Second, this manual is intended as a ready reference for the staff of the Revisor's office who are already familiar with Minnesota bill drafting. A drafter must be familiar with a wide variety of procedural and substantive matters 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 ready reference to 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 other publications have been collected here.

Third, pursuant to the apparent intent of section 482.09 (7) of the Minnesota Statutes 1980, the manual serves as a guide to ensure uniformity in drafting among all persons drafting bills and other legislative documents. Without a guide, disparity of technique would soon result. A multiplicity of drafting techniques would inhibit the legislative process.

Fourth, the manual enforces the necessary uniformity required by the computerized text management system. The principal computerized

## **2 Minnesota Revisor's Manual**

### **1.2 (cont.)**

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, the reader is encouraged to read the materials available on the subject of bill drafting, 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 manual.

### **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 and chapters marked by tabs. 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, certain areas are treated separately, but they apply to all legislative documents. These areas are: practical helps in drafting, the rules of grammar, and certain complex bill drafting subject areas.

## MINNESOTA LAW ON THE CONSTRUCTION OF STATUTES

- 2.1 Introduction
- 2.2 Practical Test for Clarity of Intent
- 2.3 "Clarity," the Threshold to Determination of  
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- 2.4 Legislative Intent
- 2.5 Aids to Construction
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  - (g) Construction of Statutes *in pari materia*
  - (h) Construction of Statutes Adopted  
by Reference
  - (i) Construction of Uniform Laws



#### 4 *Minnesota Revisor's Manual*

### 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, confiscated  
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.

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

## 2.1 (cont.)

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.

J. Sutherland, *SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION* (hereafter, Sutherland), §45.01 (4th ed. D. Sands, 1973) (citations omitted).

The imprecision in language is also due to the inherent difficulty of foreseeing 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 making it difficult to determine what is or is not included.

The legislative process contributes to the imprecision in language. It 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 involves compromise. The process of obtaining a compromise may result in parties to the agreement reading different meanings into the bill's language. Non-legislators may find the same different meanings. The courts will then 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

**2.1 (cont.)**

(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.

An example of vagueness would be a statute providing 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.

A drafter should be continually aware of the problems of drafting and avoid them. However, a thorough knowledge of the properties of the English language will 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. *Pacific Indemnity Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548 (Minn. 1977).

In construing a statute allocating costs for the installation of certain new equipment at a sewage plant, the court, in *Minneapolis-St. Paul*

**2.3 (cont.)**

*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. 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 *Minneapolis-St. Paul Sanitary Dist.*, *supra*, as authority for the plain meaning rule and stated that the rule still prevails in Minnesota. 246 Minn. 489 at 494 (footnote 10).

The plain meaning rule is codified in Minnesota Statutes, section 645.16 (1980). 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 statute was found 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 *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 did not mean what it appeared 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, the courts have said that a statute is clear and unambiguous if the words have one meaning

2.3 (cont.)

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*. 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



## 2.3 (cont.)

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 [sic] 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.

2.3 (cont.)

*Sutherland*, §46.02.

**2.4 Legislative Intent**

Once a statute is found ambiguous the aids to statutory construction must be utilized. The aids are used to discover the original legislative intent.

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

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 Marketable Title Act).

*Peterson, supra*, held that the Chisholm Dairy Queen is a "public building" within the meaning of Minnesota Statutes, section 299G.11 (1974), 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 (referred to as statutes *in pari materia*).

Minnesota Statutes, section 645.16 (1980), 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. *Starkweather v.*

2.4 (cont.)

*Blair*, 245 Minn. 371, 71 N.W.2d 869 (1955), 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. at 380.

*State v. Target Stores, Inc.*, 279 Minn. 447, 156 N.W.2d 908 (1968), 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*, §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 omitted).

## 2.6 Intrinsic Aids

### (a) Introduction

*Sutherland*, §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*, §47.01.

*Mattson v. Flynn*, 216 Minn. 354, 13 N.W.2d 11 (1944), stated: “[W]e 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. 362-363.

*Mattson, supra*, 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, 354, 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 (1897)).

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.

2.6(a) (cont.)

**THRUST**

**BUT**

**PARRY**

- |   |   |
|---|---|
| <p>1. A statute cannot go beyond its text.</p> <p>2. Statutes in derogation of the common law will not be extended by construction.</p> <p>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.</p> <p>4. Where a foreign statute which has received construction has been adopted, previous construction is adopted too.</p> <p>5. Where various states have already adopted the statute, the parent state is followed.</p> <p>6. Statutes in <i>pari materia</i> must be construed together.</p> <p>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.</p> <p>8. Where design has been distinctly stated no place is left for construction.</p> <p>9. Definitions and rules of construction contained in an interpretation clause are part of the law and binding.</p> | <p>1. To effect its purpose a statute may be implemented beyond its text.</p> <p>2. Such acts will be liberally construed if their nature is remedial.</p> <p>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.</p> <p>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 of policy of the laws of the adopting state.</p> <p>5. Where interpretations of other states are inharmonious, there is no such restraint.</p> <p>6. A statute is not in <i>pari materia</i> 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.</p> <p>7. Remedial statutes are to be liberally construed and if a retroactive interpretation will promote the ends of justice, they should receive such construction.</p> <p>8. Courts have the power to inquire into real — as distinct from ostensible — purpose.</p> <p>9. Definitions and rules of construction in a statute will not be extended beyond their necessary import nor allowed to defeat intention otherwise manifested.</p> |
|---|---|



**2.6(a)** (cont.)

10. A statutory provision requiring liberal construction does not mean disregard of unequivocal requirements of the statute.

11. Titles do not control meaning; preambles do not expand scope; section headings do not change language.

12. If language is plain and unambiguous it must be given effect.

13. Words and phrases which have received judicial construction before enactment are to be understood according to that construction.

14. After enactment, judicial decision upon interpretation of particular terms and phrases controls.

15. Words are to be taken in their ordinary meaning unless they are technical terms or words of art.

16. Every word and clause must be given effect.

17. The same language used repeatedly in the same connection is presumed to bear the same meaning throughout the statute.

18. Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute.

19. Exceptions not made cannot be read.

10. Where a rule of construction is provided within the statute itself the rule should be applied.

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. Not when literal interpretation would lead to absurd or mischievous consequences or thwart manifest purpose.

13. Not if the statute clearly requires them to have a different meaning.

14. Practical construction by executive officers is strong evidence of true meaning.

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. If inadvertently inserted or if repugnant to the rest of the statute, they may be rejected as surplusage.

17. This presumption will be disregarded where it is necessary to assign different meanings to make the statute consistent.

18. Rules of grammar will be disregarded where strict adherence would defeat purpose.

19. The letter is only the "bark." Whatever is within the reason of the law is within the law itself.

2.6(a) (cont.)

- 20. Expression of one thing excludes another.
- 21. General terms are to receive a general construction.
- 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*).
- 23. Qualifying or limiting words or clauses are to be referred to the next preceding antecedent.
- 24. Punctuation will govern when a statute is open to two constructions.
- 25. It must be assumed that language has been chosen with due regard to grammatical propriety and is not interchangeable on mere conjecture.
- 26. There is a distinction between words of permission and mandatory words.
- 27. A proviso qualifies the provision immediately preceding.
- 28. When the enacting clause is general, a proviso is construed strictly.
- 20. The language may fairly comprehend many different cases where some only are expressly mentioned by way of example.
- 21. They may be limited by specific terms with which they are associated or by the scope and purpose of the statute.
- 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. Not when evident sense and meaning require a different construction.
- 24. Punctuation marks will not control the plain and evident meaning of language.
- 25. "And" and "or" may be read interchangeably whenever the change is necessary to give the statute sense and effect.
- 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. It may clearly be intended to have a wider scope.
- 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 Minnesota Supreme Court has used them in the process of judicial decision making.

2.6 (cont.)

(b) **Canons of Construction**

(1) *Noscitur a sociis* (*associated words*). The meaning of doubtful words may be determined by their reference to associated words. *State v. Suess*, 236 Minn. 174, 52 N.W.2d 409 (1952), 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 phrase 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 Minnesota Statutes, section 645.08, clause (3) (1980), 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. *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. 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. 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'

**2.6(b)(2) (cont.)**

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 flexibility 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 italicized 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. at 88-89 (citations omitted).

Minnesota Statutes, section 219.39 (1980), did not expressly permit railroads to initiate proceedings before the railroad and warehouse commission with respect to dangerous crossings, authorizing only municipalities to initiate proceedings. The court refused to follow the canon and held that a 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*, §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 omitted).

Canons of construction will be fully exhausted before a statute will be declared void for vagueness. *Contos v. Herbst*, 278 N.W.2d 732, 746 (Minn. 1979).

2.6 (cont.)

(c) **Pertinent Context**

*Sutherland*, §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.*, *supra*, the court in construing the phrase "tax limitations now established by statute" in a general statute relating to 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. 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.

The court said that 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. *See: Town & Country Homes, Inc. v. Commissioner of Taxation*, 269 N.W.2d 7 (Minn. 1978).

## 2.6 (cont.)

**(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. *LaBere v. Palmer*, 232 Minn. 203, 44 N.W.2d 827 (1950), 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 supplied).

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. at 206 (emphasis added).

(2) *Preamble*. The preamble consists of one or more "whereas" clauses located 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).

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

**2.6(d)(2)** (cont.)

interpretation. The “whole act” interpretation reads all the provisions of an act together for purposes of interpretation. *Sutherland*, §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, *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 Minnesota Statutes, section 325.53, subdivision 2 (1980), also applies to that phrase as it was then used in sections 614.06 and 614.07.

*Hahn v. City of Ortonville*, 238 Minn. 428, 57 N.W.2d 254 (1953), considered whether the civil damage act (Minn. Stat. §340.95 (1980)) applied 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. at 437.

Minnesota Statutes, section 645.08 (1980), codifies the use of words defined by statute. In pertinent part, it provides: “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 an amendment to or repeal of existing provisions of law. The common law rule is that if a law is

**2.6(d)(4) (cont.)**

repealed and there is no specific saving clause in the repealing law or an applicable general savings clause, the repealed law 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 Minnesota Statutes, section 645.35 (1980), a general savings statute, did not apply. The court held that the repeal was to be construed as at common law and provisions of the repealed law were not to be kept in effect with respect to pending proceedings or enforcing penalties already 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 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. at 563.



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### 2.6(d)(4) (cont.)

Minnesota Statutes provide many saving provisions, at least one of which will apply to any bill. There are two general classes of saving provisions. The first class deals directly with rights upon repeal of a statute.

One saving clause within the first class is the general presumption against retroactive effect: "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. §645.21 (1980).

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

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.

Minn. Stat. §645.31, subd. 1 (1980). Another statute provides for the effect of multiple amendments: "When a law has been more than once amended, the latest amendment shall be read into the original law as previously amended and not into such law as originally enacted." Minn. Stat. §645.32 (1980).

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

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

2.6(d)(4) (cont.)

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.

Minn. Stat. §645.35 (1980). Another statute provides for the effect of repeal and reenactment of a law:

When a law is repealed and its provisions are at the same time reenacted in the same or substantially the same terms by the repealing law, the earlier law shall be construed as continued in active operation. All rights and liabilities incurred under such earlier law are preserved and may be enforced.

Minn. Stat. §645.37 (1980). Yet another statute provides for the effect of repeal and reenactment of limitations on rights or remedies:

When a limitation or period of time, prescribed in any law for acquiring a right or barring a remedy, or for any other purpose, has begun to run before a law repealing such law takes effect, and the same or any other limitation is prescribed by any other law passed at the same session of the legislature, the time which has already run shall be deemed a part of the time prescribed as such limitation in such law passed at the same session of the legislature.

Minn. Stat. §645.43 (1980).

The second class of saving clauses preserves rights caused by confusion over multiple enactments dealing with the same statutes. The statutes within this class provide for conflicting amendatory laws:

When, in the same law, several clauses are irreconcilable, the clause last in order of date or position shall prevail.

When the provisions of two or more laws passed during the same session of the legislature are irreconcilable, the law latest in date of final enactment, irrespective of its effective date, shall prevail from the time it becomes effective, except as otherwise provided in section 645.30.

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**2.6(d)(4)** (cont.)

When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail.

Minn. Stat. §645.26, subd. 2, 3, and 4 (1980).

When two or more amendments to the same provision of law are enacted at the same or different sessions, one amendment overlooking and making no reference to the other or others, the amendments shall be construed together, if possible, and effect be given to each. If the amendments be irreconcilable, the latest in date of final enactment shall prevail.

Minn. Stat. §645.33 (1980).

The statutes also provide for the effect of a general revision or code upon other laws: "Except as provided in section 645.39, 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. §645.28 (1980).

When any existing law incorporated into and repealed by a code or revision is also amended by other legislation enacted at the same session of the legislature, such separate amendment shall be construed to be in force, notwithstanding the repeal by the code of the act it amends, and such amendment shall be construed to prevail over the corresponding provisions of the code.

Minn. Stat. §645.30 (1980).

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.

**2.6(d)(4) (cont.)**

Minn. Stat. §645.39 (1980).

Other statutes within this class provide for conflicts between repealers:

The repeal of an amendatory law does not revive the corresponding provision or section of the original law or of any prior amendment. Except as otherwise provided in section 645.26, subdivision 3, the repeal of the original law, or section or provision of the original law, repeals all subsequent amendments to the original law, or to the original section or provision, as the case may be.

Minn. Stat. §645.34 (1980); and “When a law is repealed which repealed a former law, the former law shall not thereby be revived, unless it is so specifically provided.” Minn. Stat. §645.36 (1980).

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. 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, subdivision 1. However, in the Uniform Commercial Code the headnotes are made part of the act by section 336.1-109 and are presumably available as an aid to statutory construction.

**(e) Specific Provisions Control General Provisions**

*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 (1980). 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. *Adams v. Nadave*, 309 Minn. 536, 245 N.W.2d 227 (1976). Section 645.26, subdivision 1 (1980), reads:

**2.6(e)** (cont.)

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 recovery under workers' compensation was appropriate.

*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 Minnesota Statutes, section 169.21 (1941), a section dealing with pedestrian traffic control, stated that 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—

**2.6(f) (cont.)**

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 Minnesota Statutes, section 169.11 (1945), 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 regulating vehicular homicide and other statutes relating to homicide in force at the time of enactment related to the common subject matter of 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. 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. 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....” Minn. Stat. §645.08 (1980).

**(g) Rules of Grammar**

*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 Minnesota Statutes, 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 “[T]o authorize the board to consider on the merits a petition for the establishment of any

2.6(g) (cont.)

road or of *any roads* which connect with each other running into more than one town, or....” 231 Minn. at 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.”

Punctuation is recognized as a part of the English language, and it can be used for the purpose of statutory construction. From 1941 to 1979, Minnesota Statutes, section 645.18, read:

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.

Minn. Stat. §645.18 (1978). In 1979 the legislature removed the third sentence. It, therefore, recognized that punctuation forms as much of a role in statutory construction as do words.

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. A regulation provided that 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.

**2.6(g) (cont.)**

The court may transpose words and phrases in a statute only where it is necessary to give the statute meaning and to 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*, §49.35 (4th ed. 1973).

*Gale, supra*, 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**

“The singular includes the plural; and the plural, the singular;....” Minn. Stat. §645.08, cl. (2) (1980).

*State ex rel. Nelson v. Anoka*, 240 Minn. 350, 61 N.W.2d 237 (1953), held that under Minnesota Statutes, section 413.14 (1949) 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**

“Words in the masculine gender include the feminine and neuter;....” Minn. Stat. §645.08 (1980).

*Sutherland*, §47.32, states:

It is not uncommon usage, in statutes as well as elsewhere, for masculine pronouns to be used generically to refer to



2.6(i) (cont.)

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).

As indicated in section 10.4 of this manual, 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*, (3rd 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 (1965).

**(k) Mandatory and Directory Provisions**

*State ex rel. Laurisch v. Phol*, 214 Minn. 221, 8 N.W.2d 227 (1943), held that Minnesota Statutes, section 375.02 (1941), 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

**2.6(k)** (cont.)

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. at 223.

The provision in Minnesota Statutes, section 375.02 (1941), 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.

*State v. Jones*, 234 Minn. 438, 48 N.W.2d 662 (1951), interpreted as directory Minnesota Statutes, 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.*, 269 N.W.2d 31 (1978), the court interpreted the provision of Minnesota Statutes, section 169.127, subdivision 3 (1976), 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:

**2.6(k)** (cont.)

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.”

269 N.W.2d at 33; 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*, §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 omitted).

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 Minnesota Statutes, section 645.44 (1980). In pertinent part, it says: “‘May’ is permissive.... ‘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 are:

**2.7(a)** (cont.)

- (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 are discussed below.

**(b) Legislative History**

Due to technological advances in recording instruments, there are a variety of means to ascertain much of the contemporaneous discussion about legislation. 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 their floor and committee proceedings. Additionally, minutes are kept of all committee proceedings. Both the minutes and recordings are filed with the Legislative Reference Library. 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 admissible 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 proceedings of the Senate and its committees). "Testimony and discussion preserved under this rule is not intended to be admissible 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 a group of legislators speaks for the entire body.

2.7(b) (cont.)

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 sources of showing the evaluation are the legislative journals. 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, the text of amendments, 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. §599.12 (1980).

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 used the journals to determine 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 (1956), the court used the legislative journals to determine that the two houses had never agreed to the exact text of a bill.

The journals contain committee reports and conference committee reports. Committees 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

**2.7(b)** (cont.)

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. 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 court relied upon a report by a 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.

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

Minnesota law provides for 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...." Minn. Stat. §645.16 (1980).

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*

**2.7(b)** (cont.)

*v. Arnold*, 182 Minn. 313, 235 N.W. 373 (1931), the 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. 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 the intent 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 adoption of an amendment raises the presumption that the legislature intended to make some changes in existing law. *Brotherhood of Ry. and S. S. Clerks v. State by Balfour*, 303 Minn. 178, 229 N.W.2d 3 (1975).

**(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. 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 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

**2.7(c)** (cont.)

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: “[L]aws 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. §645.28 (1980).

However, this general statement is modified by Minnesota Statutes, section 645.39 (1980), which states:

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.

Minn. Stat. §645.39 (1980).

The comment of an advisory committee to a statute can be evidence of legislative intent. *State v. Knox*, 311 Minn. 314, 250 N.W.2d 147 (1976).

The principal issue of legislative construction 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.

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 637 (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.



2.7 (cont.)

**(d) Executive Construction of Statutes**

Certain actions of the executive branch of government may be used to determine legislative intent.

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 becomes 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. §645.16 (1980).

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. §645.16 (1980). In other words, the governor's message, calling a special session, sets the subject matter for the session and thereby outlines in general terms the legislative intent of legislation passed in that session. (Minnesota Constitution, art. IV, sec. 12).

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*

**2.7(d)** (cont.)

*Dist.*, 272 Minn. 343, 138 N.W.2d 32 (1965), is of persuasive weight when construction has been acted upon and has gone unchallenged for many years. *State v. Hartman*, 261 Minn. 314, 112 N.W.2d 340 (1961). Additionally, the legislature may affirmatively endorse 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:

[T]he 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).

The fact that attorney general opinions are not (unless legislatively endorsed) 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. §§8.07, 121.17, 270.07 and 270.09, subd. 1 (1980).

**(e) Administrative Construction of Statutes**

Closely related in nature to executive construction of statutes is the statutory construction of administrative agencies. Agencies develop their own construction of a specific statute. These constructions are disregarded by the courts where:

[T]he 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 interpretation 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, (1971).

2.7(e) (cont.)

*Minnesota Microwave v. Public Service Comm.*, 291 Minn. 241, 246; 190 N.W.2d 661, (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 112 (citing *Mattson v. Flynn*, 216 Minn. 354, 13 N.W.2d 11 (1944)). *Soo Line Ry. Co. v. Commissioner of Revenue*, 277 N.W.2d 7 (Minn. 1979). 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.

Failure of the legislature to change the workmens' compensation commission's interpretation of a statute when the legislature revised the statute was an adoption of the commission's interpretation by the legislature. *Nelson v. National Biscuit Co.*, 300 Minn. 46, 217 N.W.2d 734 (1974).

**(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 (1980), which in pertinent part states: "When a

**2.7(f)** (cont.)

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* to the law at issue. According to Sutherland:

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.

*Sutherland*, §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 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).

2.7(g) (cont.)

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. *State v. Coolidge*, 282 N.W.2d 511, (Minn. 1979). While statutes passed during the same legislative session are given special weight with regard to their construction, *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 equal 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.

**2.7(h)** (cont.)

Read: "Is Referential Legislation Worth While?" 25 Minn. L. Rev. 261, 283-284 (1941) (citations deleted).

The Minnesota Supreme Court endorsed this distinction 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. at 224 (citing Minn. Stat. §290.01, subd. 20 (1965)).

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. 70 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. 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. at 228.

On its face, this holding would appear to conflict with Minnesota Statutes, section 645.31, subdivision 2 (1980), which states: "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."

**2.7(h)** (cont.)

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 (1980). This section adopts by reference administrative rules: "'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.

**2.7 (cont.)****(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 widely adopted. 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. "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." Minn. Stat. §645.22 (1980).

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.



FACE TO (P. 1111)

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

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3.3 (cont.)

- (p) School Lands and Other Public Lands;  
Restrictions on Disposition
- (q) Eminent Domain
- (r) Independence of the University of Minnesota
- (s) Local or Special Laws

**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, Minnesota Statutes, the permanent rules of the House, the permanent rules of the Senate, and the joint rules of the Senate and House of Representatives. A 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**

A rule of the Minnesota House of Representatives provides as follows:

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.

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, a bill printed on the revisor's equipment is easily differentiated from typewriter copy originating elsewhere. The logo, however, remains the official identification.

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

**3.2 (cont.)**

**(b) Compliance with Rules of Legislature**

“Each house may determine the rules of its proceedings....”  
Minn. 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.”  
Minn. 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.” Minn. 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 chapter 4 of this manual.

**(d) Enacting Clause**

“The style of all laws of this state shall be: ‘Be it enacted by the legislature of the state of Minnesota.’” Minn. Const. art. IV, sec. 22.

**(e) Bills Should Amend Minnesota Statutes.**

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

...  
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.

3.2 (cont.)

**(f) Forms of Citation**

“Bills shall refer to Minnesota Statutes as follows: ‘Minnesota Statutes [year], Section [number],’ Bills shall refer to the sessions laws as follows: ‘Laws [year], Chapter [number], Section [number].’” Joint Rule 2.01.

“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.” Minn. Stat. §645.46 (1980).

“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.” Minn. Stat. §645.47 (1980).

“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.” Minn. Stat. §645.48 (1980).

**(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.

3.2 (cont.)

**(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. §648.35 (1980).

**(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. §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 catch-words 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. §648.36 (1980).

**(k) Use of Numbers**

All numbers in titles 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

**3.2(k)** (cont.)

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 manual.

#### **(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. §645.02 (1980).

**3.3 (cont.)**

**(c) Measuring 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.

Minn. Stat. §645.071, subd. 1 (1980).

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.

Minn. Stat. §645.14 (1980).

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.

Minn. Stat. §645.15 (1980).



3.3 (cont.)

**(d) General Definitions Applying to the Statutes**

Certain common words have been given a special meaning for purposes of their use in Minnesota Statutes. Chapter 645 of the statutes 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 in chapter 645 include the following:

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

**3.3(d)** (cont.)

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. However, for the executive branch of the state of Minnesota, "holiday" also includes the Friday after Thanksgiving but does not include Christopher Columbus Day. Other branches of state government and political subdivisions shall have the option of determining whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. Where it is determined that Columbus Day or the Friday after Thanksgiving is not a holiday, public business may be conducted 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.

**3.3(d)** (cont.)

Subd. 8. **POPULATION; INHABITANTS.** When used in reference to population, "population" and "inhabitants" mean that shown by the last preceding federal decennial census 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.

3.3(d) (cont.)

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;

**3.3(d)** (cont.)

- (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.

**3.3(d)** (cont.)

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.

3.3 (cont.)

**(1) The 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.” Minn. Const. art I, sec. 1.

**(2) 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.” Minn. Const. art. I. sec. 11.

The state constitution prohibits bills of attainder, *ex post facto* laws, and laws impairing contracts. 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 in which a state law might impair a contract. 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.

3.3 (cont.)

**(3) 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.

For a review of the constitutional limitations on the use of public funds by religious institutions see section 7.9 of this manual.

**(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.” Minn. Const. art. I, sec. 2.



**3.3(f)** (cont.)

“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.” Minn. Const. art. I, sec. 8.

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

**(g) Equal Protection of Law**

“Taxes shall be uniform upon the same class of subjects....”  
Minn. 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.

Minn. 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.” Minn. Const. art. III, sec. 1.

**3.3(h)** (cont.)

“The legislature shall have the power to prescribe the bounds of congressional and legislative districts.” Minn. 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....

Minn. 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.” Minn. 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.” Minn. 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 within three years after expiration of the term for which he is selected. 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.” Minn. Const. art. VI, sec. 9.

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

**3.3(h)** (cont.)

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.

**3.3(h)** (cont.)

“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.” Minn. 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.” Minn. 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 borrow temporarily as authorized in section 6 governing tax anticipation certificates;
- (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

3.3(i) (cont.)

(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.

Minn. Const. art. XI, sec. 5.

“Taxes ... shall be levied ... for public purposes....” Minn. 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. The issue is whether the state financing authorized by the law in question is 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. Metropolitan Sports Facilities Comm’n.*, 270 N.W.2d 749 (Minn. 1978).

3.3(i) (cont.)

*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. In that case the court set forth 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; and (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* 252 Minn. at 184, 89 N.W.2d at 643.

The court also recognizes the changing nature of what is a public purpose. In the *Minnesota Housing Finance Agency* case, the plaintiff attempted to argue that the state could only provide low-income housing at public expense since that was what was approved in *Thomas v. Housing & Redevelopment Authority of Duluth*, 234 Minn. 221, 48 N.W.2d 175 (1951). Since the law in the *Minnesota Housing Finance Agency* 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 served 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):

3.3(i) (cont.)

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 possibly 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.

*Minnesota Housing Finance Agency*, 297 Minn. at 168, 210 N.W.2d at 306. *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*.

It is also important to note that in *Lifteau* 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.

A drafter who is 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.

3.3(i) (cont.)

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

Second, the drafter could include a statement of legislative findings which would support state action in the questionable area. See, for example, section 462A.02 of the Housing Finance Agency Law of 1971, which was cited extensively by the *Lifteau* court. It 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.

[T]his shortage of housing ... 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. §462A.02 (1980).

The section also includes 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.

A drafter should also be aware of the following statement by the Minnesota Supreme Court in the *Visina* case:

In determining whether an act of the state constitutes a performance of a governmental function or a public purpose which will justify expenditure of public money, a legislative



**3.3(i)** (cont.)

declaration of public purpose is not always controlling. The 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 the courts.

*Visina*, 252 Minn. at 184, 89 N.W.2d at 643.

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." Minn. Const. art. XI, sec. 2.

**(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.

Minn. 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;

3.3(k) (cont.)

(b) to repel invasion or suppress insurrection;

(c) to borrow temporarily as authorized in section 6 [governing tax anticipation certificates];

(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.

Minn. 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.

Minn. 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

**3.3(k)** (cont.)

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.

Minn. 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.

Minn. 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

3.3(k) (cont.)

exceeds five per cent of the value of the taxable property within that county, township or municipal corporation.

Minn. 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.

Minn. 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.

Minn. 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.

Minn. 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

**3.3(k)** (cont.)

exceeds five per cent of the value of the taxable property within that county, township or municipal corporation.

Minn. 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.

Minn. Const. art. XIV, sec. 11.

**(l) Public Purpose Doctrine**

“Taxes ... shall be levied ... for public purposes....” Minn. Const. art. X, sec. 1. See discussion under section 3.3 (i) of this manual.

**(m) Power of Taxation**

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

“Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes....” Minn. 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.

Minn. Const. art. X, sec. 1.

**3.3(m)** (cont.)

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.

Minn. 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.

Minn. 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.

Minn. 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

**3.3(m)** (cont.)

owned by a nonresident of the state temporarily using the air space overlying the state.

Minn. 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.

Minn. 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.

Minn. Const. art. XIV, sec. 9.

**3.3(m) (cont.)**

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.

Minn. 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.” Minn. Const. art. XI, sec. 1.

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. §3.23 (1980).

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



**3.3(n)** (cont.)

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. §3.24 (1980).

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.

**3.3(n) (cont.)**

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. §16A.28 (1980).

**(o) Administrative Rulemaking**

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. When presented with a rule for endorsement pursuant to subdivision 2a, the revisor of statutes should indicate in the endorsement that the rule duplicates statutory language.

Minn. Stat. §15.0412, subd. 1. (1980).

“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 sections 12.31 to 12.37, or (c) the department of military affairs. Sections 15.0418 to 15.0426 do not apply to (a) the Minnesota municipal board, (b) the corrections

**3.3(o)** (cont.)

board, (c) the unemployment insurance program in the department of economic security, (d) the director of mediation services, (e) the workers' compensation division in the department of labor and industry, (f) the workers' compensation court of appeals, (g) the board of pardons, or (h) the public employment relations board.

Minn. Stat. §15.0411, subd. 2 (1980).

“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 (e) opinions of the attorney general.

Minn. Stat. §15.0411, subd. 3 (1980).

**(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.

**3.3(p)** (cont.)

Minn. 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.

Minn. 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.

Minn. 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.”  
Minn. 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.

Minn. Const. art. XIII, sec. 4.

**3.3 (cont.)**

**(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.” Minn. Const. art. XIII, sec. 3.

“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, §4.

**(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 manual.

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## 4

### BILL DRAFTING

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#### 4.1 Generally

A bill is the most common legislative vehicle. It is the only form which carries the words "An Act" in its title and the enacting clause

**4.1 (cont.)**

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

Each bill draft follows a standard framework. The framework, however, is standard only 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,

**4.2(a) (cont.)**

that “No law shall embrace more than one subject, which shall be expressed in its title.” *Joint Rule 2.01* 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;

(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. Despite the seeming simplicity of this rule, it can be very difficult with which to comply. One reason for its difficulty is that legislation may be comprehensive in the material treated. Another reason is that the legislative process exerts pressure to compromise by combining legislation.

There is one subject when all matters contained in the bill are clearly related to each other. If there is any doubt as to the relation of several subjects in a bill, the drafter should do one of two things:

(1) Redraft the title to make it clearly broad enough to cover all subjects in the bill; or,

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

The former course is normally preferred by legislators because of the difficulty of shepherding a second bill through the legislative process. In fact, drafters have been told to ignore the one subject rule and to draft a bill combining what, to the drafter, are clearly two subjects. The problem is particularly troublesome when a short bill with a narrow subject has a second “subject” engrafted onto it. The two subjects are clearly evident. When three, four, or more “subjects” are added to a bill, the bill appears to be a valid omnibus bill. The solution



**4.2(b)** (cont.)

to the problem of a request to add a second "subject" to a bill may often be in adding more "subjects" rather than attempting to tell a sponsor that new subjects cannot be added.

**(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 reinforces 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 subject 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...."

The drafter must consider that this general subject is often used to determine the committee to which a bill will be referred. If it is possible to select from among several possible general subjects, as it often is, the drafter should use the general subject keyed to the committee to which the bill's sponsor would prefer to have the bill referred.

4.2 (cont.)

(3) *The Object or Specific Subject.* This phrase begins with some phrase other than “relating to.” It may be:

“augmenting”  
“adding”  
“authorizing”  
“empowering”  
“providing”  
“creating”  
“abolishing”  
“limiting”  
“restricting”

or similar words. The remainder of the phrase should give the specific thrust of the bill.

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

First, when the bill contains an appropriation, the phrase “appropriating money” should be inserted in the title after the other specific subject phrase or phrases.

Second, when a criminal penalty is imposed, the phrase “imposing a penalty” should be inserted.

(4) *A Statement of the Chapter or Chapters Affected by New Law in the Bill.* If any new statutory section is included in the bill, the chapter of Minnesota Statutes in which the section is proposed for coding must be recited in the title. The typical format is: “proposing new law coded in Minnesota Statutes, Chapter 123.” Unlike the recitations in the title of sections amended or repealed, the reference to Minnesota Statutes does not state the date of the edition of the statutes. This is due to the fact that coding is prospective in application, not retrospective as are amendments and repeals. The proposed coding is not binding on the Revisor but is given great deference when coding is done.

If the new law consists of a proposed new chapter, the appropriate format is: “proposing new law coded as Minnesota Statutes, Chapter 123.”

**4.2(d)(4) (cont.)**

The listing of chapters affected, as well as the sections amended and repealed, puts on notice those interested in particular areas of the statutes that provisions in which they are interested are affected by the bill. The recitations are also used as index statutory sections affected by bills.

(5) *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 1980, Section 12.34."

If only a subdivision is amended, the section and subdivision are designated. An example is: "amending Minnesota Statutes 1980, Section 12.34, Subdivision 4."

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

(6) *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. 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 5 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 (1980). The section prohibits unfair trade practices in the dairy industry. It provides:

**4.4(a) (cont.)**

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.

Minn. Stat. §32A.02 (1980).

Another example is Minnesota Statutes, section 270.32 (1980). It deals with the purpose of the "Minnesota Tree Growth Tax Law." It provides:

**4.4(a) (cont.)**

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.

Minn. Stat. §270.32 (1980).

**(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 a citation or short title is archaic and is not encouraged, they should be used in instances where deemed desirable or, more often, in instances where the requester asks that a citation or short title be included.

When used, the citation should be either 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."

OR

Subd. 7. [SHORT TITLE.] This section is the "Uniform Simultaneous Death Act."

**4.4(b) (cont.)**

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 manual).

**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 unfamiliar words or phrases;
- (b) Indicate that, for the purpose of this bill, a term has a different or more limited meaning than the meaning by which the term is usually understood; or,
- (c) 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. [123.45] [DEFINITIONS.]
Subdivision 1. [TERMS DEFINED.] As used in sections 2
to 20, the terms defined in this section have the meanings
given them.
-----
Subd. 2. [ENGINEERING.] "Engineering" means....
Subd. 3. [PRACTICE OF ENGINEERING.] "Practice of
engineering" excludes....
-----
Subd. 4. [BOARD.] "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 term having a special limited meaning; and subdivision 4 represents an example of a definition used to avoid repetition.

A definition should be simply a definition. Do not write substantive law into a definition. For an example of improper writing of substantive law into a definition, see Minnesota Statutes, section 645.44, subdivision 5 (1980).

**4.5 (cont.)**

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 manual. The terms defined therein should not be redefined, 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 Minnesota 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 divide the bill into relatively short sections and, when length or content of the subject matter requires, subdivide the sections into subdivisions. Selection of appropriate divisions will make reading easier and facilitate later amendment.

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

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

There are at least three methods that can be used in developing the logical order of complex legislation. They are: the "assembly of the

**4.6(a)** (cont.)

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 "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.

Davies, *supra*, pg. 111.

The "preliminary outline" method envisions the complete development of the proposed bill in outline form before drafting any text. Often, a drafter will start with a list of provisions that he or she desires to put in the bill. The list is lengthened as research and thought indicate what must be included. When the drafter feels that the list is all inclusive, the random list is then reorganized into a logical outline. The outline should be reworked until the provisions in the bill fit together as a logical, consistent whole. This manner is particularly advantageous when it is known that the various sections of the bill will



**4.6(a)** (cont.)

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 basic format for a bill section containing new law is to simply show the proposed coding and proposed headnote after the bill's section number and then set out the text of the new law. For example:

Sec. 14. [293.21] [REFUND OF TAX ERRONEOUSLY  
COLLECTED.]

The commissioner of revenue shall refund any tax  
erroneously paid or collected, and shall reimburse the  
general fund for the expenses of implementing this chapter.

The text of the section, whether or not it is divided into subdivisions, always begins on a new indented line after the headnote. All new law (but not the bill section number, proposed statutory section number, and headnote) is underlined. Any subdivision in a section has the "Subdivision" or "Subd.," and its number, but not the subdivision headnote, underlined.

A variant on the basic format is to utilize an introductory clause to specify what chapter is being amended. For example:

Sec. 14. Minnesota Statutes 1980, Chapter 293, is  
amended by adding a section to read:

## 4.6(a) (cont.)

[293.21] [REFUND OF TAX ERRONEOUSLY COLLECTED.]

The commissioner of revenue shall refund any tax  
 -----  
 erroneously paid or collected, and shall reimburse the  
 -----  
 general fund for the expenses of implementing this chapter.  
 -----

This format is sometimes used in the belief that it mandates the chapter in which the Revisor is to compile the new statute, while the former version merely "suggests" where it is to be compiled. In view of the Revisor's plenary powers to renumber statutory provisions, there is no difference between the two forms. The first format is preferred, quite simply, because it takes fewer words to achieve the same result. The second form, however, is not incorrect.

The bill drafter must draft headnotes for each section, using all capital letters in brackets. Headnotes should also be put in subdivisions. The headnotes for sections tend to be longer, usually they are phrases. The headnotes for subdivisions are shorter, usually they are one to three "catch" words. Headnotes are not drafted for subdivisions if the new section is coded in an area of the statutes in which subdivisions do not presently have headnotes.

The drafter must propose coding for new law which is intended to be compiled in Minnesota Statutes. If the drafter has difficulty determining proposed coding, then the Editor of the Minnesota Statutes should be consulted. The remainder of a section not proposed for coding, including use of headnotes, starting text on a new line, and underscoring, is identical to coded provisions.

Neither the headnotes nor the proposed coding become law if the bill is passed. They can provide information for the construction of the provisions as well as providing 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.

4.6(a) (cont.)

In addition to dividing a section into subdivisions, subdivisions may be divided into paragraphs (Minnesota Statutes, section 645.47 (1980)) and paragraphs may be divided into clauses or items. No further subdivisions are permitted. The breakdown of the various possible parts of a section is:

<i>Part</i>	<i>Example</i>
Section	645.45
Subdivision	Subd. 2.
Paragraph	(a)
Clause (or item)	(2)

In some drafts there are no paragraph elements but there are clauses or items. In those cases, the letter designation of paragraphs may be skipped and only clause or item designation used. However, if there are no paragraph elements, then numbers and not letters are used for clauses or items. The clause elements are grammatical clauses not sentences or paragraphs. For that reason the first letter of the first word is not capitalized and the clause ends in a semi-colon.

A bill may also be subdivided by grouping sections of a bill into an article or a group with an editor's heading. This kind of division is typically used on long and complex bills.

The division of a bill using articles is the more evident form of division of a bill. Each article is preceded by the centered and capitalized article number and, on the next line, the name of the article. For example:

ARTICLE IV  
CAMPAIGN FINANCING

When using articles to divide a bill, the section numbering starts over with section 1 for the first section after each article division. The first section often is a short title or citation provision. The last sections in each article are the repealer and effective date provisions.

The drafter should be careful that the "one subject" rule is not violated. When a bill is divided into articles, the bill takes on the appearance of several bills being combined. If several bills are, in fact, being combined, the situation is worse. If this occurs, the drafter should find methods of making the single subject evident. One way is to not divide the bill into articles.

**4.6(a) (cont.)**

The second method of dividing a bill is the use of headings for groupings of sections. The use of group headings is the equivalent of the use of editor's headings in the Minnesota Statutes. For examples of editor's headings in the statutes, see Minnesota Statutes, chapter 15. The heading is a centered and capitalized word or group of words. For example, if a bill was divided using headings, a heading might appear as:

CAMPAIGN FINANCING

When using group headings, section numbering is continuous throughout the bill. That is, the first section after the heading does not start over with "Section 1" as occurs when article divisions are used.

For both article and group divisions, there is no guarantee that they will be carried forward into the statutes. Both will be considered for use as editorial headings if it is appropriate. The drafter, however, should use division of a bill to facilitate understanding of a bill and not to attempt to bind the Revisor on how the statutes will be compiled. Use of either type of division is rare. Not more than ten bills out of several thousand in a session utilize these types of divisions.

When drafting legislation with numerous interrelated 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. [123.45] [SPECIFICATIONS OF PETROLEUM  
PRODUCTS.]

Subdivision 1. [GASOLINE.] No gasoline shall be sold  
-----

4.6(a) (cont.)

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. [123.45] [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.  
-----

**4.6(a) (cont.)**

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. Disregarding 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.

**(b) Amended Old Law**

A section of a bill amending existing law begins with an introductory phrase stating which section or subdivision of Minnesota Statutes or Session Laws is being amended. The subdivision is the minimum unit which may be amended (Joint Rule 2.01) despite the fact that the subdivision may be divided into paragraphs or the paragraphs into clauses or items. After the introductory phrase, the existing law is set forth with language which is to be deleted, lined out (stricken) and new language underlined (underscored). New language follows stricken old language or punctuation. Language should never be stricken and then reinserted with underlining.

The basic format for amending an old law is for the bill section to start with an introductory phrase which identifies the section, subdivision or subdivisions being amended. Immediately following it, and in the same form as in the latest edition of *Minnesota Statutes*, is the provision being amended. For example:

Sec. 7. Minnesota Statutes 1980, Section 192A.15, is amended to read:  
192A.15 [MILITARY JUDGE SYSTEM ESTABLISHED.]  
Subdivision 1. [JUDGES.] There is hereby established a military judge system for the state military forces....

The text of the section, whether or not it is divided into subdivisions, always begins on a new line.

The bill may propose to amend only a subdivision of a statutory section. If only a single subdivision is being amended, the number and headnote of the section should not be shown. When multiple subdivisions of the same statutory section are being amended, each statutory subdivision must be amended in a separate section of the bill. For example:

4.6(b) (cont.)

Sec. 19. Minnesota Statutes 1980, Section 179.23,  
Subdivision 2, is amended to read:

Subd. 2. [GOVERNOR MAY APPOINT A LABOR REFEREE.] Upon receipt of such certification by the director of mediation services....

Sec. 20. Minnesota Statutes 1980, Section 179.23,  
Subdivision 6, is amended to read:

Subd. 6. [SERVICE TERMINATED.] Upon the conclusion.....

When only a subdivision of a section is amended, the section's headnote and section number are not shown. This includes subdivision 1 of a section.

The requirement of repetition of the statutory text in the form in which it appears in Minnesota Statutes is without exception. The requirement of repetition includes indentations and paragraphing. However, capital letters replace bold face type for headnotes. Also, it is not necessary to show existing statutory group headings when amending existing statutes.

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

Changes are made, if necessary, in the existing headnotes of a section or subdivision to reflect amendments of the text. Striking and underlining are used to show these changes. Entirely new headnotes to a section or subdivision, however, are not underlined. It is not required that the *section's* headnote be shown and changed if it will not otherwise be part of the draft (i.e., when only one *subdivision* of a section is changed).

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

**4.6(b) (cont.)**

merely ordering a subdivision added and reciting only the language of the new subdivision.

Many drafts 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. By drafting this way all changes in the statutes are shown in the order they will occur when compiled in Minnesota Statutes.

When dealing with major amendments to existing law, a drafter may be presented with a dilemma. Since so much of the former law is being changed, would it be better to just repeal the old law and enact a new one rather than amending the old law. The answer is to use a new law if the intent is that the law is wholly new. Amend the existing law if the intent is to change something that already exists. The selection should not be based on the convenience of the drafter. If changes are complex it is always easier to repeal and replace a law than to amend it. But to the reader, the presentation of a new law and an amended old law having the same substantive effect have entirely different effect. The preference is to amend rather than repeal and replace.

**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 and are not intended to be compiled in Minnesota Statutes. Third, they are technical provisions such as 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 manual.



4.7(a) (cont.)

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, of a longer bill establishing, for instance, a new program or agency. It is placed at the end of a bill and succeeded only by any repealer and effective date provisions.

A typical biennial appropriation section would be:

```
Sec. 47. [APPROPRIATION.]  
  
The sum of $..... is appropriated from the  
-----  
general fund to the commissioner of administration for the  
-----  
purpose of ..... The sum is available until  
-----  
June 30, 1983.  
-----
```

In the case of a biennial appropriation made during a session in an odd-numbered year the sentence "the sum is available until June 30, 1983" should be used. If made during an even year session, the same date "June 30, 1983" 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 be trapped into thinking that all appropriations are made for two years. Also, do not deliberately attempt to finance beyond the end of the next biennium in an odd 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 (1980). If it is desired that the funds be available at an earlier or later date it must be specified. Similarly, section 16A.28 (1980) provides that an appropriation remaining unexpended or unencumbered at the end of a fiscal year shall lapse. For that reason, 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.

**4.7(a) (cont.)**

Do not say “the sum of \$..... shall be appropriated.” An 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.

Do not say “the sum of \$..... is hereby appropriated.” “Hereby” is surplusage.

Do not say “the sum of \$..... is annually appropriated” unless a standing appropriation that would be repeated each year is consciously intended. The recipients prefer a standing appropriation, but legislative policy opposes it.

The appropriation should name the official, board, or agency that has statutory power to spend money. The legal name of the board or agency must be used. Sometimes an agency will informally adopt a name different than that used to create it in the statutes. If this occurs, then use the name in the statute.

Describe the purpose of the appropriation in a short phrase 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.”

The dollar amount should be rounded off to the nearest thousand or hundred dollars. Do not use cents.

A drafter should specifically consider the period for which the appropriation is available. If the bill has no 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 (1980), and lapse on June 30 of the next year, pursuant to section 16A.28 (1980). 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 the following June 30. This is usually not what is intended. An appropriation may be extended for the next full fiscal year by inserting after the dollar amount the phrase “shall be available until June 30, 19..”. Appropriations for construction and repair of real property are available until expended, pursuant to section 16A.28 (1980). Other appropriations should not normally “remain available until expended.”

**4.7(a)** (cont.)

Do not create an open appropriation of "the amount necessary for this purpose" if it can be avoided. This kind of provision makes 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, separate subdivisions are used for each.

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. However, legislative policy does not favor revolving accounts.

Examples of various appropriation sections, including standing and revolving account appropriations, used in bills 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 drafting. The method is discussed in section 7.1 of this manual.

**(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 manual). In view of this, a section directing that a section be "liberally interpreted" to accomplish its stated purpose, is of no value. The 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." The 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 to be followed by the courts upon the presentation of specific factual situations.

4.7 (cont.)

(c) Effective Date

(1) *For General Laws.* Minnesota Statutes, section 645.02 (1980), 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 stating when the act, or certain provisions of it, is 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. Instead, use "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, become effective in accordance with Minnesota Statutes, sections 645.02 to 645.024 (1980).

When a special law requires local approval, the law becomes effective when the requirements of Minnesota Statutes, section 645.021, subdivision 3 (1980), providing for the filing of 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 a law of general application. The correct use of local approval provisions is described in full in section 7.4 of this manual.

(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 the same time; i.e. the beginning of a fiscal year which is also the specified time for effective date of appropriations.

4.7 (cont.)

**(d) Saving or Nonsaving Clause**

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

Minnesota Statutes (1980) contains many savings provisions at least one of which should apply to every conceivable need. The use of each is discussed in section 2.6 (d)(4) of this manual.

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

There may arise instances where the intent of the proposed bill repealing or amending certain laws is to strike down pending actions or rights. If this is 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 1980, Section 645.21, [or other appropriate sections] shall not be construed to apply to section...." would be sufficient. The provision should cite only the particular section or sections of the statutory saving clauses that are relevant.

**(e) Repealers**

A 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. The repeal is contained in a separate section of the bill. The repealer is generally the last section unless an effective date section is used. The form used is:

```
Sec. 10. [REPEALER.]  
  
Minnesota Statutes 1980, 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 51.02 to 51.06." Use of the list rather than

**4.7(e)** (cont.)

an inclusive reference will ensure that no sections are repealed that are not intended to be repealed.

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. The cross-references can be found in Table IV of Minnesota Statutes.

A bill drafter should 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 section 1 are repealed" or 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 due to 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 still be found and repealed and a general repealer avoided.

The term "expire" is undefined by statute. A drafter should not insert a provision that a law "expires" on a certain date. If repeal is desired, then "repeal" should be used. The term "expire" seems to mean that a law is not repealed but is no longer effective. That result is a bad practice.

Also, the use of ghost repealers should be avoided. A ghost repealer consists of two provisions. The first provision repeals a statutory section. The second provides that the repealed statutory provision as it existed prior to repeal (its ghost) is still binding on some classification of people, places, or times. An example of a "ghost" provision is found in Minnesota Statutes, section 3.97, subdivision 6 (1980). Rather than keeping the ghost, a new section should state the law as still binding on the limited classification of people, places, and times.

**4.7(e) (cont.)**

The drafter must remain cognizant of the provisions of Minnesota Statutes, sections 645.34, 645.35, and 645.36 (1980) upon the use of repealers. The text of these sections is shown in chapter 2 of this manual. The effect of those sections, however, is that:

- (1) The repeal of an amendatory law does not revise the provisions it amended. However, repeal of an original law also repeals all subsequent amendments.
- (2) The repeal of any provision does not affect any right accrued under the former law.
- (3) The repeal of a repealer does not revise the law originally repealed.

All of these effects can be overcome but the drafter must include specifically words to do so. If the drafter does desire to overcome one of the standard repeal effectiveness provisions, the language should be inserted in the repeal section of the bill.

**(f) Instructions to the Revisor**

Some bills include a provision which instructs the Revisor to change statutory provisions meeting certain criteria in a specified way. The most common of these provisions is an instruction to change an agency's name or an official's title to a new name or title. For example, changing "workmen's compensation" to "worker's compensation." An instruction to the Revisor is used primarily to reduce the bulk of a bill necessary just to achieve a name change.

Despite the seeming convenience of an instruction to the Revisor, it is the policy of the Revisor's office to resist drafting instructional provisions into bills. This resistance is based on two factors.

First, laws should be amended by the legislature and not by someone else even with legislative direction.

Second, the Revisor's office has had continual difficulty implementing the instructions to the Revisor. In some cases a term the office is directed to change has a variety of uses, not all of which were intended to be changed. For example, a direction to change "firemen" to "firefighter" in a bill dealing with fighting fires is overbroad when it

**4.7(f) (cont.)**

is considered that “firemen” is also used elsewhere in the statutes to refer to persons who tend boilers. In other cases, the term directed to be changed will appear in other forms than just the one in the instruction. Some of these variants are plurals, possessives, and abbreviations. On some occasions it is difficult to determine whether or not the instruction intended all variants of the words to be changed or just the specific words.

On some occasions, instructions are requested which accomplish a substantive and not just a name or title change. For instance, an instruction to reduce all income tax brackets by five percent. An instruction of this type is extremely difficult to implement because of the interrelationship of statutory sections. This kind of instruction cannot be used.

An example of permitted instructions to the Revisor can be found at the end of this chapter.

**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 objective and state the full effect of the bill. Subjectivity or personal opinion plays no part in preparation of an analysis. The drafter carefully avoids the 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. An unqualified statement of 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.



**4.8 (cont.)**

An analysis of the bill previously prepared by either the author or by the staff of other agencies may be considered for any information they possess, but is not to be regarded as controlling.

The final draft of the analysis, labeled as such and noting any committee amendments considered in the analysis, is 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 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 is proofread. Effective proofreading can only be done by one person reading the drafter's original text aloud while another person follows the copy. Proofreading done alone is so slow and so subject to error as to make it worthless. In addition to proofreading, an assistant who is aware of the principles of bill drafting can find drafting errors or recommend improvement to the drafter.

Second, the bill is examined by the drafter, and, if necessary, redrafted. When drafting complex bills, it is necessary to redraft several times before the bill is ready for introduction. If time exists, the drafter shows the draft to other drafters. In particular, the advice of those familiar with the subject area or who have done preliminary research on the bill are consulted. The collective work of several persons is more likely to result in an effective draft than the work of one person working alone.

4.9 (cont.)

Third, a preliminary draft of the bill is given to the requester for examination. After an opportunity for examination, the drafter determines whether the requester's wishes have been effectively carried out. If not, the bill is redrafted before the final draft is delivered.

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 preparation of amendments.

4.10 Advisory Bills

The rules of the House of Representatives provide that any member may introduce an advisory bill. Any advisory bill that is introduced is referred to a committee. It may be considered there but no other action can be taken on it except referral for consideration to another committee. Forms for an advisory bill are available from the Chief Clerk. The form is simple and is technically intended for completion by the Representative sponsoring it. However, legislative staff are often asked to prepare the form. If asked to do so, the requestor should be accommodated.

On the form, the title is restricted to twelve words. It does not use the multiple phrases separated by semicolons as used for bills. Rather, the title is usually a single phrase or sentence describing the general content of the proposal. Following the title is a paragraph which describes in detail the operative provisions of the advisory bill. The total effect of an advisory bill can be analogized to a bill drafting request. The general information as to a legislator's intent is provided so that a drafter can actually write out the full draft.

A copy of a completed advisory bill is shown at the end of this chapter.

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## EXAMPLES — TITLES

### A typical title showing all parts

Opening boilerplate \_\_\_\_\_ A bill for an act |  
General subject \_\_\_\_\_ relating to education;| authorizing  
Specific subject \_\_\_\_\_ school districts to provide teacherages;|  
\_\_\_\_\_ proposing new law coded in Minnesota |  
New law \_\_\_\_\_ Statutes, Chapter 122;| amending Minnesota |  
Sections amended \_\_\_\_\_ Statutes 1980, Section 122.12;| repealing |  
\_\_\_\_\_ Minnesota Statutes 1980, Section 122.34, |  
Sections repealed \_\_\_\_\_ Subdivision 6. |

### General title, only one section affected:

relating to ....; amending [or  
repealing] Minnesota Statutes 1980,  
Section 12.34.

### General title, only one subdivision affected:

relating to ....; amending [or  
repealing] Minnesota Statutes 1980,  
Section 456.78, Subdivision 3.

### General title, several non-inclusive sections affected:

relating to ....; amending [or  
repealing] Minnesota Statutes 1980,  
Sections 12.34; 12.36; 12.38; and 12.40.

### General title, several inclusive sections affected:

relating to ....; amending [or  
repealing] Minnesota Statutes 1980,  
Sections 123.45 to 123.48.

### Amended since publication of statutes:

relating to ....; amending [or  
repealing] Minnesota Statutes 1980,  
Section 234.56, as amended.

### Subdivision added since the cited publication:

relating to ....; amending [or  
repealing] Minnesota Statutes 1980,  
Section 123.45, Subdivision 6, as added.

### Section amended and published in the supplement:

relating to ....; amending [or  
repealing] Minnesota Statutes 1981  
Supplement, Section 123.45.

### Amendment since publication of supplement:

relating to ....; amending [or  
repealing] Minnesota Statutes 1981  
Supplement, Section 123.45, as amended.

**EXAMPLES — TITLES (CONT.)**

**Amendment to a law not coded:**

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

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

relating to ....; 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 ....; amending Minnesota  
Statutes 1980, Section 78.91, by adding  
a subdivision.

**New law proposed:**

relating to ....; proposing new law  
coded in Minnesota Statutes,  
Chapter 540.

**New law amending an existing statutory chapter:**

relating to ....; amending Minnesota  
Statutes 1980, Chapter 540, by adding a  
section.

**New law amending an existing section:**

relating to ....; amending Minnesota  
Statutes 1980, Section 540.12, by adding  
a subdivision.

**EXAMPLE — NEW LAW (Statutory sections with subdivisions)**

```

1           A bill for an act
2           relating to public welfare; establishing a senior
3           companion program; proposing new law coded in
4           Minnesota Statutes, Chapter 256; appropriating money.
5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7           Section 1. [256.977] [SENIOR COMPANION PROGRAM.]
8           Subdivision 1. [CITATION.] Sections 1 and 2 may be cited
9           as the "Minnesota senior companion act."
10          Subd. 2. [ESTABLISHMENT.] The Minnesota board on aging
11          shall establish a senior companion program to engage the
12          services of low...
13          Subd. 3. [COMPENSATION.] Persons serving as senior
14          companions shall be compensated for no more than 20 hours...
15          Subd. 4. [GRANTS.] The Minnesota board on aging may make
16          grants-in-aid for the purchase of senior companion...
17          Subd. 5. [RULES.] The Minnesota board on aging shall
18          promulgate rules necessary to implement the provisions of...
19          Sec. 2. [APPROPRIATION.]
20          The sum of $100,000 is appropriated from the general fund
21          to the commissioner of public welfare for the use by the
22          Minnesota board on aging in implementing the senior companion
23          program created by section 1. The sum is available until June
24          30, 1983.
25          Sec. 3. [EFFECTIVE DATE.]
26          Sections 1 and 2 are...

```

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.

Note the proposed coding in section 1 and the lack of proposed coding in sections 2 and 3. This indicates the fact that the last two sections will not be printed in Minnesota Statutes.

**EXAMPLE — NEW LAW (Statutory sections without subdivisions)**

1                                   A bill for an act  
2           relating to crimes and criminals; providing for  
3           transportation of certain persons to place of arrest;  
4           proposing new law coded in Minnesota Statutes, Chapter  
5           629.  
6  
7   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
8           Section 1. [629.78] [TRANSPORTATION AFTER ARREST.]  
9           Every county or municipality which causes to be issued a  
10           -----  
11           warrant for arrest of a person pursuant to Minnesota Statutes,  
12           -----  
13           Section 628.05 or 629.41, shall cause the person, at his  
14           -----  
15           request, to be transported to the location of the arrest after a  
16           -----  
17           trial or final hearing on the matter.  
18           -----  
19           Sec. 2. [629.79] [EXCEPTIONS.]  
20           Section 1 does not apply:  
21           -----  
22           (1) to arrests made outside the state pursuant to Minnesota  
23           -----  
24           Statutes, Sections 629.01 to 629.291;  
25           -----  
26           (2) where the person is convicted or pleads guilty to any  
27           -----  
28           offense;  
29           -----  
30           (3) where the arrest is made pursuant to Minnesota  
31           -----  
32           Statutes, Section 629.61; or,  
33           -----  
34           (4) where the person has sufficient money on his person to  
35           -----  
36           return to the location of the arrest.  
37           -----

Note in section 1 that "Section" is written out but that it is abbreviated for the second and subsequent sections. Note that neither section is divided into subdivisions but the text begins with the paragraph on the first line after the headnote.

Each section is to be coded so each has proposed coding. In section 2 note the use of numbers for the clauses. Letters are not used since the text is not a complete paragraph.

In section 2 note the use of numbered clauses. Numbers and not letters are used since the elements are clauses and not paragraphs.

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

**EXAMPLE — NEW LAW (Uncoded with subdivisions)**

1 A bill for an act  
2 relating to the city of Duluth; providing for certain  
3 city tax revenues.  
4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
6 Section 1. [CITY OF DULUTH; SALES AND USE TAX.]  
7 Subdivision 1. [EXCEPTED FROM GENERAL LAW.] Minnesota  
8 Statutes, Section 477A.01, Subdivision 18, does not prohibit the  
9 city of Duluth from amending its sales and use tax ordinances so  
10 as to impose a sales or use tax at the rate of...  
11 Subd. 2. [ADDITIONAL TAX AUTHORIZED.] Notwithstanding  
12 Minnesota Statutes, Section 477A.01, Subdivision 18, or any  
13 other law, ordinance, or city charter provision to the contrary,  
14 the city of Duluth may, by ordinance, impose an additional sales  
15 tax...  
16 Sec. 2. [CITY OF DULUTH; TAX ON RECEIPTS BY HOTELS AND  
17 MOTELS.]  
18 Notwithstanding Minnesota Statutes, Section 477A.01,  
19 Subdivision 18, or any other law, or ordinance, or city charter  
20 provision to the contrary, the city of...  
21 Sec. 3. [ALLOCATION OF REVENUES.]  
22 Revenues received from the taxes authorized by section 1,  
23 subdivision 2, and section 2 shall be used to pay for activities  
24 ....  
25 Sec. 4. [EFFECTIVE DATE.]  
26 ....



**EXAMPLE — NEW LAW (Uncoded without subdivisions)**

1                                   A bill for an act  
2           relating to Independent School District No. 466;  
3           permitting the sale of certain land.  
4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
6           Section 1. [LAND SALE AUTHORIZED.]  
7           Independent School District No. 466 may sell and execute a  
8           deed of conveyance for the following described property  
9           notwithstanding its possible continued use for school purposes.  
10          Lot Four, Block Twenty, auditor's replat of the City of  
11          Dassel, excepting that portion of Lot Four described as  
12          follows: Commencing at the Northwest corner of said Lot 5, of  
13          Block 20 of auditor's replat of the City of Dassel, as a point  
14          of beginning; thence East along the North line of said Lot 5 a  
15          distance of 172 feet; thence North a distance of 32 feet; thence  
16          West parallel with the North line of said Lot 5, a distance of  
17          172 feet; thence South a distance of 32 feet to the point of  
18          beginning; also excepting the West 200.23 feet of the South  
19          130.0 feet of said Lot 4, Meeker County, Minnesota.  
20          Sec. 2. [APPLICABILITY.]  
21          On its effective date, section 1 applies to Independent  
22          School District No. 466.  
23          Sec. 3. [EFFECTIVE DATE.]  
24          Pursuant to Minnesota Statutes, Section 645.023,  
25          Subdivision 1, Clause (a), section 1 is effective without local  
26          approval on the day following final enactment.

**EXAMPLE — NEW LAW (Proposed coding and headnote)**

1	A bill for an act
2	relating to game and fish; authorizing use of portable
3	fish houses within the boundary waters canoe area;
4	proposing new law coded in Minnesota Statutes, Chapter
5	101.
6	
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA
8	Section 1. [101.425] [GAME AND FISH; BOUNDARY WATERS;
9	PORTABLE FISH HOUSES.]
10	Notwithstanding any regulation of the commissioner of
11	----- natural resources to the contrary, a person may utilize fish
12	----- houses or dark houses.... -----

The proposed code number, “[101.425],” and the headnote, “[GAME AND FISH; BOUNDARY WATERS; PORTABLE FISH HOUSES.],” will not be a part of the law. Appropriate headnote and proposed coding must be inserted by the drafter. Do not leave section or subdivision numbers blank.

**EXAMPLE — AMENDATORY BILL (Change of headnote)**

1                                   A bill for an act  
2           relating to fish; removing the authorization for the  
3           use of dark houses within the boundary waters canoe  
4           area; amending Minnesota Statutes 1980, Section  
5           101.425.  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
8           Section 1. Minnesota Statutes 1980, Section 101.425, is  
9           amended to read:  
10           101.425 [GAME AND FISH; BOUNDARY WATERS; PORTABLE FISH  
11           HOUSES.]  
12           Notwithstanding any regulation of the commissioner of  
13           natural resources to the contrary, a person may utilize fish  
14           houses ~~or dark houses~~....

In this amendatory bill, note the change in the headnote. Despite the striking of the language in the headnote, the headnote is still not actually part of the law, An addition to the headnote would be shown by underlining. Headnotes for entirely new sections or for bill sections are never underlined.

**EXAMPLE — AMENDATORY BILL (Amending a section)**

```

1               A bill for an act
2
3       relating to cemeteries; prohibiting certain activities
4       on public and private cemeteries and Indian burial
5       grounds; requiring the posting of Indian burial
6       grounds; amending Minnesota Statutes 1980, Section
          307.08.
7
8  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
9
10      Section 1. Minnesota Statutes 1980, Section 307.08, is
11      amended to read:
12
13      307.08 [DAMAGES, TO CEMETERY OR DISCHARGE OF FIREARMS;
14      PENALTY.]
15
16      Subdivision 1. Every person who shall wilfully destroy,
17      mutilate, injure, or remove any tombstone, monument, or
18      structure placed in any public or private cemetery or
19      authenticated and identified Indian burial ground, or any fence,
20      railing, or other work erected for protection or....
21
22      Subd. 2. Every authenticated and identified Indian burial
23      ground shall be posted every 75 feet around its....
          Subd. 3. (text)
          Subd. 4. (text)
          Subd. 5. (text)
          Subd. 6. (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 13. Additional subdivisions were then appended at the end and numbered appropriately.

Note the change of the headnote shown by striking and underlining.

**EXAMPLE — AMENDATORY BILL (Adding a section)**

1	A bill for an act
2	relating to public employees; providing for (etc.);
3	amending Minnesota Statutes 1980, Chapter 352E, by
4	adding a section.
5	
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. Minnesota Statutes 1980, Chapter 352E, is
8	amended by adding a section to read:
9	[352E.045] [ATTORNEY'S FEES FOR CLAIMING BENEFITS.]
10	<u>A fee for legal services that is claimed for the work of an</u>
11	<u>attorney relating to a claim made pursuant to the provisions of</u>
12	<u>Minnesota Statutes, Sections 352E.01 to 352E.05 is not...</u>
13	Sec. 2. [EFFECTIVE DATE.]
14	<u>Section 1 is effective for fees charged for services</u>
15	<u>performed by an attorney after July 31, 1979.</u>

Compare this example to the examples for new law. The form for new law is preferred.

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 manual.

In the title and section headings, note the listing of 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)**

1	A bill for an act
2	relating to taxation; providing for an exception to
3	the application of tax in certain cases of cigarettes
4	stored or used in Minnesota; amending Minnesota
5	Statutes 1980, Section 297.22, Subdivision 3.
6	
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
8	Section 1. Minnesota Statutes 1980, Section 297.22,
9	Subdivision 3, is amended to read:
10	Subd. 3. This tax shall not apply to the use or storage of
11	cigarettes in quantities of 200 or less in the possession of any
12	one consumer, provided that the cigarettes were carried into
13	this state by such consumer. -----
14	Sec. 2. [EFFECTIVE DATE.]
15	Section 1 is effective the day following final enactment. -----

Not 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 12 and 13. 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.

**EXAMPLE — AMENDATORY BILL (Adding a subdivision)**

1	A bill for an act
2	relating to state parks; prohibiting littering;
3	providing a penalty; amending Minnesota Statutes 1980,
4	Section 85.20, by adding a subdivision.
5	
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. Minnesota Statutes 1980, Section 85.20, is
8	amended by adding a subdivision to read:
9	<u>Subd. 6.</u> [STATE PARKS; LITTERING; PENALTY.] <u>A person shall</u>
10	<u>not drain, throw, or deposit upon the lands and waters within a</u>
11	<u>state park any substance that would mar the appearance, create a</u>
12	<u>stench, destroy the cleanliness or safety of the....</u>

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

The new subdivision number and headnote are 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. Again, the proposed headnote will not become part of the law.

**EXAMPLE—AMENDATORY BILL (Adding a subdivision to a section and amending a subdivision)**

1 A bill for an act

2 relating to the designer selection board; defining

3 terms; amending Minnesota Statutes 1980, Section

4 16.822, Subdivision 5, and by adding a subdivision.

5

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

7 Section 1. Minnesota Statutes 1980, Section 16.822,

8 Subdivision 5, is amended to read:

9 Subd. 5. "Designer" means an architect ~~or~~, engineer, or

10 landscape architect, or a partnership, association, or

11 corporation comprised primarily of architects ~~or~~, engineers or

12 of both architects and engineers landscape architects, or a

13 combination of them.

14 Sec. 2. Minnesota Statutes 1980, Section 16.882, is

15 amended by adding a subdivision to read:

16 Subd. 5a. "Landscape architect" means a person licensed or

17 registered to practice landscape architecture as defined in

18 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)**

1   A bill for an act  
2                   relating to public welfare; transferring certain  
3                   authority relating to county nursing homes to the  
4                   state board of health; amending Minnesota Statutes  
5                   1980, Section 144.584; repealing Minnesota Statutes  
6                   1980, Section 144.583.  
7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
9                   Section 1. Minnesota Statutes 1980, Section 144.584, is  
10 amended to read:  
11                   144.584 [STATE BOARD OF HEALTH; POWERS AND DUTIES  
12 TRANSFERRED.]  
13                   All authority granted to the commissioner of public welfare  
14 under Laws 1953, Chapter 574, relating to the licensing of  
15 county nursing homes established under the authority of Laws  
16 1951, Chapter 610, and the authority relating to the  
17 establishment by rule and regulation of minimum standards for  
18 the construction, equipment, and maintenance and operation  
19 therefor is hereby transferred to, vested in, and conferred upon  
20 the state board of health.  
21                   Sec. 2. [REPEALER.]  
22                   Minnesota Statutes 1980, Section 144.583, is repealed.  
-----

The title contains a 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. The headnote is always in brackets whether or not the provision is new or amendatory.

In section 2, note that it still has the headnote for the section even though it will not be coded. It is customary to indicate the contents of the bill's section by headnote.

**EXAMPLE — AMENDATORY BILL (Containing a session law repealer)**

1	A bill for an act
2	relating to the city of Duluth; reducing the period of
3	service required for firemen's service pensions and
4	survivor benefits; amending Laws 1965, Chapter 179,
5	Section 1; repealing Laws 1955, Chapter 188, Section 8.
6	
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
8	Section 1. Laws 1965, Chapter 179, Section 1, is amended
9	to read:
10	Section 1. [DULUTH, CITY OF; FIREMEN'S RELIEF
11	ASSOCIATION.]
12	A member of the firemen's relief association in the city of
13	Duluth who has completed a period, or periods of service on the
14	fire department equal to 20 18 years or....
15	Sec. 2. [REPEALER.]
16	Laws 1955, Chapter 188, Section 8, is repealed.

**EXAMPLE — BILL FOR NEW LAW WITH REPEAL**

1                                   A bill for an act

2           relating to public welfare; transferring authority

3           relating to county nursing homes to the state board of

4           health; proposing new law coded in Minnesota Statutes,

5           Chapter 144; repealing Minnesota Statutes 1980,

6           Section 144.583.

7

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

9           Section 1. [144.584] [STATE BOARD OF HEALTH; POWERS AND

10          DUTIES TRANSFERRED.]

11           All authority granted to the commissioner of public welfare

12          under Laws 1953, Chapter 574, relating to the licensing of

13          county nursing homes established under the authority of Laws

14          1951, Chapter 610, and the authority relating to the

15          establishment by rule and regulation of minimum standards for

16          the construction, equipment, maintenance and operation therefor

17          is hereby transferred to, vested in, and conferred upon the

18          state board of health.

19           Sec. 2. [REPEALER.]

20           Minnesota Statutes 1980, 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.

The repeal is contained in a separate section.

**EXAMPLE — AMENDATORY BILL (Amending the Supplement to Minnesota Statutes)**

1	A bill for an act
2	relating to certain counties; requiring the filing of
3	certain surveys with ....; amending Minnesota Statutes
4	1981 Supplement, Section 389.08.
5	
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. Minnesota Statutes 1981 Supplement, Section
8	389.08, is amended to read:
9	389.08 [COUNTY SURVEYORS; FILING OF SURVEYS IN CERTAIN
10	COUNTIES.]
11	In any county in which <del>the office of</del> there is a county
12	surveyor <del>is a full time position</del> and the surveyor <del>has</del> maintains
13	an office on a full time basis in a building....

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

1	A bill for an act
2	relating to crimes and criminals; exempting guards
3	from pistol permit requirements when on duty; amending
4	Minnesota Statutes 1981 Supplement, Section 624.714,
5	by adding a subdivision.
6	
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
8	Section 1. Minnesota Statutes 1981 Supplement, Section
9	624.714, is amended by adding a subdivision to read:
10	Subd. 13. [EXEMPTIONS; PRISON GUARDS.] A permit to carry a
11	pistol is not required of a guard at a state adult correctional
12	institution when on guard duty or otherwise engaged in an
13	assigned duty.

**EXAMPLE — AMENDATORY BILL (Amending Session Laws)**

1	A bill for an act
2	relating to the city of Duluth; liquor license for the
3	arena-auditorium complex; amending Laws 1967, Chapter
4	406, Section 1, Subdivision 1.
5	
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. Laws 1967, Chapter 406, Section 1, Subdivision
8	1, is amended to read:
9	Section 1. [DULUTH; ARENA-AUDITORIUM COMPLEX LIQUOR
10	LICENSE.]
11	Subdivision 1. In addition to the licenses now authorized
12	by law, and notwithstanding any provision of law to the contrary
13	contained in the charter or ordinances of such city, or statutes
14	applicable to such city, the city of Duluth is authorized to
15	issue an "on sale" liquor license for the premises known and
16	used as the Duluth arena-auditorium complex. The fee for such
17	license shall be....
18	Sec. 2. [EFFECTIVE DATE.]
19	Section 1 is....

The effective date provision has a headnote. All bill sections have headnotes. The section does not have proposed coding because the text will not be placed in the statutes.

**EXAMPLE — AMENDATORY BILL (Amending Session Laws as amended)**

1                                   A bill for an act  
2           relating to the city of Mound; firemen's service  
3           pensions; amending Laws 1973, Chapter 175, Section 1,  
4           as amended.  
5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
7           Section 1. Laws 1973, Chapter 175, Section 1, as amended  
8           by Laws 1975, Chapter 117, Section 1, is amended to read:  
9           Section 1. [MOUND, CITY OF; VOLUNTEER FIREMEN'S RELIEF  
10          ASSOCIATION PENSIONS.]  
11          Notwithstanding any provision to the contrary of Minnesota  
12          Statutes, Section 69.06, **after the effective date of this act**  
13          the Mound volunteer fire department relief association shall  
14          pay to ~~any~~ retired firemen and newly retiring firemen qualifying  
15          with 20 years of service and having attained the age of 50, a  
16          monthly annuity not to exceed \$120 per month. ~~Payments may be~~  
17          made retroactive to January 1, 1975.  
18          -----  
18          Sec. 2. [EFFECTIVE DATE.]  
19          Section 1 is....  
                -----

Section 2 has a headnote, as do all sections, but does not have proposed coding since effective date provisions are not codified.

**EXAMPLE — AMENDATORY BILL (Amending Minnesota Statutes, Supplement and Laws)**

1   A bill for an act

2           relating to municipalities; clarifying (etc.);

3           amending Minnesota Statutes 1980, Section 471.616,

4           Subdivision 1; Minnesota Statutes 1981 Supplement,

5           Section 471.561 and Laws 1980, Chapter 151, Section 1.

6

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

8           Section 1. Minnesota Statutes 1981 Supplement, Section

9   471.561, is amended to read:

10           471.561 [COUNTIES, CITIES AND, SCHOOL DISTRICTS AND OTHER

11   AGENCIES; INVESTMENT OF FUNDS.]

12           Subdivision 1. In addition to other investments authorized

13   by law, a city, county ~~or~~, school district, or an agency or

14   instrumentality thereof, may....

15           Sec. 2. Minnesota Statutes 1980, Section 471.616,

16   Subdivision 1, is amended to read:

17           Subdivision 1. [BIDDING REQUIRED.] No governmental

18   subdivision, ~~political subdivision~~, or any other body....

19           Sec. 3. Laws 1980, Chapter 151, Section 1, is amended to

20   read:

21           Section 1. [MAPLEWOOD, CITY OF; PARAMEDIC SERVICE; TAX

22   LEVY.]

23           Notwithstanding the provisions of Minnesota Statutes 1974,

24   Chapter 275 or any other law to the contrary, the city of

25   Maplewood is hereby authorized to collect in taxes payable in

26   1981 the sum of ~~\$100,000~~ \$250,000 in excess of the tax levy

27   limitation, without penalty, for the purpose of financing the

28   paramedic program provided for in Laws 1975, Chapter 426,

29   Section 4.

30           Sec. 4. [EFFECTIVE DATE.]

31           Sections 1 to 3 are....



**EXAMPLE — REPEALS (Only repealers, no substantive sections)**

1                                   A bill for an act  
2           relating to . . . ; repealing Laws 1923, Chapter 77,  
3           Section 10, as amended; and Laws 1969, Chapter 838,  
4           Sections 1 to 6, as amended.  
5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
7           Section 1. [REPEALER.]  
8           Laws 1923, Chapter 77, Section 10, as amended by Laws 1955,  
9           -----  
10          Chapter 581, Laws 1959, Chapter 551, Laws 1969, Chapter 799, and  
11          -----  
12          Laws 1974, Chapter 322, Section 18; and Laws 1969, Chapter 838,  
13          -----  
14          Sections 1 to 6, as amended by Laws 1974, Chapter 322, Sections  
15          -----  
16          22 to 24, are repealed.  
17          -----

**EXAMPLE — REPEAL (Subdivision)**

1                                   A bill for an act  
2           relating to game and fish; ....; repealing Minnesota  
3           Statutes 1980, Section 98.50, Subdivision 3.  
4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
6           Section 1. [REPEALER.]  
7           Minnesota Statutes 1980, Section 98.50, Subdivision 3, is  
8           -----  
          repealed.  
          -----

**EXAMPLE — REPEAL (Section)**

1                                   A bill for an act  
2           relating to ....; repealing Minnesota Statutes 1980,  
3           Section 138.04, as amended.  
4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
6           Section 1. [REPEALER.]  
7           Minnesota Statutes 1980, Section 138.04, as amended by Laws  
8           -----  
          1981, Chapter 14, Section 4, is repealed.  
          -----

**EXAMPLE — REPEAL (Chapter)**

1                                   A bill for an act  
2           relating to ....; repealing Laws 1973, Chapter 713.  
3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
5           Section 1. [REPEALER.]  
6           Laws 1973, Chapter 713, is repealed.  
          -----

**EXAMPLE — BILL CONTAINING LAND DESCRIPTION**

1                                   A bill for an act  
2           relating to Independent School District No. 624 and  
3           Independent School District No. 12; providing for the  
4           exchange of territory between the districts.  
5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
7           Section 1. [LAND EXCHANGE AUTHORIZED.]  
8           The following described tracts of land now situated within  
9           -----  
9           Independent School District No. 624 are....  
10          -----  
10           The Northwest one-quarter, Section 25, Township 31, Range  
11          -----  
11          22 except that portion of the Southeast one-quarter....;  
12          -----  
12           The East one-half of the Northeast one-quarter of Section  
13          -----  
13          26, Township 31....  
14          -----  
14           Sec. 2. (Insert text).  
15           Sec. 3. (Insert text).

## EXAMPLE — CONSTITUTIONAL AMENDMENT TO MINNESOTA CONSTITUTION

1	A bill for an act
2	proposing an amendment to the Minnesota Constitution,
3	Article XIII, Section 3; providing for two student
4	members of the board of regents of the University of
5	Minnesota.
6	
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
8	Section 1. [CONSTITUTIONAL AMENDMENT PROPOSED.]
9	The following amendment to the Minnesota Constitution,
10	Article XIII, Section 3, is proposed to the people. If the
11	amendment is adopted the section will read as follows:
12	Sec. 3. All the rights, immunities, franchises and
13	endowments heretofore granted or conferred upon the University
14	of Minnesota are perpetuated unto the university. Two regents
15	of the university shall be selected in addition to those
16	otherwise provided. They shall be students at the university at
17	the time of their election, serve for two years, and be elected
18	in the same manner and have the same power as other regents.
19	Sec. 2. [SUBMISSION TO VOTERS.]
20	The proposed amendment shall be submitted to the people at
21	the 1976 general election. The question submitted shall be:
22	"Shall the Minnesota Constitution be amended to add two
23	student members to the University of Minnesota board of regents?"
24	Yes .....
25	No ....."
26	Election procedures shall be as provided by law.

Note that the constitutional section does not contain the headnote shown in the edition printed in Minnesota Statutes. The absence is because the headnotes were editorially added and are not a part of the constitution.

**EXAMPLE — BILL ANALYSIS**

1	BILL ANALYSIS -----
2	This special law authorizes the county board of
3	commissioners of either Marshall or Kittson counties to impose
4	an occupation tax upon the removal of gravel from any gravel pit
5	located in those counties. The amount of the tax is determined
6	by each county board but cannot exceed ten cents per cubic yard
7	of gravel removed.
8	Payment of the tax is enforced by requiring persons
9	engaging in the gravel supply business to file quarterly reports
10	with the county auditor. If a report is not filed or the report
11	is erroneous the auditor independently determines the tax due.
12	The persons assessed such a tax retain the right to object and
13	appeal the finding of the tax due.
14	Funds derived from occupation taxes may only be used to
15	repair roads used by gravel trucks and for the restoration of
16	abandoned gravel pits on county or state lands.
17	The state of Minnesota and its contractors are exempt from
18	the payment of occupation taxes for gravel used in the
19	construction of trunk highways.
20	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 314 to 316.

## EXAMPLES — APPROPRIATION PROVISIONS

### 1. Regular Biennial (odd-numbered year session)

Sec. 10. [APPROPRIATION.]

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. The sum is available until June  
-----  
30, 1983.  
-----

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

Same as for an odd-numbered year except that the drafter should ensure that the date of 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. [APPROPRIATION.]

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. The sum is available until expended.  
-----

### 4. Annual Standing

Sec. 6. [APPROPRIATION.]

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. Special Revenue Account

Sec. 16. [123.45] [APPROPRIATION; SPECIAL REVENUE  
ACCOUNT.]

All fees and penalties collected by the board pursuant to  
-----  
sections 1 to 15 shall be deposited in a special revenue  
-----  
bookkeeping account of the treasury. Funds deposited are  
-----  
appropriated to the board for the administration of sections 1  
-----  
to 15.  
-----

**EXAMPLES — APPROPRIATION PROVISIONS (Cont.)**

A special revenue account is used for the deposit of funds received by an agency from the public and which then are appropriated for general operations of an agency or a limited part of an agency. *See:* Minnesota Statutes, section 16A.55, subdivision 3 (1980).

**6. Agency Account**

Sec. 17. [123.45] [APPROPRIATION; AGENCY ACCOUNT.]

All funds received by the commissioner from businesses for  
-----  
the payment of debts to others when business is terminated  
-----  
pursuant to sections 1 to 16, shall be deposited in an agency  
-----  
bookkeeping account of the treasury. Funds deposited are  
-----  
appropriated to the commissioner for the payment of the  
-----  
businesses debts pursuant to sections 1 to 16.  
-----

An agency account is used only when the state is acting as a legal agent for others. *See:* Minnesota Statutes, section 16A.55, subdivision 5 (1980).

**7. Revolving account**

Sec. 18. [123.45] [APPROPRIATION; REVOLVING ACCOUNT.]

All revenue received by the department from the fees paid  
-----  
by other agencies of the state government for its purchases of  
-----  
goods or services pursuant to sections 1 to 17, shall be  
-----  
deposited in a revolving account of the treasury. Funds  
-----  
deposited are appropriated to the department for the payment of  
-----  
expenses connected with its manufacturing and sale of the goods  
-----  
or furnishing of services pursuant to sections 1 to 17.  
-----

A revolving account is used for intra-government transactions connected with the purchase of goods or services by one agency from another. *See:* Minnesota Statutes, section 16A.55, subdivision 5 (1980).

**8. Anti-lapse Provision (added to appropriation in place of a sentence providing for a reversion date)**

-----  
This appropriation is available until expended.  
-----

**EXAMPLES — APPROPRIATION PROVISIONS (Cont.)**

**9. Multiple Appropriations**

Sec. 9. [APPROPRIATIONS.]

Subdivision 1. [GENERALLY.] 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. The sums are available until June 30, 19.. .

Subd. 2. [AGENCY.] For ....., as provided in section .... \$.....

Subd. 3. [DEPARTMENT.] For ....., as provided in section .... \$.....

This appropriation is from the trunk highway fund.

Subd. 4. [DEPARTMENT.] For ....., as provided in section .... \$.....



**EXAMPLE — REPEALER (For a bill containing substantive sections)**

Sec. 42. [REPEALER.]

Minnesota Statutes 1980, 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, 1981.

### 2 Multiple Effective Dates

Sec. 10. [EFFECTIVE DATES.]

Sections 1, 3, 4, 5, and 9 are effective the day following  
-----  
final enactment. Section 2 is effective January 1, 1982.

Sections 6 and 7 would be effective the day following final enactment since no effective date is stated 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 and payable  
-----  
in 1981.

### 5. Special Laws

See discussion in section 7.4 and forms in chapter 7 of this manual.

### 6. Retroactive Effective Date

Sec. 10. [EFFECTIVE DATE.]

Upon the day after final enactment of sections 1 to 8,  
-----  
those sections are effective retroactive to July 1, 1978.

**EXAMPLE — INSTRUCTION TO REVISOR**

1	Sec. 14. [INSTRUCTION TO REVISOR.]
2	The revisor of statutes is directed to change the words
3	----- "workman's compensation" wherever they appear in Minnesota
4	----- Statutes 1980 to "worker's compensation" in Minnesota Statutes
5	----- 1982 and subsequent editions of the statutes. -----

Any instructions to the Revisor should be restricted to name changes. A check should be made as to whether there are any variants on the change which are to be included in the change. In the above example, for instance, it should be determined that "workmen's compensation," and "compensation of of injured workmen" either do not occur in the statutes or are not to be changed.

Unless there are serious reasons for a variance from the policy, name changes should only be directed in the next full publication of Minnesota Statutes and not in any intervening Supplement.

**EXAMPLE — ADVISORY BILL**

State of Minnesota  
House of Representatives  
72nd Session (1981-1982)  
**HOUSE ADVISORY NO.** \_\_\_\_\_

Introduced by \_\_\_\_\_  
\_\_\_\_\_


Date introduced \_\_\_\_\_

Referred to Committee on \_\_\_\_\_

Title "A PROPOSAL ~~FOR~~ TO (Title not to exceed 12 additional words) equalize the  
compensation of teachers at state institutions of higher education.  
\_\_\_\_\_"

The public employment labor relations act of 1971 (Minnesota Statutes 1980, Sections 179.61 to 179.76), should be amended to provide that contracts negotiated with the state must treat identically the teachers at the University of Minnesota, the various state colleges, and the various community colleges. Wages and fringe benefits for teachers at the three types of institutions should be substantially the same. If any of the three groups receive better wages or benefits, then the other groups' wages and benefits should be automatically increased to be equal.

**INSTRUCTIONS:** Type body of Advisory on this form using additional blank sheets if necessary. The language can be informal and the style need not conform to the rules governing House Bills. Double space body. "Date introduced" and "Referred to Committee on" will be completed by House Desk. Deliver original and three copies to Speaker's Office or House Desk. Author should retain last copy.

Form 137 



## RESOLUTIONS AND MOTIONS

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

### 5.1 Generally

In addition to bills, resolutions and motions are available as vehicles by which the legislators can express policy. Unlike bills, resolutions and motions do not result in law. Rather, they express policy in a nonbinding way. Resolutions also differ from motions but the difference can be only that a resolution is written. However, complex motions may be reduced to writing.

### 5.2 General Format of Resolutions

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.

Resolutions are somewhat similar to bills in style and form. The drafting rules and practice for resolutions follows the rules and practice 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 six title elements for bill titles. 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

**5.2(a) (cont.)**

enact law, it never contains a list of sections amended or repealed. The opening boilerplate is either: "A senate (house) resolution;" "A house (senate) concurrent resolution;" "A resolution;" or, "A joint resolution."

**(b) 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 disappeared on bills. However, the preamble of a resolution may often be longer than the body of a resolution itself.

Typically, a preamble will consist of from one or more 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 certain identifiably repetitive topics. 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 those situations, obvious boilerplate language may be taken as insulting by the person who is the subject of the resolution.

The use of a preamble should be omitted for resolutions relating solely to the internal business of either or both houses of the Legislature. They are clearly surplusage for business purposes. However, most resolutions relate to congratulatory or other matters for which the formality of a preamble is appropriate.

5.2 (cont.)

**(c) Resolving Clause**

The constitutional enacting clause is not utilized for resolutions. Rather, a resolving clause is used. The exact wording of this first, or primary, resolving clause 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,...." 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 are called secondary resolving clauses and each begins "BE IT FURTHER RESOLVED...."

**(d) Subject Provisions**

The subject 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.

Each subject provision is usually stated in a single sentence beginning with the initial, or, when appropriate, secondary resolving clause. Each sentence is also usually a paragraph. That is, the first line is indented and the next provision begins on a new indented line.

If the resolution deals with the internal business of either or both houses, each subject provision is a separate numbered paragraph after the resolving clause. Secondary resolving clauses are not used.

**(e) Miscellaneous Provisions**

Many resolutions direct the Secretary of the Senate or Chief Clerk of the House of Representatives to "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.



5.2(e) (cont.)

For examples of both see the end of this chapter.

### 5.3 Types of Resolutions

There are four distinct types of resolutions. They are: Simple Resolutions, Concurrent Resolutions, Memorial Resolutions and Joint Resolutions. The boundaries between the various types 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: "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." Minn. Const. art. IV, sec. 24.

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 that 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, the

**5.3 (cont.)**

concurrence is not required. An example of the latter is a concurrent resolution commending some person for winning a national award. Either house might have passed such a resolution on its own. The fact that they used a concurrent resolution was solely a matter of preference.

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 (1965). 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 has indicated approval of them. The presentation has been by special arrangement, such as giving the Governor an opportunity to join in the congratulations. Approval, or disapproval, of the concurrent resolution has no legal affect.

The lowest echelon of resolution is the simple resolution. It neither requires nor does it receive the approval of both houses. It is never sent to the Governor for approval or 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 of a joint session is not "concurrence of the two houses" and a joint resolution is never sent to the Governor for concurrence or veto.

Typically, all resolutions contain a provision requiring an officer, (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 Resolution**

A simple resolution is proposed by a senator or representative and considered only by that house. The rules of procedure are relaxed. For

**5.3(a)** (cont.)

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) A matter pertaining to the internal operation of either the House or the Senate. For example: employment of personnel, payment of expenses, or mileage.

(2) An expression of concern, sense, or opinion of the body relating to the action of some state agency or state department or some private situation which the body desires to affect.

(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 Resolution**

A concurrent resolution is proposed by a senator or representative and is considered by both the Senate and House of Representatives. As for a simple resolution, the procedure it follows in the Senate and House is relaxed.

The following are the usual occasions for the use of concurrent resolutions.

(1) A matter pertaining to the joint operation of the two houses. For example: the scheduling of a joint session, the setting of adjournment, or authorizing adjournment for more than three days.

(2) A joint expression of concern, sense, or opinion of the two bodies relating to the action of some state agency or state department or some private situation which the bodies desire to affect.

**5.3(b) (cont.)**

(3) Authorizing the establishment of a special joint study committee on a specific topic.

(4) 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.

(5) Proclaiming a special observance day.

Typical examples of each are furnished at the end of this chapter.

**(c) Memorial Resolution**

Although a memorial resolution is prepared in a form similar to that of a concurrent resolution, it is considered and adopted by both houses. The process of consideration is 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.

(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) The ratification of 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 and a form is provided in chapter 4.

Copies of each type of memorial resolution are found at the end of this chapter.

**(d) Joint Resolution**

A joint resolution is proposed by either a senator or representative

**5.3(d)** (cont.)

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. A joint resolution is only used for business other than constitutionally required business.

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.

An example of a joint resolution is furnished at the end of this chapter.

**5.4 Motions**

In a technical sense, any proposal for decision by a member while the body of which he or she is a member is in session, is a motion. For example, a member may move that a report be adopted, an amendment be adopted, a bill be given its third reading, and a myriad of other possibilities. Most motions are oral. Since it is the intent of this manual to detail drafting method and not parliamentary procedure, the many oral motions will not be discussed here. Rather, only those few identifiable motions that, because of their length or complexity, are reduced to writing are discussed here.

The basic form of a written motion is simple. In the Senate it would be "Mr. Jones moves that...." In the House it would be "Smith moves that...." The remainder would be a statement of what is moved using precise terms and an economical number of words.

The rules of each house are adopted by use of a motion from the floor. Because of their length, they must be written out. It is usually customary that the motion be to adopt the rules of the last legislature with certain exceptions. The exceptions are then shown by striking and

**5.4 (cont.)**

underlining. The total effect is that the motion takes on the appearance of an amendatory bill or a concurrent resolution amending the joint rules. Each paragraph showing a change is sequentially numbered.

This same format should be used on any long or complex motion. An example to use is found at the end of this chapter.

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Joint Resolution (Eulogizing a person's life).....	184
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**EXAMPLE — SIMPLE RESOLUTION (Internal operation of the Senate)**

1	A senate resolution
2	relating to the adoption of temporary Rules.
3	
4	BE IT RESOLVED by the Senate of the State of Minnesota:
5	(1) Except as stated by paragraphs (2) to (14), the
6	permanent Rules of the Senate for the .... session are adopted
7	as the temporary Rules of the .... session. These temporary
8	Rules are effective until the adoption of permanent Rules by a
9	majority vote of the Senate.
10	(2) Senate Rule 21 is amended to read:
11	.....

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 (Internal operation of the House)**

1                                   A house resolution  
2            providing payment of salary to the widow of a deceased  
3            member of the Legislature.  
4  
5            WHEREAS, Representative ..... died while being a  
6            member of the House of Representatives of the State of Minnesota  
7            and it is necessary that his business with the House and  
8            constituents be concluded; and,  
9            WHEREAS, his widow desires to direct the conclusion of his  
10           business; NOW, THEREFORE,  
11           BE IT RESOLVED by the House of Representatives of the State  
12           of Minnesota that compensation in an amount equal to the  
13           compensation that would have been paid to former Representative  
14           ..... be paid to his widow for the services of concluding  
15           his business with the House and for his constituents.  
16           BE IT FURTHER RESOLVED that the Chief Clerk of the House is  
17           directed to furnish clerical assistance to Mrs. .... as  
18           shall be necessary to properly conclude Representative  
19           .....'s business with the House of Representatives.

While this resolution ostensibly deals with the internal business of the House, its effect is really in the nature of external business of a ceremonial nature. For that reason the abbreviated "business" format is not used.



**EXAMPLE — SIMPLE RESOLUTION (Internal operation of the House, Cont.)**

31           (5) Each member of the House shall certify in writing to  
32 the Chief Clerk, prior to the issuance of the first of such  
33 warrants for living expenses, whether or not he has moved from  
34 his usual place of lodging.

While this is clearly internal business, a preamble is here used to cite the authority for the action taken in the resolution.

**EXAMPLE — SIMPLE RESOLUTION (Internal operation of the House)**

1                                   A house resolution  
2           relating to compensating members of the House of  
3           Representatives and members-elect who attended  
4           freshman orientation.

5

6           BE IT RESOLVED by the House of Representatives of the State  
7           of Minnesota that those members of the House of Representatives  
8           and members-elect who attended the freshman orientation programs  
9           held in preparation for the 72nd Legislature shall be reimbursed  
10          in the same manner and in the same amount as reimbursement is  
11          made to members who attend interim meetings of legislative  
12          committees.

**EXAMPLE — SIMPLE RESOLUTION (Internal operation of the House)**

1	A house resolution
2	relating to the election of ..... to the
3	House of Representatives.
4	
5	BE IT RESOLVED by the House of Representatives of the State
6	of Minnesota:
7	(1) ..... was not legally elected and is not
8	entitled to retain his seat as a Representative of the .....
9	Legislative District, ..... County, in the state House of
10	Representatives, because he violated Minnesota Statutes, Section
11	210A.04, and this violation was deliberate, serious, and
12	material.
13	(2) House seat .... is vacant and that vacancy is certified
14	to his excellency, the Governor of the State of Minnesota, so
15	that he may issue a writ of election, as provided by law, to
16	fill the vacancy.



**EXAMPLE — SIMPLE RESOLUTION (Congratulations to an athletic team, Cont.)**

30           WHEREAS, ..... High School's players and fans have  
31 exhibited outstanding sportsmanship, skill, and desire  
32 throughout the season; NOW, THEREFORE,  
33           BE IT RESOLVED by the Senate of the State of Minnesota that  
34 congratulations are extended to the ..... of ..... High  
35 School on the accomplishments, skill, and efforts of their  
36 basketball team and to ....., the team's coach, and to the  
37 team's fans.  
38           BE IT FURTHER RESOLVED that the Secretary of the Senate is  
1 directed to enroll a copy of this resolution, to be  
2 authenticated by his signature and that of the President of the  
3 Senate, and that it be presented to the principal of .....  
4 High School.





**EXAMPLE — SIMPLE RESOLUTION (Nonathletic team congratulations)**

1                                   A senate resolution

2           congratulating ..... High School on winning

3           the Minnesota State High School Debate Tournament

4           Championship.

5

6           WHEREAS, on February .... and ....., 1981, .....

7           High School participated in the State High School Debate

8           Tournament against ..... other schools and teams from throughout

9           the state; and,

10          WHEREAS, ..... High School won the tournament and

11          the State High School Debate Championship; and,

12          WHEREAS, debate is a highly competitive event requiring

13          long hours of research, practice, and preparation; and,

14          WHEREAS, high intellectual ability, forensic skill, and

15          maturity are required to win debate competition; NOW, THEREFORE,

16          BE IT RESOLVED by the Senate of the State of Minnesota that

17          ..... High School, and ..... and .....,

18          the team that won the championship, and ....., their

19          coach, are congratulated upon their victory.

20          BE IT FURTHER RESOLVED that the Secretary of the Senate is

21          directed to prepare an enrolled copy of this resolution, to be

22          authenticated by his signature and that of the President of the

23          Senate, and to transmit it to the principal of .....

24          High School.

**EXAMPLE — SIMPLE RESOLUTION (Congratulations for a personal honor)**

1                                    A senate resolution

2

3                    congratulating ..... for receiving the award

4                    of being designated one of America's Ten Outstanding

5                    Young Men for 1980.

6

7                    WHEREAS, ..... of ....., Minnesota, has

8                    invented and developed numerous products for persons afflicted

9                    with cardiac and renal problems; and,

10                    WHEREAS, his inventions have led to longer, safer, and more

11                    productive lives of persons with cardiac and renal problems and

12                    simplified the job of physicians, nurses and technicians; and,

13                    WHEREAS, the manufacture and distribution of the products

14                    invented by ..... as well as the development of new

15                    products have provided employment for many Minnesotans; and,

16                    WHEREAS, ..... has also given unselfishly of

17                    his time to the programs and youth activities of the Young Men's

18                    Christian Association, the Parent Teacher Association, the

19                    Tri-Comm Homeowners Association and the United States Power

20                    Squadron; and,

21                    WHEREAS, despite the heavy demands of work and community

22                    activities, he maintains a strong family life including frequent

23                    boating and fishing trips with his children; and,

24                    WHEREAS, in recognition of his life and work,

25                    ..... has been selected as one of America's Ten

26                    Outstanding Young Men for 1980 by the United States Jaycees;

27                    NOW, THEREFORE,

**EXAMPLE — SIMPLE RESOLUTION (Congratulations for a personal honor, Cont.)**

28           BE IT RESOLVED by the Senate of the State of Minnesota that  
29 ..... is congratulated for not only his award as one  
30 of America's Ten Outstanding Young Men for 1980 from the United  
31 States Jaycees, but also for his work and achievements. It is  
32 hoped that he may indefinitely continue his productive work to  
33 help his fellowman.

34           BE IT FURTHER RESOLVED that the Secretary of the Senate is  
35 directed to prepare an enrolled copy of this resolution, to be  
36 authenticated by his signature and that of the President of the  
37 Senate, and that it be presented to .....

**EXAMPLE — SIMPLE RESOLUTION (Congratulations for state honor)**

1                                  A senate resolution  
2            congratulating ..... for winning  
3            the honor of being named Minnesota Teacher of the Year.  
4  
5            WHEREAS, ..... of the city of .....  
6            has been selected by the Minnesota Education Association as  
7            Minnesota Teacher of the Year; and,  
8            WHEREAS, ..... is one of four teachers in  
9            final consideration to be chosen National Teacher of the Year;  
10          and,  
11          WHEREAS, ..... 's contribution to her  
12          students and her profession have earned the respect and  
13          gratitude of the people of Minnesota; NOW, THEREFORE,  
14          BE IT RESOLVED by the Senate of the State of Minnesota that  
15          its congratulations are extended to ..... for  
16          .....  
17          BE IT FURTHER RESOLVED that the Secretary of the Senate  
18          enroll a copy of this resolution, authenticated by his signature  
19          and that of the President of the Senate, and it be presented to  
20          .....

**EXAMPLE — SIMPLE RESOLUTION (Proclaiming a special observance day)**

1                   A house resolution  
2       proclaiming Sunday, ..... as ..... Day in  
3       the State of Minnesota.  
4  
5       WHEREAS, the Congress of the United States, in an effort to  
6       raise awareness of the present and future potential of .....  
7       ....., has proclaimed Sunday, .....  
8       as ..... Day; and,  
9       WHEREAS, the policy of the State of Minnesota is consistent  
10      with the goal of the Congress of the United States; NOW,  
11      THEREFORE,  
12      BE IT RESOLVED by the House of Representatives of the State  
13      of Minnesota that Sunday, .... .. is proclaimed to be  
14      ..... Day. All citizens and residents of Minnesota are  
15      encouraged to participate and support all state and private  
16      agencies in ..... Day activities.  
17      BE IT FURTHER RESOLVED that a copy of this resolution shall  
18      be enrolled by the Chief Clerk of the House of Representatives,  
19      to be authenticated by his signature and that of the Speaker,  
20      and to transmit it to ..... .

**EXAMPLE — SIMPLE RESOLUTION (Expression of  
condolence)**

1	A house resolution
2	expressing condolences to the family of the late
3	Senator .....
4	
5	WHEREAS, the House of Representatives has been informed of
6	the death of the Honorable ....., Senator, District ...,
7	State of Minnesota; NOW, THEREFORE,
8	BE IT RESOLVED that the House of Representatives in session
9	assembled this .... day of ....., 1981, does hereby express to
10	the family of ..... its appreciation for his leadership
11	and dedication to the welfare of Minnesotans and extends its
12	heartfelt sympathy in their bereavement.
13	BE IT FURTHER RESOLVED that a committee of ten members of
14	the House shall be appointed to represent the House of
15	Representatives at the funeral of .....

**EXAMPLE — SIMPLE RESOLUTION (Eulogizing a person's life)**

1	A house resolution
2	eulogizing ..... and commemorating the
3	exemplary nature of his life and work.
4	
5	WHEREAS, ..... was born on his father's farm in
6	Havana Township, Steele County, Minnesota, on August 6, 1891;
7	and,
8	WHEREAS, ..... attended the country schools in
9	Steele County, graduated from Owatonna High School in 1908, and
10	with his father and brother operated the family farm for many
11	years; and,
12	WHEREAS, ..... was elected to the House of
13	Representatives of the State of Minnesota and served there
14	continuously from 1935 until he chose not to stand for
15	reelection in 1968; and,
16	WHEREAS, during his seventeen terms in the House of
17	Representatives he served eight terms on the tax committee
18	including once as its chairman; five terms on the education
19	committee including twice as its chairman; nine terms as a
20	member of the civil administration committee including four
21	times as its chairman; three terms on the markets and marketing
22	committee including once as its chairman; twelve terms on the
23	insurance committee; seven terms as a member of the highways
24	committee; six terms as a member of the rules committee; three
25	terms as a member of the employee's compensation committee; five
26	terms as a member of the appropriations committee; and for a
27	single term at various times of his career as a member of
28	fourteen other committees; and,

**EXAMPLE — SIMPLE RESOLUTION (Eulogizing a person's life, Cont.)**

29           WHEREAS, from 1949 through 1953, ..... was elected  
30 to and served as Speaker of the House of Representatives; and,  
31           WHEREAS, ..... was principally responsible for the  
32 1967 tax reform bill which provided for the state sales tax;  
33 and,  
34           WHEREAS, he was the principal author of many other laws  
35 which benefited the people of the State of Minnesota and of  
36 Steele County; and,  
37           WHEREAS, after retirement from the Legislature, he  
1 continued to work for the betterment of the people of the State  
2 of Minnesota; and,  
3           WHEREAS, ..... died on April 5, 1979; NOW,  
4 THEREFORE,  
5           BE IT RESOLVED by the House of Representatives of the State  
6 of Minnesota:  
7           (1) It commends to the people of the State of Minnesota the  
8 record of ..... as a life, work, and spirit worth  
9 emulation.  
10           (2) It extends its condolences to his wife, ....., to his  
11 son and daughter, to his godson, to his sister and two brothers,  
12 and to all the people of Steele County who knew him.  
13           (3) The Chief Clerk of the House of Representatives is  
14 directed to prepare an enrolled copy of this resolution,  
15 authenticated by his signature and that of the Speaker, and to  
16 present it to .....



**EXAMPLE — CONCURRENT RESOLUTION (Establishing a study commission)**

1                   A senate concurrent resolution  
2           establishing a commission on .....  
3  
4           WHEREAS, the Legislature is concerned about .....  
5 .....; NOW, THEREFORE,  
6           BE IT RESOLVED by the Senate of the State of Minnesota, the  
7 House of Representatives concurring:  
8           (1) A commission on ..... is established. The  
9 commission shall be composed of .....  
10 .....  
11 The members shall be appointed by.....  
12           (2) The commission report to the Legislature on its first  
13 day in session in 1981 recommendations on:  
14           (a) .....  
15           (b) .....  
16           (c) .....  
17           (d) .....  
18           (3) The expenses of the commission shall be paid from  
19 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. This type of resolution can be considered internal business and the preamble omitted. Here it was inserted, because it can serve to give direction to the study committee.

**EXAMPLE — CONCURRENT RESOLUTION (Recognizing outstanding service by a public employee)**

1                                   A senate concurrent resolution  
2           expressing the appreciation of the Legislature to  
3           ..... for many years of loyal and efficient  
4           service to the State of Minnesota.  
5  
6           WHEREAS, ..... was born in ..... on  
7           ....., ....., was educated in the schools of .....  
8           ....., and was graduated from ..... High School  
9           and ..... University; and,  
10          WHEREAS, ..... has served as ..... since  
11          .....; and,  
12          WHEREAS, his tenure in office has been typified by .....  
13          .....; NOW, THEREFORE,  
14          BE IT RESOLVED by the Senate of the State of Minnesota, the  
15          House of Representatives concurring, that the sincere  
16          appreciation of the Minnesota Legislature is extended to  
17          ..... for his long and untiring efforts and  
18          achievements as a public servant of the State of Minnesota.  
19          BE IT FURTHER RESOLVED that the Secretary of the Senate is  
20          directed to prepare an enrolled copy of the resolution,  
21          authenticated by his signature and that of the President of the  
22          Senate, and it be presented to .....

**EXAMPLE — CONCURRENT RESOLUTION (Joint operation of House and Senate)**

1                   A senate concurrent resolution  
2           relating to the adoption of temporary Joint Rules.  
3  
4           BE IT RESOLVED by the Senate of the State of Minnesota, the  
5 House of Representatives concurring:  
6           (1) Except as provided by paragraphs (2) to (9), the Joint  
7 Rules of the Senate and House for the .... session are adopted  
8 as the temporary Joint Rules of the .... session. These  
9 temporary Joint Rules are effective until the adoption of  
10 permanent Joint Rules by the Senate and House.  
11           (2) Joint Rule .... is amended to read:  
12           .....

**EXAMPLE — CONCURRENT RESOLUTION (Joint convention of both houses)**

1                                   A house concurrent resolution  
2            providing for a joint convention of the Senate and the  
3            House of Representatives to elect members of the Board  
4            of Regents of the University of Minnesota.  
5  
6            BE IT RESOLVED by the House of Representatives, the Senate  
7            concurring:  
8            (1) The House of Representatives and the Senate shall meet  
9            in joint convention on ....., .... at ..... in the  
10           chamber of the House of Representatives to elect members to the  
11           Board of Regents of the University of Minnesota.  
12           (2) The Education Committee of the Senate and the Higher  
13           Education Committee of the House of Representatives in a joint  
14           meeting shall prepare a slate of nominations and shall report  
15           the slate at the meeting of the joint convention.

**EXAMPLE — CONCURRENT RESOLUTION (Adjournment of Legislature)**

1                   A house concurrent resolution  
2           relating to adjournment until 1982.  
3  
4           BE IT RESOLVED by the House of Representatives, the Senate  
5 concurring:  
6           (1) Upon its adjournment ..... .., 1981, the House of  
7 Representatives may set its next day of meeting for ..... ..,  
8 1982 at 12:00 noon, and the Senate may set its next day of  
9 meeting for ..... .., 1982, at 12:00 noon.  
10           (2) By the adoption of this resolution, each house consents  
11 to adjournment of the other house for more than three days.

**EXAMPLE — CONCURRENT RESOLUTION (Proclaiming a special observance day)**

1                                   A house concurrent resolution  
2                   proclaiming ..... as ..... Day.  
3  
4                   WHEREAS, ..... Day was established by an act of  
5 Congress in .... to be an annual observance on .....; and,  
6                   WHEREAS, citizens today enjoy more .....  
7 .....; and,  
8                   WHEREAS, it is necessary to rededicate ourselves to the  
9 principles of .....; NOW, THEREFORE,  
10                  BE IT RESOLVED by the House of Representatives of the State  
11 of Minnesota, the Senate concurring, that ..... is  
12 proclaimed as "..... Day" in Minnesota.  
13                  BE IT FURTHER RESOLVED that the people of Minnesota are  
14 encouraged to hold meetings, ceremonies, celebrations, and other  
15 activities to commemorate ..... Day.

If some particular group sponsors the day being commemorated, another paragraph may be added providing for presentation of an enrolled bill to it.

**EXAMPLE — MEMORIAL RESOLUTION (Memorializing the President and Congress to take certain action)**

1	A resolution
2	memorializing the President and Congress to
3	.....
4	
5	WHEREAS, the United States .....
6	.....
7	.....; and,
8	WHEREAS, the several states have .....
9	.....
10	.....; and,
11	WHEREAS, these requirements impede .....
12	.....; and,
13	WHEREAS, it would be of great value to .....
14	.....; NOW, THEREFORE,
15	BE IT RESOLVED by the Legislature of the State of Minnesota
16	that Congress should speedily enact legislation to .....
17	.....
18	.....
19	BE IT FURTHER RESOLVED that the Secretary of State of the
20	State of Minnesota is directed to transmit certified copies of
21	this memorial to the President of the United States, the
22	President and the Secretary of the United States Senate, the
23	Speaker and the Chief Clerk of the United States House of
24	Representatives and to Minnesota's Senators and Representatives
25	in Congress.









**EXAMPLE — JOINT RESOLUTION (Eulogizing a person's life)**

1                                   A joint resolution

2           eulogizing ..... for the exemplary nature of

3           his life and work.

4

5           WHEREAS, on the .... of ..... the Honorable .....

6           ..... of ..... will achieve the venerable age of

7           .....; and,

8           WHEREAS, his long and vigorous life stands as a memorable

9           symbol of devoted and broad-visioned public service; and,

10          WHEREAS, over a half century ago in ....., he was elected a

11          member of the House of Representatives of the State of

12          Minnesota, and ... years later was elected a member of the

13          Senate of the State of Minnesota, in both of which he served

14          with eminence and distinction; and,

15          WHEREAS, in .... he was named .....

16          ....., and has through the years

17          that followed devoted himself unceasingly to .....

18          ..... ; and,

19          WHEREAS, failing health, though no weariness of spirit, now

20          prompts him to submit his resignation and step aside so that the

21          burdens of ..... responsibility may be carried on younger

22          shoulders than his; NOW, THEREFORE,

23          BE IT RESOLVED by the House of Representatives and the

24          Senate of the State of Minnesota in joint convention that they

25          record their admiration, their sense of gratitude, and their

26          respect for the manifold contributions made to the welfare and

27          the progress of the State of Minnesota and to ..... by

28          the Honorable .....

**EXAMPLE — JOINT RESOLUTION (Eulogizing a person's life, Cont.)**

1           BE IT FURTHER RESOLVED that there is extended to the  
2 Honorable ..... the warmest of greetings and the  
3 kindest of wishes as he approaches another milestone in the  
4 notable career that has in truth made him, for the state and for  
5 the ....., "a builder of the name."  
6           BE IT FURTHER RESOLVED that the secretary of the joint  
7 convention is directed to enroll a copy of this resolution and  
8 that it be authenticated by his signature and that of the  
9 President of the joint convention and that it be presented to  
10 the Honorable .....

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.

**EXAMPLE — MOTION (House form)**

1           Smith moves that the Rules of the House of Representatives  
2 for the 72nd Legislature be the Rules of the 71st Legislature,  
3 but amended as follows:  
4           (1) Rule 4.10 is amended to read:  
5           4.10 [PRESENTATION OF PETITIONS.] Any petition, memorial or  
6 other paper formally presented to the House for its  
7 consideration shall include the name of the member introducing  
8 it and a brief description of its contents and shall be  
9 presented by the Speaker, who shall state briefly its contents.  
10          (2) Rule 5.1 is amended to read:  
11          5.1 [BILL FORM.] No bill or amendment shall be ~~introduced~~  
12 voted upon until it has been examined and approved by the  
13 Revisor of Statutes as to form and compliance with the Joint  
14 Rules of the House and Senate and the Rules of the House.  
15 Approval of a bill as to form shall be endorsed on the ~~bill~~  
16 bill's jacket by the Revisor of Statutes.

The Senate form would be the same except that it would open  
"Mr. Smith . . ."

## 6

# AMENDMENTS

- 6.1 Introduction
- 6.2 The Amending Document
  - (a) Motion in Committee
  - (b) Committee Reports
  - (c) Floor Amendments
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  - (e) Common Problems With All Amending Documents
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    - (1) Amending Operations
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    - (8) Amendments to the Title
- 6.4 Amendments to Amendments
- 6.5 Amendments and the Engrossing and Enrolling Process
- 6.6 Forms

### 6.1 Introduction

The processes of drafting bills and drafting amendments to them cannot take place in isolation. 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

**6.1 (cont.)**

order for this process to work properly, the forms set out in this section should be followed.

Amendments have a variety of forms dictated by two separate elements. The 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. No. 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 a bill is heard by a committee and marked up, the committee will report its recommendation to the full house. In addition to recommending favorable action (i.e. "do pass"), the report will include the committee's recommended amendments, if any.

**6.2(b) (cont.)**

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 and returned to the floor for final 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, the amendment begins with "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. The committee consists 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 repassage of the bill and the signatures.



**6.2(d)** (cont.)

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 to 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 further amendments agreed upon. 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 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. No. 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.

**6.2(e) (cont.)**

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. No. 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 either to the unengrossed original, the last official engrossment, or to the subsequent amendments to it, as appropriate. The only exception to the rule that unofficial engrossments cannot 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. 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 amendments to bills from the other house 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 committee's amendment is not officially adopted until the Senate has agreed to it.

Senate action upon House bills can follow the reciprocal path as outlined above for the House. However, the Senate does not always unofficially engross the Senate committee's amendment into a House

**6.2(e)** (cont.)

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, 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"

**6.2(e) (cont.)**

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. The numbering does not include the "form" portion of committee reports.

Line numbering is necessary for two reasons. First, the 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. 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

**6.3(a)** (cont.)

“delete everything” amendments, see the examples at the end of this chapter.

“Delete everything” amendments should not be used except when necessary. This 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. This technique helps the reader better understand the impact of the proposed amendment because of its merger with the unchanged text of 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 arisen claiming that a bill has not been “read three times” as required by the constitution when one bill is substituted for another. This claim occurs more frequently 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 more 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 these amendments are correct, a drafter should utilize only the forms set out below.

Page and line amendments should only be used after the drafter determines that readers will be able to understand the effect of the proposed changes on the bill and that repeated references to the document being amended will not cause undue confusion.  
undue confusion.

**6.3(b)** (cont.)

Since the amendments are complex, the various elements are considered separately.

(1) *Amending Operations.* There are six basic operations performed by an amendment. They are:

deleting (removing) text from a bill;

striking (adding cancel marks to the words, for example: “~~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; and,

amending the title of the bill, when appropriate.

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 six operational command words:

“delete”

**6.3(b)** (cont.)

“strike”

“reinstate”

“insert” (which may be combined with “delete” or “strike”)

“renumber” (or “reletter”, if appropriate)

“amend the title as follows:” (or “delete the title in its entirety and insert:”)

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 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 should 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. However, if a drafter decides to include more than one amending operation in a paragraph, a semicolon should be used to separate each operation.

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 these amendments are as follows:

1. Delete a page (“Delete page 2”);
2. Delete multiple pages in increasing numerical order (“Delete pages 2 to 4”);

6.3(b) (cont.)

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 (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"); and,
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.

All punctuation which the drafter wishes to delete should be expressed in words, not figures ("Page 1, line 17, after "occurred" delete the comma").



**6.3(b)** (cont.)

The deletion operation may never be used to change text in an existing law. In all 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.

When amendments of striking are proper and the rules governing their use 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. Care must be exercised to determine whether the amendment shows the words to be inserted are, or are not, underscored. If the words to be added are new language to any law, the words are underlined. If, however, the words to be added are merely additional words which are already law, the words are not 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:");

**6.3(b)** (cont.)

5. Following any deletion or striking operation with specified text, insert one or more words, lines or sections in place of the deleted or stricken 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 place of the deleted or stricken language (“Page 6, strike lines 1 to 18 and insert “.....””); and

7. Following any deletion or striking operation of everything after an indicated place, insert one or more lines, words, or figures in place of the deleted or stricken language (“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, 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, 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 insertion 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 text from a bill and replace it with other text. These amendments are used when it is desired to change the proposed wording of a new law or the amendments to an existing law, from one wording to another. When preparing these amendments, the drafter must be sure that both the words to be deleted and the words to be inserted are properly underlined or stricken. If the language to be deleted is incorrectly stated or improperly underlined, the amendment is defective. If the

**6.3(b)** (cont.)

language to be inserted is incorrectly stated or improperly underlined, the amendment is defective and inadequate to amend the text. Amendments of deletion and insertion cannot be used to reinstate stricken language in an existing law. Restoration of text can only be accomplished by an amendment of reinstatement. 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 text which is followed immediately by new text to be added to the law. This amendment is used to change the proposed wording in an existing law from one wording to another. When preparing these amendments, the drafter must be sure that 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 stricken text, shown with cancellation marks, in existing law. Cancellation marks denote text 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 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 these amendments are as follows:

1. Reinstatement specified stricken text in a line ("Page 1, line 8, reinstate "....."");
2. Reinstatement specified stricken text in multiple lines in increasing numerical order ("Page 1, lines 8 to 12 reinstate "....."");
3. Reinstatement 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. Reinstatement 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 "....."");

**6.3(b)** (cont.)

5. Reinstates stricken text in a line and any number of additional lines (“Page 2, lines 17 to 21, reinstate “~~property~~””);
6. Reinstates an entirely stricken line (“Page 1, reinstate line 4”); and,
7. Reinstates 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.* An amendment of renumbering is a frequent amendatory operation and 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.”

(8) *Amendments to the Title.* Amendments to the title of the bill are necessary when prior operations in the amendment change either the object or specific subject of the bill or the list of statutory provisions amended or repealed, or both. Amendments to the title are, operationally, amendments of deletion, insertion, or both. Amendments of striking or reinstatement never occur in the title.

The amended title must accurately reflect the subject of the bill as it will exist when the amending document is adopted. Statutory provisions cited in the title of the bill must be amended to comport with those changes made in the amending document which affect these citations.

**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 these amendments, several requirements must be kept in mind.

6.4 (cont.)

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 is 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
2      S.F. No. 111, proposed to the Senate on Jan. 15, 1979, as
3      follows:
4
5      Page 1, line 11, delete "quality of life" and insert
6      "the essential amount of energy to residential customers"
7
```

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. No. 182 as follows:
2
3      Page 7, line 11, delete "quality of life" and insert
4      "the essential amount of energy to residential customers"
5
```

might have a second degree amendment to it proposed which reads:

```
1      Mr. Smith moves to amend the amendment of Mr. Jones to
2      H.F. No. 182, proposed to the House on January 18, 1979, as
3      follows:
4
5      Page 1, lines 2 and 3, delete "delete 'quality of
6      life' and insert 'the essential amount of energy to
7      residential customers'" and insert "insert 'as indicated by
8      such essential amount of energy to residential customers'"
9
```

## 6.4 (cont.)

When the second degree amendment is engrossed into the first degree amendment, lines 2 and 3 will read:

1	Page 7, line 11, insert "as indicated by such
2	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 phrase "essential amount of energy to residential customers" is 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 English 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, these amendments are prohibited by the rules of both houses. *See*: P. Mason, *MASON'S MANUAL OF LEGISLATIVE PROCEDURE*, at section 409(1) (1962). These 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)**

1	Jones No. 1
2	
3	Jones moves to amend H.F. No. 1000, the third engrossment,
4	as follows:
5	Page 1, line 19, after the period insert "No members of the
6	Minnesota Legislature shall serve on the subcommittee."

**EXAMPLE — MOTION IN COMMITTEE (House Form)**

1	Jones No. 1
2	
3	Mrs. Jones moves to amend H.F. No. 1000, the third
4	engrossment, as follows:
5	Page 1, line 19, after the period insert "No members of the
6	Minnesota Legislature shall serve on the subcommittee."

The language of amendments in committee is the same as for floor amendments.

See other examples on pages 212 to 217.

The information in the upper right hand corner is sometimes placed on amendments in committee if a legislator is offering more than one amendment to a particular bill at any given time. The information consists of the name of the person offering the amendment, the number of the particular amendment in the order it is offered by the legislator, and may also include a few key words describing the effect of the amendment. This information aids committee members in locating the proper amendment under discussion. (Amendments can also be identified by the amendment number which is placed on all amendments drafted by the Revisor's office. This number is located at the top right-hand corner of the amendment.)



**EXAMPLE — SENATE COMMITTEE REPORT (Page and line amendment; no title amendment)**

1 Mr. .... from the Committee on Local Government  
2 and Urban Affairs, to which was referred

3 S. F. No. 170: A bill for an act relating to political  
4 subdivisions; regulating certain interests in contracts by  
5 public officials; amending Minnesota Statutes 1980, Section  
6 471.88, Subdivisions 2, 5, and 8.

7 Reports the same back with the recommendation that the bill  
8 be amended as follows:

9 Page 2, line 11, delete "\$3,000" and insert "\$5,000"  
-----  
10 Page 2, line 16, delete "\$3,000" and insert "\$2,000"  
-----

11 Page 2, after line 18, insert:

12 "Sec. 4. [EFFECTIVE DATE.]

13 Sections 1 to 3 are effective the day following final  
-----  
14 enactment."  
-----

15 And when so amended the bill do pass. Amendments adopted.  
16 Report adopted.

17

18

19 .....  
20 (Committee Chairman)  
21

22 January 19, 1981.....  
23 (Date of Committee recommendation)  
24

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)**

1 Mr. .... from the Committee on Taxes and Tax  
 2 Laws, to which was referred

3 S. F. No. 267: A bill for an act relating to taxation;  
 4 defining "common carrier" for certain purposes in connection  
 5 with the sales and use tax; amending Minnesota Statutes 1980,  
 6 Section 297A.01, by adding a subdivision.

7 Reports the same back with the recommendation that the bill  
 8 be amended as follows:

9 Delete everything after the enacting clause and insert:

10 "Section 1. Minnesota Statutes 1980, Section 297A.211,  
 11 Subdivision 1, is amended to read:

12 Subdivision 1. Every person, as defined in this chapter,  
 13 who is engaged in the transportation of property as a common  
 14 carrier in interstate commerce interstate for-hire  
 15 transportation of tangible personal property by motor vehicle  
 16 may at their option, under rules and regulations prescribed by  
 17 the commissioner, register as retailers and pay the taxes  
 18 imposed by this chapter in accordance with this section.

19 Persons referred to by this subdivision are:

20 (1) persons possessing a certificate or permit authorizing  
 21 for-hire transportation of property from the Interstate Commerce  
 22 Commission or the Minnesota Public Service Commission; or,  
 23 (2) persons transporting commodities defined as "exempt" in  
 24 for-hire transportation in interstate commerce; or,  
 25 (3) persons who, pursuant to contracts with persons  
 26 described in clauses (1) or (2), transport tangible personal  
 27 property in interstate commerce.

28 Persons qualifying under clauses (2) and (3) must maintain  
 29 on a current basis the same type of mileage records that are  
 30 required by persons specified in clause (1) by the Interstate  
 31 Commerce Commission.

32 Sec. 2. [EFFECTIVE DATE.]  
 33 Section 1 is effective the day following final enactment."  
 34 Amend the title as follows:

**EXAMPLE — SENATE COMMITTEE REPORT (Delete everything amendment with page and line title amendment, Cont.)**

1	Page 1, line 5, delete "297A.01, by adding a subdivision"
2	and insert "297A.211, Subdivision 1"
3	And when so amended the bill do pass. Amendments adopted.
4	Report adopted.
5	.....
6	(Committee Chairman)
7	
8	January 19, 1981.....
9	(Date of Committee recommendation)
10	

Only the amendment would be prepared by the drafter. The committee secretary would complete the report form.

**EXAMPLE—HOUSE COMMITTEE REPORT (Page and line amendment; no title amendment)**

1 ..... from the Committee on Governmental Operations to  
2 which was referred:

3 H. F. No. 2224: A bill for an act relating to the city of  
4 Nashwauk; police relief pensions and widow's benefits; officers  
5 of association; amending Laws 1943, Chapter 196, Sections 4, as  
6 amended; and 8.

7 Reported the same back with the following amendments:

8 Page 2, line 11, after "department" insert ", plus an  
9 additional \$3 per month for each year of service"  
-----

10 Page 3, line 20, after the period insert "The increases  
-----  
11 provided for in section 1 shall apply to service pensioners or  
-----  
12 widows who are receiving service pensions or widow's benefits on  
-----  
13 the effective date of this act. The increases shall begin to  
-----  
14 accrue on the first day of the month next following the  
-----  
15 effective date of sections...."  
-----

16 With the recommendation that when so amended the bill pass.

17  
18

19  
20 This Committee action taken ....., 19..  
21  
22  
23 ....., Chairman  
24

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 every-  
thing amendment with a delete everything title amendment)**

1 ..... from the Committee on General  
2 Legislation and Veterans Affairs to which was referred:

3 H. F. No. 2451: A bill for an act relating to elections;  
4 providing that public facilities be available for precinct  
5 caucuses; fixing the charge for their use; amending Minnesota  
6 Statutes 1980, Section 202A.15, by adding a subdivision.

7 Reported the same back with the following amendments:

8 Delete everything after the enacting clause and insert:

9 "Section 1. [202A.192] [USE OF PUBLIC FACILITIES.]

10 Every statutory city, home rule charter city, county, town,  
11 school district and other public agency, including the  
12 University of Minnesota and other public colleges and  
13 universities, shall make their facilities available for the  
14 holding of precinct caucuses and legislative district or county  
15 conventions required by chapter 202A. A charge for the use of  
16 the facilities may be imposed in an amount that does not exceed  
17 the lowest amount charged to any public or private group.

18 Sec. 2. Minnesota Statutes 1980, Section 202A.65,  
19 Subdivision 3, is amended to read:

20 Subd. 3. [NOMINATING PETITIONS; TIME FOR FILING.] In all  
21 cases other than those provided in subdivision 2, nominating  
22 petitions shall be filed not later than the seventh day during  
23 the filing period preceding the election at which the vacancy is  
24 to be filled.

25 Sec. 3. [EFFECTIVE DATE.]

26 Sections 1 and 2 are effective the day following final  
27 enactment."

28 Delete the title and insert:

29 "A bill for an act

30 relating to elections; providing that public  
31 facilities be available for precinct caucuses; fixing  
32 the charge for their use; providing for the filing of  
33 certain nominating petitions; amending Minnesota  
34 Statutes 1980, Section 202A.65, Subdivision 3;  
35 proposing new law coded in Minnesota Statutes, Chapter  
36 202A."

**EXAMPLE — HOUSE COMMITTEE REPORT (Delete everything amendment with a delete everything title amendment, Cont.)**

1	
2	With the recommendation that when so amended the bill pass.
3	
4	
5	This Committee action taken ....., 19..
6	....., Chairman
7	

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 licenses
4	shall not expire until January 1, 1982." -----
5	----- Amend the title as follows:
6	Page 1, line 3, after "valid" insert "; extending the
7	expiration date of certain licenses"

**EXAMPLE — SENATE FLOOR AMENDMENT (Delete everything amendment with delete everything title amendment)**

1 Mr. .... moves to amend S.F. No. 1286 as follows:  
2 Delete everything after the enacting clause and insert:  
3 "Section 1. [GENERAL OBLIGATION NURSING HOME BONDS.]  
4 Subdivision 1. [AUTHORIZATION.] The board of commissioners  
5 of Chisago county may by resolution sell and issue general  
6 obligation bonds of the county in the amount of \$1,500,000 to  
7 finance the acquisition and betterment of additional facilities  
8 for the county nursing home, comprising apartment units.  
9 Subd. 2. [ADMINISTRATION AND RENTAL OF APARTMENT UNITS.]  
10 The apartment units shall be constructed in close proximity to  
11 existing county nursing home facilities, and administered  
12 together with the existing facilities as part of an overall  
13 program for the care of aged and infirm persons. The board of  
14 commissioners may rent such apartment units to persons applying  
15 for entrance to the county nursing home, or to other elderly  
16 persons of low and moderate income who may require use of  
17 nursing home facilities, upon such terms and conditions as the  
18 board shall deem advisable.  
19 Subd. 3. [ELIGIBILITY.] The county may by ordinance adopt  
20 regulations establishing age, health and income eligibility  
21 requirements for the rental of such apartment units. The  
22 regulations may provide different rental terms and conditions  
23 for persons of different ages, health conditions and incomes.  
24 Subd. 4. [BOND SECURITY; REFERENDUM PETITION.] The bonds  
25 shall be issued and secured in accordance with Minnesota  
26 Statutes, Sections 445.45 to 445.50 and Chapter 475, except that  
27 in authorizing the bonds the board of commissioners shall adopt  
28 an initial resolution stating the amount, purpose and, in  
29 general, the security to be provided for the bonds; and shall  
30 publish the resolution once each week for two consecutive weeks  
31 in the official newspaper. The bonds so authorized may be  
32 issued without the submission of the question of their issuance



**EXAMPLE — SENATE FLOOR AMENDMENT (Delete everything amendment with delete everything title amendment, Cont.)**

1 to the electors unless within 30 days after the second  
-----  
2 publication of the resolution a petition requesting such  
-----  
3 election signed by more than ten percent of the qualified  
-----  
4 electors voting in the county at the last general election is  
-----  
5 filed with the county auditor. In the event a petition is  
-----  
6 filed, no bonds shall be issued under this subdivision unless  
-----  
7 authorized by a majority of the electors voting on the question."  
-----  
8 Delete the title and insert:  
9 "A bill for an act  
10 relating to Chisago County; authorizing the issuance  
11 of general obligation bonds to finance the cost of  
12 facilities for the county nursing home; providing for  
13 the administration and rental of such facilities."

**EXAMPLE — HOUSE FLOOR AMENDMENT (Page and line amendment; page and line title amendment)**

1	..... moves to amend H.F. No. 1234, as follows:
2	Page 31, lines 28 to 30, reinstate the stricken language
3	Page 59, line 29, delete "60A.13, Subdivisions 3 and 4;"
4	Amend the title as follows:
5	Page 1, line 36, delete "60A.13,"
6	Page 1, line 37, delete "Subdivisions 3 and 4;"

**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 "Section 1"  
3 Page 2, after line 30, insert:  
4 "Sec. 3. [LEOTA, TOWN OF; DETACHED BANKING FACILITY;  
5 AUTHORIZATION.]  
6 With the prior approval of the commissioner of banks, a  
7 bank doing business in this state may establish and maintain not  
8 more than one detached facility in the town of Leota in Nobles  
9 County. Any bank desiring to establish a detached facility  
10 shall follow the approval procedure prescribed in Minnesota  
11 Statutes, Section 47.54. The establishment of a detached  
12 facility in the town of Leota shall be subject to the provisions  
13 of Minnesota Statutes, Sections 47.51 to 47.57."  
14 Amend the title as follows:  
15 Page 1, line 2, after "to" insert "banking;"  
16 Page 1, line 7, after the semicolon insert "authorizing the  
17 establishment of a detached banking facility in the town of  
18 Leota in Nobles County;"

**EXAMPLE — FLOOR AMENDMENT TO ENGROSSED BILL (House form)**

1 ..... moves to amend S.F. No. 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 the  
6 number of citizen board members;"

**EXAMPLE — FLOOR AMENDMENT TO ENGROSSED BILL (Senate form)**

1 Mr. .... moves to amend S.F. No. 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 the  
6 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.

**EXAMPLE — AMENDMENT TO COMMITTEE AMENDMENT TO BILL ORIGINATING IN THE OTHER HOUSE (Senate form)**

1 Mr. .... moves to amend the amendment placed on H.F.  
2 No. .... by the committee on ....., 1981, as follows:  
3 After section 2, insert:  
4 "Sec. 3. [150A.091] [RULES.]  
5 The board shall make rules establishing the minimum  
6 -----  
6 standards for the construction of high-pressure steam generators  
7 -----  
7 to be operated in high density population areas."  
8 -----  
8 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 219, 220.

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)**

1           Mr. .... moves to amend the amendment of Mr.  
2           ..... to H.F. No. ...., proposed to the Senate on .....,  
3           1980, as follows:  
  
4           Page 1, line 11, delete "quality of life" and insert "the  
5           essential amount of energy to residential customers"  
6           Page 1, line 13, after "encouraged" insert "and the quality  
7           of life protected"  
8           Page 2, delete line 1  
9           Page 2, line 3, reinstate "revenue"  
10          Page 2, line 7, strike "and any lost revenues"  
11          Renumber the sections, subdivisions, or clauses and correct  
12          all internal cross references as may be required by this  
13          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)**

```
1      Mr. .... moves to amend the amendment of Mr.  
2      ...., proposed in the ..... on ....., 1980, as  
3      follows:  
  
4      Page 1, line 3, delete "strike 'four' and insert 'six'" and  
5      insert "strike 'four' and insert '400'"  
6      Page 1, after line 3, insert: ---  
7      "Page 7, after line 21, insert:  
8      'Subd. 2. The board shall make rules establishing the  
9      minimum standards for the construction of high pressure steam  
10     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 necessary to end the second operation.

Also, note the necessary repetitive quotation marks necessary to end the second operation.

This amendment amends the amendment appearing on page 217.

**EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (House acceding to the Senate amendment)**

1 CONFERENCE COMMITTEE REPORT ON H. F. NO. 317  
2 A bill for an act  
3 relating to highway traffic regulations; passing a  
4 stopped school bus displaying stop arm signals;  
5 providing remedies; prescribing penalties; amending  
6 Minnesota Statutes 1980, Section 169.44, by adding a  
7 subdivision.  
8 May 19, 1981  
9 The Honorable .....  
10 Speaker of the House of Representatives  
11  
12 The Honorable .....  
13 President of the Senate  
14  
15 We, the undersigned conferees for H. F. No. 317,  
16 report that we have agreed upon the items in dispute and  
17 recommend as follows:  
18  
19 That the House accede to the Senate amendment.  
20  
21 We request adoption of this report and repassage of the  
22 bill.  
23  
24 House Conferees: (Signed)  
25 .....  
26 .....  
27 .....  
28 Senate Conferees: (Signed)  
29 .....  
30 .....  
31 .....



**EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (Senate receding from its amendment)**

1	CONFERENCE COMMITTEE REPORT ON H. F. NO. 624
2	A bill for an act
3	relating to counties; fixing the amounts that may be
4	spent for Memorial Day observances; amending Minnesota
5	Statutes 1980, Sections 375.34; and 375.35.
6	May 18, 1981
7	The Honorable .....
8	Speaker of the House of Representatives
9	
10	The Honorable .....
11	President of the Senate
12	
13	We, the undersigned conferees for H. F. No. 624,
14	report that we have agreed upon the items in dispute and
15	recommend as follows:
16	
17	The Senate recede from its amendment.
18	We request adoption of this report and repassage of the
19	bill.
20	
21	House Conferees: (Signed)
22	
23	.....
24	
25	Senate Conferees: (Signed)
26	
27	.....

**EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (Delete everything amendment; delete everything title amendment)**

1 CONFERENCE COMMITTEE REPORT ON H. F. NO. 2466  
2 A bill for an act  
3 relating to privacy of data on individuals;  
4 definitions, determination and emergency  
5 classification; amending Minnesota Statutes 1980,  
6 Sections 15.162, Subdivision 2a; and 15.1642,  
7 Subdivisions 3 and 5; repealing Minnesota Statutes  
8 1980, Section 15.1642, Subdivision 4.  
9 May 22, 1981  
10 The Honorable.....  
11 Speaker of the House of Representatives  
12  
13 The Honorable.....  
14 President of the Senate  
15  
16 We, the undersigned conferees for H. F. No. 2466,  
17 report that we have agreed upon the items in dispute and  
18 recommend as follows:  
19  
20 The Senate recede from its amendment and that H.F. No. 2466  
21 be further amended as follows:  
22 Delete everything after the enacting clause and insert:  
23 "Section 1. Minnesota Statutes 1980, Section 15.162,  
24 Subdivision 2a, is amended to read:  
25 Subd. 2a. "Confidential data on individuals" means data  
26 which is (a) made not public by statute or federal law  
27 applicable to the data and is inaccessible to the individual  
28 subject of that data; or (b) collected by a civil or criminal  
29 investigative agency as part of an active investigation  
30 undertaken for the purpose of the commencement of a legal  
31 action, provided that the burden of proof as to whether such  
32 investigation is active or in anticipation of a legal action is  
33 upon the agency. Confidential data on individuals does not  
34 include arrest information that is reasonably contemporaneous  
35 with an arrest or incarceration. The provision of clause (b)  
36 shall terminate and cease to have force with regard to the state  
37 agencies, political subdivisions, statewide systems, covered by  
38 the ruling, upon the granting or refusal to grant an emergency  
39 classification pursuant to section 15.1642 of both criminal and  
40 civil investigative data, or on July 31, 1978 1982, whichever  
41 occurs first. ----

**EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (Delete everything amendment; delete everything title amendment, Cont.)**

1       Sec. 2. Minnesota Statutes 1980, Section 15.1642,  
2 Subdivision 5, is amended to read:

3       Subd. 5. [EXPIRATION OF EMERGENCY CLASSIFICATION.] All  
4 emergency classifications granted under this section and still  
5 in effect shall expire on July 31, 1978 1982. No emergency  
6 classifications shall be granted after July 31, 1978 1983.

7       Sec. 3. [15.1643] [INTERNATIONAL DISSEMINATION  
8 PROHIBITED.]

9       No state agency or political subdivision shall transfer or  
10 disseminate any private or confidential data on individuals to  
11 the private international organization known as Interpol.

12       Sec. 4. [REPEALER.]

13       Minnesota Statutes 1980, Sections 144.151, Subdivisions 8  
14 and 9; and 144.175, Subdivision 2, are repealed.

15       Sec. 5. [EFFECTIVE DATE.]

16       Sections 1, 2, and 4 are effective the day following final  
17 enactment. Section 3 is effective July 1, 1981."

18       Delete the title in its entirety and insert:

19               "A bill for an act

20 relating to departments of state; concerning  
21 confidential data on individuals; regarding emergency  
22 classification of data; prohibiting the release of  
23 certain data to the international organization known  
24 as Interpol; amending Minnesota Statutes 1980,  
25 Sections 15.162, Subdivision 2a; 15.1642, Subdivision  
26 5; and Minnesota Statutes 1980, Chapter 15, by adding  
27 a section; repealing Minnesota Statutes 1980, Sections  
28 144.151, Subdivisions 8 and 9; and 144.175,  
29 Subdivision 2."

30       We request adoption of this report and repassage of the  
31 bill.

32

33 House Conferees: (Signed)  
34 .....  
35 .....  
36

37 Senate Conferees: (Signed)  
38 .....  
39 .....  
40

Entire amendment prepared by the drafter.

**EXAMPLE — HOUSE CONFERENCE COMMITTEE REPORT (Page and line amendment; no title amendment)**

1 CONFERENCE COMMITTEE REPORT ON H. F. NO. 921

2 A bill for an act

3 relating to public employees; designating the number  
4 of arbitrators to resolve labor dispute; amending  
5 Minnesota Statutes 1980, Section 179.72, Subdivision 6.

6 May 16, 1981

7 The Honorable .....  
8 Speaker of the House of Representatives  
9

10 The Honorable .....  
11 President of the Senate  
12

13 We, the undersigned conferees for H. F. No. 921,  
14 report that we have agreed upon the items in dispute and  
15 recommend as follows:  
16

17 That the Senate recede from its amendments and that H.F.  
18 No. 921 be further amended as follows:

19 Page 2, lines 8 to 12, reinstate the stricken language  
20 Page 2, line 11, strike "\$100" and insert "\$180"  
21 Page 2, line 13, after "All" insert "fees,"  
22 Page 2, line 14, after the period insert "In those cases  
23 where a single arbitrator is hearing a dispute, the fees,  
24 expenses and costs of the arbitrator shall also be shared and  
25 assessed equally by the parties to the dispute."  
26 We request adoption of this report and repassage of the  
27 bill.  
28  
29

30 House Conferees: (Signed)  
31 .....  
32 .....  
33 .....  
34 Senate Conferees: (Signed)  
35 .....  
36 .....

Entire amendment is prepared by the drafter.

**EXAMPLE — SENATE CONFERENCE COMMITTEE REPORT (Page and line amendment; no title amendment)**

1 CONFERENCE COMMITTEE REPORT ON S. F. NO. 274

2 A bill for an act

3 relating to natural resources; authorizing additions  
4 to and deletions from certain state parks; authorizing  
5 land acquisition in relation thereto; amending Laws  
6 1945, Chapter 484, Section 1, as amended.

7 May 18, 1981

8 The Honorable .....  
9 President of the Senate

10

11 The Honorable .....  
12 Speaker of the House of Representatives

13

14 We, the undersigned conferees for S. F. No. 274,  
15 report that we have agreed upon the items in dispute and  
16 recommend as follows:

17

18 That the Senate concur in the House committee amendment

19 adopted May 6, 1981, and the House recede from the other

20 amendments it adopted May 12, 1981, and that S.F. No. 274 be

21 further amended as follows:

22 Page 6, after line 14, insert:

23 "Subd. 7. [BIG STONE STATE PARK; DELETION.] The following  
24 -----  
25 area is deleted from Big Stone State Park: The Northeast  
26 -----  
27 Quarter of the Northwest Quarter of Section 20 in Township 123  
28 -----  
29 North, Range 48 West and that part of Government Lot Two (2),  
30 -----  
31 Section Ten (10), Township One Hundred Twenty-two (122), Range  
32 -----  
33 Forty-seven (47) lying south of Highway No. 7 and west of the  
34 -----  
35 following described line: Commencing at a point on the westerly  
36 -----  
37 boundary line of Government Lot Two (2), Section Ten (10),  
38 -----  
39 Township One Hundred Twenty-two (122), Range Forty-seven (47)  
40 -----  
41 which is 189.75 feet due South of the intersection of the  
42 -----  
43 Westerly boundary line of said Government Lot 2 and the  
44 -----  
45 Southerly right of way line of Trunk Highway No. 7; thence due  
46 -----  
47 East 853.3 feet to an iron stake; thence deflect to the left at  
48 -----  
49 a delta angle of 71 degrees 41 minutes 371.9 feet to the  
50 -----  
51 intersection of said line with the Southerly right of way line  
52 -----

**EXAMPLE — SENATE CONFERENCE COMMITTEE  
REPORT (Page and line amendment; no title amendment,  
Cont.)**

1 of said Trunk Highway No. 7 which is the starting point of said  
2 line above referred to; thence in a Southwesterly direction back  
3 along said line just described for a distance of 1081.4 feet to  
4 the shores of Big Stone Lake."

5

6 We request adoption of this report and repassage of the  
7 bill.

8

9 Senate Conferees: (Signed)

10

11

12

13

14

15

16

House Conferees: (Signed)

.....

.....

**EXAMPLE — SECTION RENUMBERING (Page and line amendment requiring renumbering of sections in bill)**

1 ..... moves to amend H.F. No. 1702, as follows:  
2 Page 1, after line 13, insert:  
3 "Sec. 2. Minnesota Statutes 1980, Section 330.02, is  
4 amended to read:  
5 330.02 [BOND.]  
6 Every auctioneer, before making sales, shall give a  
7 corporate surety bond to the ~~county~~ state in a the penal sum of  
8 ~~not less than \$1,000 nor more than \$3,000 to be fixed by the~~  
9 ~~treasurer and with sureties approved by the treasurer~~ \$5,000,  
10 conditioned that he will pay all sums required by law and in all  
11 things conform to the laws relating to auctioneers. The  
12 ~~treasurer shall endorse his approval upon such bond, and file it~~  
13 ~~in his office~~ The bond shall be approved and filed as provided  
14 in chapter 574."  
15 -----  
16 Renumber the remaining section  
17 Amend the title as follows:  
18 Page 1, after line 2, insert "modifying bond requirements;"  
19 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 section. In the course of engrossing, this directive will be carried out.

**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
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- 7.4 Special Laws
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- 7.5 Taxes
  - (a) Constitutional Considerations
  - (b) Cross-references to Federal Laws
  - (c) Effective Dates
- 7.6 Organization of State Government
  - (a) General Considerations
  - (b) Basic Provisions for New Agency
  - (c) Alteration of Existing Agencies
  - (d) Table of Governmental Agencies and Agency Heads
- 7.7 Organization of Counties, Cities, and Metropolitan Government
  - (a) Counties
  - (b) Cities
  - (c) Towns
  - (d) Metropolitan Government
  - (e) Other Local Government Units
- 7.8 Retirement and Pension Laws
  - (a) Existing Major Plans
  - (b) Existing Minor Plans
  - (c) Problem of "Omitted Buy Back"
- 7.9 Religious Issues Including Use of Public Funds for Religious Institutions
  - (a) Generally



(cont.)

- (b) Restrictions on Legislation Under the First Amendment
- (c) Sectarian or Parochial Schooling Under the First Amendment
  - (1) Transportation
  - (2) Textbooks
  - (3) Instructional Materials and Equipment other than Books
  - (4) Reimbursement for Testing
  - (5) Tuition Grants, Reimbursements, and Tax Benefits
  - (6) Teacher Salaries or Supplements
  - (7) School Lunches
  - (8) Auxiliary Services
  - (9) Maintenance Grants and Assistance
  - (10) Construction Grants
  - (11) Noncategorical 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 Administrative Procedures

- (a) Rulemaking
- (b) Contested Cases

7.11 Forms

## 7.1 Appropriations

This section discusses only general appropriations bills. Appropriations contained in substantive bills are discussed in section 4.7 (a) of this manual.

### (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."

**7.1(a)** (cont.)

Unlike bills imposing taxes, which must originate in the House, bills appropriating money may originate in either body of the legislature. Most appropriations are contained in eight general appropriations bills adopted by the legislature during the session held in odd-numbered years.

The contents of these appropriations bills are provided for by joint rules.

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;

7.1(a) (cont.)

(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.

Joint Rule 2.02.

These bills are drafted as part of the legislative appropriations and budget process.

A typical general biennial appropriations bill would begin as follows:

1           Section 1. [STATE GOVERNMENT; ADMINISTRATION;  
2           APPROPRIATIONS.]  
3           The amounts set forth in the columns designated  
4           "APPROPRIATIONS" are appropriated from the general fund, or  
5           other designated fund, to the agency and for the purpose  
6           specified opposite it in the "AGENCY AND PURPOSE" column.  
7           The sums are available for the fiscal years indicated for  
8           each purpose. The figures "1981," "1982," and "1983" refer  
9           to fiscal years and mean that the appropriation or

**7.1(a)** (cont.)

10 appropriations listed under that fiscal year are available  
11 for the year ending June 30, 1981, June 30, 1982, or June  
12 30, 1983.

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 a legislative objective 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. §3.25 (1980).

(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 benefits or indemnifies 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.

**7.1(a)** (cont.)

(e) **When?** General appropriations bills provide money for the next two fiscal years, with each year listed separately. In some cases the bill may also provide money 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 odd 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. §645.02 (1980). If it is desired that the money 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 (1980), provides that an appropriation remaining unexpended or unencumbered at the end of a fiscal year lapses. 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. Appropriations are a temporary matter. That is, the appropriation of money is for a limited period of time. Because they are temporary law, general appropriations bills are usually not considered for coding. Nevertheless, it is not uncommon to find, within general appropriations bills, sections that are substantive law of a permanent nature. The substantive law may conflict with law on the same subject matter already in Minnesota Statutes.

In *State v. City of Duluth*, 238 Minn. 128, 56 N.W.2d 416 (1952), the Minnesota Supreme Court ruled that a substantive law provision in a general appropriations bill is permanent law absent any words repealing it at a later date. Therefore, a substantive law provision survives the two year period of the appropriation to which it is attached. 238 Minn. at 131. The court states that since repeal by implication is not favored, only when a substantive provision in an appropriations bill is inconsistent and irreconcilable with a later act will it be found to have

7.1(b) (cont.)

been repealed by implication. There is no implication that because the substantive appropriation is attached to an appropriation it is repealed when the appropriation expires. Therefore, a drafter must be careful to indicate that a substantive provision is only temporary or it will be construed as permanent.

The inclusion of substantive law provisions in any general appropriations bill is not desirable and is discouraged. It is usually difficult for the Revisor's editorial staff to separate the permanent and temporary substantive provision in an appropriations bill. These substantive law provisions, if they are not compiled in the statutes, are difficult to locate in later years. When temporary sections must be inserted in an appropriations bill, they must clearly indicate that they are effective for only a limited period of time.

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 for appropriations bills relates to the necessary drafting techniques to provide for the Governor's item veto power.

It is clearly recognized that the appropriation item veto power of the 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. Ability to selectively veto is restricted to distinct items of appropriation and: "[H]e 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 defined by the Iowa Supreme Court, an item is: "[S]omething 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).

**7.1(b)** (cont.)

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: “[G]rant power to him [the 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 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 manual 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 in order to ensure salability, it is best to follow the pattern of existing state laws.

**7.2(a) (cont.)**

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. 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 look primarily at four areas which are chief considerations in 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 that the issue will be 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." The drafter must be sure that the bond issue does not run afoul of this or other prohibitions. See section 3.3 (i) of this manual.



**7.2(b)** (cont.)

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 may require 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. Institutional obstacles now exist to make unlikely a default like that after the railroad boom of the 1850's, but careful drafting remains fundamental to avoid long and short term ill effects.

**7.3 Crimes and the Courts**

In order to competently draft legislation in the criminal justice area, the drafter should develop an overview mastery of Minnesota criminal, correctional, and related bodies of law and familiarize himself with the interrelated agencies of the criminal justice system. In

7.3 (cont.)

In addition, the drafter should be aware that many executive branch agencies have organizational units with separate criminal justice functions. Examples of these agencies are the department of public welfare and the department of revenue.

In attempting to generate legislative solutions to crime control problems, the drafter will often discover that identification of applicable statutory or administrative law is merely a starting place. Recent legislative efforts in the area of criminal justice have involved a systemwide perspective. In following a systemwide perspective, the drafter will have to be able to trace the processing of criminal offenders through a maze of laws, rules, agencies, and programs before attempting to come up with any kind of workable legislative solution to a crime control problem.

**(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 (1980), 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,

**7.3(b)** (cont.)

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.

Minnesota Statutes, section 480.059, subdivision 8 (1980), 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.

In Laws 1979, chapter 233, the legislature conformed certain statutory provisions relating to criminal procedure to the rules of criminal procedure. The intent of this legislation was to provide criminal justice practitioners with a more coherent, accessible body of law relating to criminal procedure.

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 Minnesota Statutes and locate rules by using the index to the rules of criminal procedure found in Minnesota Statutes.

**7.3(b)** (cont.)

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 un-superseded 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**

The drafter should be familiar with the 12 executive branch criminal justice agencies and their programs. The 12 agencies are listed below along with a brief description of their criminal justice functions and the statute or statutes relevant to their activities.

*(1) Department of Public Safety*

*(a) Bureau of criminal apprehension.* The bureau's chief criminal justice function is to assist local enforcement agencies in investigations of major crimes including illegal sale or possession of prohibited drugs, homicide, and organized crime. In addition, the bureau is involved in peace officer training, scientific analysis of evidence, and maintaining a criminal justice information system. The bureau also annually publishes a crime report which provides changes in the volume and rate of reported crimes for Minnesota in the year of issuance. *See:* Minn. Stat. chap. 299C, especially §299C.03 (1980).

*(b) Division of highway patrol.* The highway patrol's criminal justice functions include enforcement of traffic laws on state trunk highways and the serving of warrants. *See:* Minn. Stat. chap. 299D (1980).

*(2) 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 also handles criminal appeals and is involved with the prosecution of organized and white collar crimes. *See:* Minn. Const. art V.; Minn. Stat. chap. 8 (1980).

(3) *County attorneys' council.* The council is a statutorily created service and planning agency designed to improve the quality of legal services of county attorneys' offices. In the area of criminal justice, the council has developed peace officer training materials and keeps county attorneys current with changes in criminal law. The council also directly participates in the legislative process in order to assure that the prosecutors' viewpoint is considered with respect to criminal justice legislation. *See:* Minn. Stat. §§ 388.19 and 388.20 (1980).

(4) *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. §609.105 (1980). 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. §260.185 (1980). The mission of the department is to protect society and to attempt to rehabilitate offenders.

The department of corrections operates correctional facilities for adult felons and facilities for juveniles. The department administers the community corrections act under which the commissioner awards grants to counties. Under the act participating counties operate local correctional services, including crime prevention, probation and parole, and detention centers.

The department of corrections also administers many programs relating to offender rehabilitation and victim services. In the area of victim services, there are victim crisis centers, and programs for battered women and victims of sexual assault.

Governing organizational and other law related to the department: Minn. Stat. chap. 241 (organizational provisions); chap. 242 (juvenile corrections); chap. 243 (adult corrections); chap. 244 (criminal sentences); chap. 401 (community corrections); and chap. 402 (human services act).

(5) *Corrections board.* The corrections board is the state's parole board. The board is responsible for adult felons in custody, and who are on probation or parole. The board is involved in a number of offender programs, including restitution contracts. The drafter should be aware that the board's powers have been modified with respect to persons sentenced on or after May 1, 1980. *See:* Minn. Stat. §241.045 (1980).

(6) *Ombudsman for corrections.* The ombudsman investigates complaints made about the actions of state and local agencies involved with corrections. The ombudsman has considerable investigative powers and can act as an inmate's advocate. The ombudsman serves an oversight function with respect to the correctional process in Minnesota. *See:* Minn. Stat. § § 241.41 to 241.45 (1980).

(7) *Board of pardons.* The board of pardons grants pardons and reprieves and commutes sentences of persons convicted of crimes. The governor, chief justice of the supreme court, and the attorney general make up the board. *See:* Minn. Const. art. V, sec. 7.; Minn Stat. chap. 638 (1980).

(8) *Crime victims reparations board.* The board makes payment of reparations to victims of crime. The payments are limited to persons who have suffered personal injury. *See:* Minn. Stat. chap. 298B (1980).

(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.

In the process of drafting criminal justice legislation, the drafter will find the research and evaluation studies of the board to be of inestimable value. In attempting to generate crime control strategies for the legislature, the drafter must know what has been done before and what has not worked: empirical knowledge is increasingly relevant to the drafting of criminal justice legislation. *See:* Minn. Stat. §299A.03 (1980).

(10) *Minnesota public defender.* The public defender provides representation to indigents in criminal appeals to the supreme court. The defender also represents inmates in correctional disciplinary hearings. *See:* Minn. Stat. § § 611.22 to 611.25 (1980).

(11) *Minnesota board of peace officer standards and training.* The board regulates Minnesota's peace officer training and licensure requirements. The board also establishes standards of professional conduct for the law enforcement profession. *See:* Minn. Stat. chaps. 214 and 367, §§382.28 and 626.84 to 626.855 (1980).

(12) *Minnesota sentencing guidelines commission.* Laws 1978, chapter 723, codified as Minnesota Statutes, sections 244.01 to 244.11

**7.3(c)(12)** (cont.)

(1980), established a sentencing guidelines commission composed of members of the judiciary, other members of the criminal justice system, and the public. Minn. Stat. §244.09, subd. 1 (1980). The commission was assigned the task of promulgating sentencing guidelines for the district court for offenders which would be advisory to the court and subject to review by the supreme court. Minn. Stat. sec. 244.09, subd. 5 (1980).

The commission developed guidelines based upon an appropriate combination of offender and offense characteristics. The commission's report was submitted to the 1980 Legislature and the guidelines became effective May 1, 1980 since the legislature did not provide otherwise. Minn. Stat. §244.09, subd. 12 (1980).

The legislative intent of the guidelines' legislation was to establish fixed presumptive sentences for felons which would reduce disparity in sentencing practices.

Persons convicted of felonies on or after May 1, 1980 will 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 will now sentence a person to a fixed term of years.

Having completed the guidelines and instructing the criminal justice community in the new sentencing practices, the commission is now in the process of developing guidelines for sanctions other than imprisonment.

The work of the commission is a clear indication that the legislature is interested in a systemwide, comprehensive approach to drafting criminal justice legislation. *See:* Minn. Stat. chap. 244 (1980).

**(d) Local Components of the Criminal Justice System (Executive branch)**

At the state level of the criminal justice system, the agencies generally are found in the executive branch of government. At the local level of the criminal justice system, the criminal justice functions are fragmented and decentralized due to the historical evolution of the various agencies.

7.3(d) (cont.)

In drafting criminal legislation that will affect a class of offenders, for example, the drafter should be sensitive to the nuances of the relationships between the local agencies. The drafter will have to be familiar with separation of powers problems; local fiscal restraints; differential perception of goals by the various agencies; and intangible elements derived from the political environment.

Local agencies are listed below along with a brief description of their criminal justice functions and the statute or statutes relevant to their activities.

(1) *Police Services.* Agencies which provide police services are generally a part of local government. The largest area of uncontrolled discretion in the criminal justice system occurs at the level of the peace officer responding to a crime control problem. Legislative attempts to encourage structuring of police discretion are still in their infancy but the drafter should develop an awareness of the issue and possible legislative solutions to structuring police discretion.

(a) *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. chap. 387, and §436.05 (1980).

(b) *Local police.*

(i) *Home rule charter cities.* The organization of a charter city police department is governed by the city's charter and ordinances implementing the charter. *See:* Minn. Const. art. XII, sec. 4.; Minn. Stat. chap. 410 (1980).

(ii) *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. §§412.016, 412.101, and 412.221, subd. 32 (1980).



7.3(d)(1) (cont.)

(iii) *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. §§367.03, subd. 3, and 367.40, subd. 4 (1980).

(c) *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, §9.; Minn. Const. art. XIII, sec. 3.; Minn. Stat. §137.12 (1980).

(2) *Prosecution and Defense Services.* Prosecution services have exhibited the most structural stability of any criminal justice system component in recent years. The county attorneys' council is perhaps the most innovative recent development in the area of prosecution services. Defense services have changed considerably in recent years and vary depending upon the needs of each judicial district.

(a) *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. §487.25, subd. 10 (1980)—county court prosecutions.

Minn. Stat. §§488A.10, subd. 11, and 488A.101 (1980)— Hennepin County municipal court prosecutions.

Minn. Stat. §488A.27, subd. 11 (1980)—Ramsey County municipal court prosecutions.

Minn. Stat. §388.051 (1980)—district court prosecutions.

7.3(d)(2) (cont.)

(b) *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, chap. 317. The second judicial district, Ramsey County, also has a special trial court public defender system. Laws 1975, chap. 258, §6. Two judicial districts, the eighth and the third, still use the method of providing counsel to indigents by judicial assignment. Minn. Stat. §611.07 (1980). The remaining six judicial districts have trial court public defenders under statewide public defender legislation. Minn. Stat. §§611.14 to 611.27 (1980). 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 rulemaking authority with respect to procedural law. For a judicial analysis of the rules of criminal procedure in relation to the court's rulemaking 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, chap. 432, §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 (b) with regard to legislative and judicial amendment to criminal procedural rules.

7.3(e)(1) (cont.)

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 (1980).

(2) *District court.* The district court has original criminal jurisdiction. Minn. Const. art. VI, sec. 3; Minn. Stat. §484.01 (1980). The district court also has appellate jurisdiction to hear appeals from county court and county municipal court. Minn. Stat. §484.63 (1980). (Laws 1977, chap. 432, §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 (1980), 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 (1980), govern 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 (1980), govern 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. §260.019 (1980).

**7.3(e)(4) (cont.)**

In all other counties juvenile cases arising under chapter 260 are tried in the family court division of the county court. Minn. Stat. §487.27 (1980).

Children who commit criminal offenses are subject to reference to adult court for prosecution. Minn. Stat. §260.125 (1980).

**7.4 Special Laws**

**(a) Prohibition**

The Minnesota Constitution contains a variety of prohibitions and restrictions on local or special laws.

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.

Minn. Const. art. XII, sec. 1.

This article of the Minnesota Constitution draws a distinction between general legislation and special legislation and, with one exception, prohibits all special legislation. It is important, therefore, for

7.4(a) (cont.)

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, 197, 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:

7.4(a) (cont.)

- 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 (1945);
- 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 1 1/2 mill tax levy for recreational programs). *Leighton v. City of Minneapolis*, 222 Minn. 523, 25 N.W.2d 267 (1946); 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

**7.4(a)** (cont.)

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. The Constitution reads:

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.

Minn. Const. art. XII, sec. 2 (emphasis added).

Minnesota Statutes, sections 645.023 and 645.024, were enacted pursuant to the italicized language in the above constitutional provision. They 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

**7.4(b)** (cont.)

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 if the law is in any of the following classes:

(a) A law which enables one or more local government units to exercise authority not granted by general law.

(b) A law which brings a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.

(c) A law which applies to a single unit or a group of units with a population of more than 1,000,000 people.

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.

These sections require local approval except in defined situations. Although the sections would govern when a bill for a local law is silent on the subject, the status of the bill will be clearer if either local approval is explicitly required or explicitly not required. In the latter case, reference is desirable to the part of section 645.023 that allows the law to take effect without local approval.



7.4(b) (cont.)

The legislature also has informally requested that drafts of local law bills routinely 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.

A local approval section activates the provisions of Minnesota Statutes, section 645.021.

645.021 [SPECIAL LAWS; LOCAL APPROVAL, CERTIFICATES.]

Subdivision 1. A special law as defined in the Minnesota Constitution, Article XII, Section 2, shall name the local government unit to which it applies. If a special law applies to a group of local government units in a single county or in a number of contiguous counties, it shall be sufficient if the law names the county or counties where the affected units are situated.

Subd. 2. A special law shall not be effective without approval of the local government unit or units affected, except as provided in section 645.023. Approval shall be by resolution adopted by a majority vote of all members of the governing body of the unit unless another method of approval is specified by the particular special law.

Subd. 3. 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. 4. Laws 1959, Chapter 368, does not apply to any special law heretofore enacted, whether or not it has

**7.4(b)** (cont.)

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 3.

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.

Minnesota Statutes, section 645.02 (1980) provides, in part, for the effective date for local laws. It reads:

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.

Thus, if the bill for a local law is silent, the above provision governs to make it effective on the day following the date on which the certificate of local approval is filed with the secretary of state. Again, however, for the sake of clarity, it is customary to put an effective date in a bill for a local law which is consistent with section 645.02, subdivision 2. It is necessary to provide for an effective date in a bill for a local law when a different effective date than the one provided for in section 645.02 is desired.

**(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

**7.4(c)** (cont.)

enacted in the form of a general act (Example: "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 being amended initially applies to the local government unit now being named. In the illustration quoted, the city to which it initially applied has grown, and in the 1980's its population is greater than 15,000. In the amendment, the quoted language is stricken and the name of the city inserted. If the drafter cannot determine with certainty the local government unit to which the initial law applied, it should not be amended; but, rather, a new special law naming the unit to which it applies should be drafted.

**(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 the Minnesota Constitution requires the approval of the county board of supervisors, city council, or other governmental unit. A bill under the authority of the judicial article should not be prepared with local approval required unless the requester insists, notwithstanding the drafter's contrary advice.

The special considerations for drafting special laws relating to the courts embrace all activities of a court including maintenance of records.

**7.5 Taxes**

The tax laws are one of the most interrelated and technical areas in the Minnesota Statutes. Drafting bills dealing with tax matters requires a thorough understanding of the entire tax system. This broad based education is not attempted by this manual. However, some problem areas will be discussed.

**(a) Constitutional Considerations**

The inherent power of the legislature to tax is very broad and is

**7.5(a)** (cont.)

subject only to constitutional limitations. *In re Petition of S.R.A., Inc.*, 213 Minn. 487, 7 N.W.2d 484 (1942). Article X of the Minnesota Constitution contains several special limitations on the power to tax.

First, taxes must be levied for a public purpose. See section 3.3 (l) of this manual for a discussion of the public purpose doctrine.

Second, taxes must be uniform upon the same class of subjects. This clause has been held to be no more restrictive than the equal protection clause of the United States Constitution. *Contos v. Herbst*, 278 N.W.2d 732 (Minn. 1979). Since the legislature has broad discretion in determining classes, a classification will be sustained unless clearly arbitrary and without reasonable basis. *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W.2d 538 (1974); *In re Cold Spring Granite Co.*, 271 Minn. 460, 136 N.W.2d 782 (1965). Classification of real property by use for ad valorem tax purposes has been specifically sustained. *Apartment Operators Assn. v. City of Minneapolis*, 191 Minn. 365, 254 N.W.2d 443 (1934).

When preparing a bill in the area of taxation of minerals, the drafter should review sections 3 and 6 of Article X of the Minnesota Constitution and the cases construing these provisions. These sections contain very specific limitations on the legislative power to tax mining operations. Some statutes relating to the taxation of taconite may not be repealed or amended, and a tax provision relating to the mining or production of copper or nickel ores may not extend beyond 1990. The allocation of funds from an occupation tax on iron ore is specifically prescribed in section 3. See section 3.3 (m) of this manual for the text of these and other constitutional provisions.

Prior to drafting tax legislation affecting interstate businesses, the drafter should review the present status of state taxation of interstate business under the federal constitution's equal protection, due process, and commerce clauses. At present, states have a great deal of discretion in taxing interstate corporations and the allocation and apportionment of income to a state for taxation purposes has generally been upheld. However, this is presently a highly litigated and rapidly developing area of the law. Minnesota's leading case in this area is *Skelly Oil Company v. Commissioner*, 269 Minn. 351, 131 N.W.2d 632 (1964). See also: *Exxon Corporation v. Wisconsin Department of Revenue*, 100 S.Ct. 2109 (1980); *Mobil Oil Corp. v. Commissioner of Taxes of Vermont*, 100 S.Ct. 1223 (1980); *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959).

**7.5(a)** (cont.)

Finally, as in all legislation, the drafter should review a taxation draft to assure that it complies with the due process requirements of the state and federal constitutions. See section 3.3 (f) of this manual for the state constitutional provisions. Prior to forfeiture of property for failure to pay taxes, proper procedures for notice and hearing must be provided. *Contos v. Herbst*, 278 N.W. 2d 732 (Minn. 1979).

**(b) 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. This tie is delegation of state legislative functions to the Congress, which is impermissible. *Wallace v. Commissioner*, 289 Minn. 220, 184 N.W.2d 588 (1971). Instead, refer to the Internal Revenue Code section as amended through a certain year or a specific previous date. The reference must then be updated periodically to incorporate later amendments made to the federal provision.

**(c) 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 date, generally December 31. If provisions of federal income tax law are being adopted, the drafter should consider conforming the effective date of the Minnesota provision to the effective date of the federal provision. 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. Estate 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 board, commission, or department to administer a new program or to regulate an occupational group should be drafted with several general considerations in mind.

First, the drafter must ensure that provision is made for all necessary features of a well functioning agency. If a necessary feature is left out, a "lame" agency is created necessitating correction by

**7.6(a)** (cont.)

additional legislation. Consult the listing of "basic provisions" in part (b) of this section.

Second, the drafter must determine if identical or similar programs or functions already exist in other agencies. Similar or identical programs or functions might 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 the common statutory elements are provisions for naming the agency, administrative rulemaking, 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 are 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." The name given to the agency should be consistent with the system of nomenclature established by Minnesota Statutes, section 15.012 (1980).

(2) Specification of who controls the agency whether a single person, a multiple person board or commission or some combination.

(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, and termination of the person or the members of the board or commission which controls the agency. Consult Minnesota Statutes, sections 15.0575 to 15.06 (1980) for statutory restrictions. If the drafter intends these sections to be applicable to the new agency, the applicable sections should be specified. If these statutory sections are not going to be applicable to the new agency, the drafter should include the following

**7.6(b)** (cont.)

phrase: "Notwithstanding section 15.0575 (or whichever section)... ." General provisions relating to advisory task forces are in Minnesota Statutes, section 15.014 (1980).

(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 agency. A drafter should specifically avoid splitting up the duties into a number of separate sections in the bill.

(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 elsewhere in the bill. For example, if the agency is established to study a problem, the drafter should consider whether the agency should have the power to issue subpoenas.

If the agency includes any special authority, such as the power to levy taxes or issue bonds or contract debt, such provisions must be given separate consideration. They have drafting difficulties in and of themselves. See other sections of this manual on taxes, bonds, and indebtedness.

(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 produce revenue in some fashion by charging fees or selling a product, the manner in which the fees or prices are determined and the disposition of funds received should be specified. The alternatives available include a standing appropriation of funds received for the agency's use or a requirement that all funds received by the agency be deposited in the state's general fund.

**7.6(b)** (cont.)

(11) Specification of the status of employees of the agency. Are they subject to civil service, exempt, or have a special status?

(12) Provision should be made for administrative rulemaking. See section 7.10 of this manual for further analysis of the considerations involved when drafting a bill which grants rulemaking authority to an agency.

(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. These matters should not be left solely to administrative rulemaking. Bills establishing licensing boards should be consistent with the provisions of Minnesota Statutes, chapter 214 (1980).

(14) If the agency deals in an area which grants a new "right" or regulates or prohibits an activity of individuals, the drafter should specify those substantive "rights" or prohibitions.

(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 either for 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) Alteration of Existing Agencies**

When a requested bill draft calls for modifications to existing



**7.6(c)** (cont.)

agencies, a drafter should use care in determining which sections must be changed. Faulty changes to a law governing the agency may make the agency "lame." Some of the more important problem areas are indicated below.

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 a single or "bullet" change to one section of the statutes related to an agency, the drafter should examine surrounding material to ensure that changes to other sections are not necessitated by the requested change. Sometimes, this will mean that the drafter should look at a whole chapter or several chapters of the statutes, depending on which agency and which aspect of that agency's function is being changed.

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" can lead 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 can be determined by checking the statutory references in section 7.6 (d), but the administrative rules may also 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

<i>Official</i>	<i>Citation</i>
Attorney General	Const. Art. V, Sec. 4
Auditor	Const. Art. V, Sec. 4
Governor	Const. Art. V, Sec. 2
Judicial	
District Court	Const. Art. VI,
10 Districts, 72 Judges	2.722
Supreme Court	
Chief Justice and 8	
Associate Justices	Const. Art. VI, 480.01
Appoints:	
Administrator	480.13
Board of Law Examiners	
(9 members)	481.01, Court Rules
Clerk	Const. Art. VI, Sec. 2
Board of Continuing Legal	
Education (13 members)	Court Rules
Law Librarian	Const. Art. VI, Sec. 2, 480.09
Professional Responsibility	
Board (20 members)	Court Rules
Reporter	Const. Art. VI, Sec. 2
Judicial Council (16 members)	483.01, 483.02
State Public Defender	611.22, 611.23
Legislature	
House of Representatives	
(134 members)	Const. Art. IV, Sec. 4, 2.021
Senate (67 members)	Const. Art. IV, Sec. 4, 2.021
Lieutenant Governor	Const. Art. V, Sec. 2
Secretary of State	Const. Art. V, Sec. 4
Treasurer	Const. Art. V, Sec. 4

7.6(d) (cont.)  
DEPARTMENTS

<u>Department</u>	<u>Administrative Heads</u>	<u>Citation</u>
Administration Department	Commissioner	16.01
Agriculture Department	Commissioner	17.01
Commerce Department		
Banking Division	Commissioner	45.01,45.02
Insurance Division	Commissioner	45.01,45.02, 60A.03
Securities and Real Estate Division	Commissioner	45.01,45.02
Consumer Services Section	Director	45.15
Corrections Department	Commissioner	241.01
Economic Development Department	Commissioner	362.07,362.09
Economic Security Department	Commissioner	268.011,268.12
Education Department	Commissioner	121.16
Employee Relations Department	Commissioner	43.001
Labor Relations Division	Deputy	43.001
Commissioner Personnel Division	Deputy Commissioner	43.001
Energy Agency	Director	116H.03
Finance Department	Commissioner	16A.01
Health Department	Commissioner	144.011
Health Facilities Complaints Office	Director	144A.52
Housing Finance Agency	Executive Director	462A.04
Human Rights Department	Commissioner	363.04
Iron Range Resources and Rehabilitation Office	Commissioner	298.22
Labor and Industry Department	Commissioner	175.001

## 7.6(d) (cont.)

<u>Department</u>	<u>Administrative Heads</u>	<u>Citation</u>
Legislative Auditor's Office	Legislative Auditor	3.97
Legislative Reference Library	Director	3.3025
Mediation Services Bureau	Director	179.02
Military Affairs Department	Adjutant General	190.07
Natural Resources Department	Commissioner	84.01
Enforcement Division	Director	84.081
Fish and Wildlife Division	Director	84.081
Forestry Division	Director	84.081
Land Bureau	Administrator	84.081
Mineral Division	Director	84.081
Parks and Recreation Division	Director	84.081
Special Services Division	Director	84.081
Waters Division	Director	84.081
Pollution Control Agency	9 members	116.02
Office of the Director	Director	116.03
Public Defender	Public Defender	611.22,611.23
Public Safety Department	Commissioner	299A.01
Capitol Complex Security Division	Director	299E.01
Criminal Apprehension Bureau	Superintendent	299C.01
Driver's License Division	Director	171.015
Emergency Services Division	Director	12.04
Fire Marshal Division	Fire Marshal	299F.01

7.6(d) (cont.)

<u>Department</u>	<u>Administrative Heads</u>	<u>Citation</u>
Highway Patrol Division	Chief Supervisor	299D.01
Motor Vehicles Division	Director	168.325
Public Service Department	Director	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	Revisor of Statutes	482.021
Small Business Finance Agency	7 members	362.51
State Planning Agency	Director	4.11
Transportation Department	Commissioner	174.01,174.02
Veterans' Affairs Department	Commissioner	196.01,196.02

## 7.6(d) (cont.)

## BOARDS, COMMISSIONS AND OTHER BODIES

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Aging Minnesota Board on Agricultural Commodity Research and Promotion Councils	25 members	256.975  17.54
Agricultural Employment Advisory Council		268.12, Subd. 6
Airport Zoning Board		360.063
American Indian Language and Culture Education Programs Advisory Task Force	9 members	126.531
Animal Health Board	5 members	35.02
Apprenticeship Advisory Council	9 members	178.02
Armory Building Commission	Corporation governed by Adjutant General and at least 2 line officers of the National Guard above lieutenant colonel	193.142
Arts Board	11 members	139.08
Battered Women Advisory Task Force	22 members	241.64
Black Minnesotans Council	7 members	3.9225
Boundary Waters Canoe Area Advisory Task Force	17 members	84.524
Building Code Standards Committee	9 members	16.853
Cable Communications Board	7 members	238.04
Canvassing Board	Secretary of State, 2 Supreme Court justices, 2 District Court judges	204A.53
Capitol Area Architectural and Planning Board	10 members	15.50

7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Chemical Dependency Advisory Council	11 members	254A.04
Child Care and Development Advisory Council	25 members	245.84
Community Colleges Board	9 members	136.61
Community Health Services Advisory Committee		145.919
Community School Advisory Council	25 members	121.87
Comprehensive Health Association, Board of Directors	7 members	63E.10
Continuing Education Advisory Task Force (Pharmacy)	10 members	151.13
Controlled Substances Advisory Council	13 members	152.02
Correctional Facilities Advisory Task Force	9 members	L78,c778,s6
Corrections Advisory Board	20 members	401.08
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	5 members	16.823
Early Childhood and Family Education Programs Advisory Task Force	9 members	3.9279
Economic Development Advisory Committee	21 members	362.09,Subd. 3
Economic Security Advisory Council	14 members	268.12

7.6(d) (cont.) <u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Economic Status of Women Advisory Council	22 members	L76,c337, L78,c793
Education Board	9 members	121.02
Education Compact Commission of the States	Governor, 1 senator, 1 representative, 4 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 Educational Policy, Governor's Task Force on	19 members	3.924
Elementary, Secondary and Vocational Education	15 members	L79,c333,s9
Computer Council	11 members	121.934
Employees Suggestion Board	7 members	16.71
Employment Agency Advisory Council	9 members	184.23
Employment Services Advisory Council		268.12,Subd.6
Environmental Education Board	6 members and 1 from each regional council	116E.02
Environmental Education Councils	12 in each council	116E.02
Environmental Quality Board	12 members	116C.03
Environmental Quality Board, Citizens Advisory Committee	11 members	116C.05



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7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Equalization Aid Review Committee	Commissioners of Agriculture, Education, Revenue and Administration	124.212, Subd. 10
Equalization Board	Commissioner of Revenue	270.12
Ethical Practices Board	6 members	10A.02
Executive Council	Governor, Lieutenant Governor, Attorney General, State Auditor, State Treasurer, Secretary of State	9.011
Fair-Plan Governing Committee	9 members	65A.35, Subd. 5
Family Farm Advisory Council	7 members	41.54
Gillette Hospital Board	9 members	250.05
Great Lakes Commission	2 senators, 2 representatives, 1 member appointed by Governor	1.22
Handicapped Council	30 members	256.482
Hazardous Waste Management Planning Council	9 to 18 members	115A.12
Health Advisory Council	15 members	144.011
Health Facilities Advisory Council	9 members	144.571
Higher Education Advisory Council	5 members	136A.02
Higher Education Coordinating Board	11 members	136A.02
Higher Education Facilities Authority	7 members	136A.26
Historical Memorials Commission	5 members	L80,c499
Hospital Planning Committees		246.022
Human Rights Advisory Committee	15 members	363.04
Human Services Board		402.02

7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Human Services Board Advisory Committees	25 members	402.03
Human Services Occupations Advisory Council	11 members plus members from various councils and boards	214.14
In-Service Training in Techniques of Education of Handicapped Pupils Advisory Council	12 members	123.581
Indian Advisory Council on Chemical Dependency	13 members	254A.03
Indian Affairs Intertribal Board	31 members	3.922
Indian Scholarship Committee	15 members	124.215, 124.48
Information Systems Advisory Council	8 members	16.91
Intergovernmental Information Systems Advisory Council	25 members	16.911
Interstate Cooperation Commission	15 members	3.29, Subd. 4
Investment Advisory Council	Commissioner of Finance, officers of 4 public pension systems, 10 appointed members	11A.08
Investment Board	Governor, State Auditor, State Treasurer, Secretary of State, Attorney General	Const. Art. XI, s8; 11A.03
Iron Range Resources and Rehabilitation Board	5 senators, 5 representatives, Commissioner of Natural Resources	298.22

## 7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Joint Legislative Committee on Agricultural Land Preservation	8 senators, 8 representatives	L79,c315
Judicial Standards Board	9 members	490.15
Land Exchange Board	Governor, Attorney General, State Auditor	Const. Art. XI, s10; 94.341
Legislative Advisory Commission	Chairmen 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 Employee Relations	6 senators, 6 representatives	3.855
Legislative Commission on Energy	8 senators, 8 representatives	3.351
Legislative Commission on Minnesota Resources	7 senators, 7 representatives	86.07
Legislative Commission on Pensions and Retirement	5 senators, 5 representatives	3.85
Legislative Commission on Waste Management	5 senators, 5 representatives	L80,c564,s11
Legislative Commission to Review Administrative Rules	5 senators, 5 representatives	3.965

## 7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Legislative Coordinating Commission	6 senators, 6 representatives	3.303
Legislative Study Group to Examine the Structure of the Government of the City of Minneapolis	6 senators, 6 representatives	L79,c303, ArtX,s22
Levy Limitations Review Board	3 members	275.551
Life and Health Insurance Guaranty Association Board of Directors	5 to 9 members	61B.04
Meat Advisory Council	10 members	31.60
Medical Policy Directional Committee on Mental Health	7 members	246.017
Mentally Ill and Dangerous and Psycopathic Personalities Special Review Board	3 members	253A.16
Mentally Retarded and Physically Handicapped Advisory Council	11 members	252.31
Merit System Council	3 members	393.07, Subd. 5 12 MCAR 2.492B
Minnesota Braille and Sight-Saving School Advisory Council	8 members	128A.03
Minnesota School for the Deaf Advisory Council	8 members	128A.03
Minnesota-Wisconsin Boundary Area Commission	5 members from each state	1.31,1.33
Minnesota-Wisconsin Boundary Area Commission Legislative Advisory Committee	5 senators, 5 representatives	1.34

## 7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Minnesota-Wisconsin Boundary Area Commission Technical Advisory Committee	10 members	1.35
Mississippi River Parkway Commission	10 members	161.1419
Continuing Education Plumbing Code and Examinations Advisory Council	10 members	151.13
Poison Information Advisory Council	7 members	326.41
Port Authority Commissions	7 members	145.93
Private Trade, Business and Correspondence Schools Advisory Council	458.09,458.10	
Public Employees Retirement Fund, Board of Trustees	16 members	141.24
Public Employment Relations Board	15 members	353.03
Public Utilities Commission	5 members	179.72
Real Estate Advisory Council	5 members	216A.03
Reapportionment Commission (If proposed Constitutional Amendment is adopted)	7 members	82.30
Rehabilitation Review Panel	9 members	L80,c588
Residential Utility Consumers Board	14 members	176.102
Retirement System Board of Directors	9 members	45.17,Subd. 6
Rules of Criminal Procedure Advisory Committee	9 members	352.03
Rules of Evidence Advisory Committee	11 members	480.059
Rules of Juvenile Procedure Advisory Committee	11 members	480.0591
Seed Potato Certification Advisory Committee		480.0595
Sentencing Guidelines Commission	6 members	21.112
Small Business Conference	9 members	244.09
	10 members	L80,c613

## 7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Soil and Water Conservation Board	12 members	40.03
Solid Waste Management Advisory Council	9 to 18 members	115A.12
South Dakota-Minnesota Boundary Waters Commission	5 members	114.13
Soybean Research and Promotion Council		21A.03
Spanish-speaking Affairs Council	7 members	L78,c510
Special Transportation Services Interagency Task Force		174.29
State Ceremonial Building Council	15 members	16.872
Steamfitting Examinations Advisory Council	7 members	326.49
Tax Court	3 judges	271.01
Tax Study Commission	7 senators, 7 representatives	3.86
Teachers Retirement Fund Board of Trustees	8 members	354.06
Transportation Regulation Board	3 members	174A.01
Turkey Research and Promotion Council	15 members	29.14,29.15
Uniform Conveyancing Forms Advisory Committee		507.09
Uniform Data Standards for Personnel-Payroll Reporting Advisory Task Force	9 members	121.938
Uniform Data Standards for Student Reporting Advisory Task Force	9 members	121.938
Uniform Financial Accounting and Reporting Standards Advisory Council	13 members	121.901

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7.6(d) (cont.)

<u>Board, Commission or Body</u>	<u>Membership</u>	<u>Citation</u>
Uniform State Laws Commission	4 commissioners	3.251
University Board	9 directors and Commissioner of Education	136.02,136.12
Urban Indians Advisory Council	5 members	3.922,Subd. 8
Veterans Advisory Committee	11 members	198.055
Vocational Education Board	Board of Education	124.53
Vocational Rehabilitation Consumer Advisory Council	9 members	129A.02
Voting Machines Advisory Committee	2 members	206.08
Voyageurs National Park Citizens Committee	12 members, 2 senators, 2 representatives	84B.11
Waste Management Board	9 members	115A.04, 115A.05
Waste Management Technical Advisory Council	7 members	115A.12
Water Conditioning Advisory Board	9 members	326.66
Water Planning Board	9 members	105.401
Water Resources Board	5 members	105.71
Water Well Contractors and Exploratory Borers Advisory Council	13 members	156A.06
Watershed Districts Advisory Committees	5 members	112.44
Workers' Compensation Advisory Council	13 members	175.007
Workers' Compensation Court of Appeals	5 members	175.006
Workers' Compensation State Fund Legislative Study Commission	6 senators, 6 representatives	L79,ExSess, c3,s67
Zoological Board	12 members	85A.01

## 7.6(d) (cont.)

## EXAMINING AND LICENSING BOARDS

<i>Board</i>	<i>Membership</i>	<i>Citation</i>
Abstracters Board	7 members	386.63
Accountancy Board	9 members	326.17
Architecture, Engineering, Land Surveying and Landscape Architecture Board	17 members	326.04
Assessors Board	9 members	270.41
Barber Examiners Board	4 members	154.22
Boxing Board	7 members	341.01
Chiropractic Examiners Board	7 members	148.02
Cosmetology Board	4 members	155.04
Dentistry Board	9 members	150A.02
Electricity Board	9 members	326.241
Law Examiners Board	7 members	481.01
Medical Examiners Board	11 members	147.01
Mortuary Sciences Committee of Examiners	4 members	149.02
Nursing Board	11 members	148.181
Nursing Home Administrators Board of Examiners	11 members	144A.19
Optometry Board	7 members	148.52
Peace Officers Standards and Training Board	11 members	626.841
Pharmacy Board	7 members	151.02
Physical Therapists Council	7 members	148.67
Podiatry Board	7 members	153.02
Private Detective and Protective Agent Services Board	5 members	326.33
Psychology Board	11 members	148.90
Teaching Board	15 members	125.183
Veterinary Medicine Board	7 members	156.01
Watchmaking Board of Examiners	7 members	326.541
Water Supply and Wastewater Treatment Operators Certification Council	6 members	115.74



7.6(d) (cont.)

INDEPENDENT STATE AGENCIES

<i>Agency</i>	<i>Membership</i>	<i>Citation</i>
Agriculture Society	A president and 9 other members	37.01,37.04
Historical Society	A director and 6 state officers	138.01
Horticultural Society	An executive board and 10 members	
Humane Society	7 directors appointed by Governor, and the Commissioner 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. XIII, s3; Territorial Laws 1851, Chapter 3

## 7.6(d) (cont.)

## MISCELLANEOUS REGIONAL AGENCIES

<i>Agency</i>	<i>Membership</i>	<i>Citation</i>
Metropolitan Airports Commission	15 members	473.603,473.604
Metropolitan Council	17 members	473.123
Metropolitan Land Use Advisory Committee	16 members	473.853
Metropolitan Mosquito Control Commission	12 members	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 Councils	8 members	30.465
Regional Development Commissions		462.387,462.388
Southern Minnesota Rivers 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 (1980) 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 (1980). The governing body of a county is its board of commissioners, usually five but sometimes seven members.

**7.7(a)** (cont.)

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 general law in chapters 370 to 402 changes very slowly but the profusion of general law does not inhibit frequent passage of special laws for counties. Individual counties often find it easier to meet special problems by special laws than by seeking to amend the general laws that affect all counties.

**(b) Cities**

City governments fall into two classes, statutory cities and home rule charter cities.

Statutory cities were formerly called villages and are organized under Minnesota Statutes, chapter 412 (1980). Several optional forms of organization of each city's government are permitted under chapter 412.

The effect of Minnesota Statutes, section 410.015 (1980), 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.

If it is intended that every city entity be included in a reference, then the reference must be to "statutory 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.

**7.7(b)** (cont.)

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 variety 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.

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 concerns are 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 form of rural 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 local approval should refer to "the town board"

7.7(c) (cont.)

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 (1980), which made approval by the hundreds of preexisting local governments unnecessary. See section 7.4 (b) of this manual. The relationship of the metropolitan council and the commissions to the other local government units and the public at large is not settled and is likely to have 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 political subdivision 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.

A bill that affects the metropolitan council or a metropolitan commission should name the counties where it applies, usually Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington, in accordance with the Minnesota Constitution, Article XII, Section 2. The Minnesota Supreme Court has characterized the metropolitan council as "a political subdivision." *City of New Brighton v.*

**7.7(d) (cont.)**

*Metropolitan Council*, 306 Minn 425, 428, 237 N.W.2d 620, 623 (1975). The commissions have not been so characterized, *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749, 757 (Minn. 1978), and a "political subdivision" is not necessarily a "local government unit." Caution suggests that naming the counties will preclude objections based on article XII, section 2. However, a drafter may also reasonably fear that naming the counties implies a legislative finding that the council or a commission is a "local government unit." If that concern exists, the drafter can add to the list of counties a sentence like the following: "The preceding list of counties does not imply a legislative finding that the commission is or is not a local government unit subject to the Minnesota Constitution, Article XII."

**(e) Other Local Government Units**

Other units exist with various powers. Examples are transit authorities, port authorities, water authorities, regional commissions, and so forth. These units are a blend of the unique and the unfamiliar. They attempt to deal with new or specialized demands placed upon local governments. In general, they combine powers of local entities for limited purposes. Such units may become more common in Minnesota as they already have in more urbanized states. The creation of such units puts a drafter into an uncharted area of Minnesota law. 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 and a number of minor and special plans, mainly local police and fire funds operating wholly or partially under local laws. 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 (1980). 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 (1980). This chapter includes all employees of municipalities or political subdivisions.

**7.8(a)** (cont.)

(3) The Teachers Retirement Association (TRA), found in Minnesota Statutes, chapter 354 (1980). Included in this group are teachers and administrators in the public schools and state universities.

(4) Teachers Retirement Associations in cities of the first class is found in Minnesota Statutes, chapter 354 (1980). Included in the group are teachers in Minneapolis, St. Paul, and Duluth.

(5) The Minneapolis Municipal Employees Retirement Fund (MERF), found in Minnesota Statutes, chapter 422A (1980), includes employees and officials of the city of Minneapolis.

(6) The Highway Patrolmen's Retirement Fund, found in Minnesota Statutes, chapter 352B (1980), includes only state highway patrolmen.

(7) Elective State Officers Retirement, found in Minnesota Statutes, chapter 352C (1980), includes elected state officers in the executive branch.

(8) Legislator's Retirement Plan, found in Minnesota Statutes, chapter 3A (1980).

(9) State Unclassified Employees Retirement Program, found in Minnesota Statutes, chapter 352D (1980), 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 (1980). Included in these sections 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 (1980), includes all police and firemen's relief associations to the extent not covered by a special law.

(12) The Judges' Retirement Plan, governing the retirement of and pensions for state judges is found in Minnesota Statutes, chapter 490 (1980).

**7.8(a) (cont.)**

Another chapter of Minnesota Statutes, chapter 356 (1980), 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, this chapter should be checked to assure that no conflict is created.

**(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 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 (1980), 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 provisions affecting a particular minor pension plan. This problem is often complicated by the 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 or expired by its own limitations.



**7.8(c)** (cont.)

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);
- (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 ensure 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 the following: "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.

7.9 (a) (cont.)

The state constitution provides the following:

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." Annot., 37 L.Ed.2d 1147, 1160 (1974). A law may be one respecting an

7.9 (b) (cont.)

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." *Id.* at 1165. To be constitutionally valid under the federal establishment clause, a law which incidentally aids religious institutions must pass the following 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 (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 & Religious Liberty v. Nyquist*, 413 U.S. 756 (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 the student's parents.

## 7.9 (b) (cont.)

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 divisiveness 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." Annot., *supra*, at 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. A 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. "[A]ny 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 of sufficient magnitude." Annot., *supra*, at 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, when 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.

7.9 (cont.)

(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. The 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 ensure secular use of the funds would require excessive entanglement between church and state. *Everson v. Board of Education*, 330 U.S. 1 (1947); *Wolman v. Walter*, 433 U.S. 229 (1977). The Minnesota Supreme Court has upheld transportation legislation under the Minnesota constitutional provisions. *Americans United, Inc. v. Independent School District No. 622*, 288 Minn. 196, 179 N.W.2d 146 (1970), *appeal dismissed*, 403 U.S. 945 (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 (1968); *Meek v. Pittenger*, 421 U.S. 349 (1975), *reh den*, 422 U.S. 1049 (1975); *Wolman v. Walter*, 433 U.S. 229 (1977); *Lemon v. Kurtzman*, 403 U.S. 602 (1971), *reh den*, 404 U.S. 876 (1971).

(3) *Instructional Materials and Equipment other than Books*. The Court has declared unconstitutional certain state statutes authorizing the expenditure of public funds for the purchase and loan to nonpublic schools of secular instructional materials and equipment such as projectors, tape recorders, maps, and charts. This has been true even when the statute specified that the items must be "incapable of diversion to religious use" and that the materials would be loaned to the pupil or his parent rather than the school. The rationale is that 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 (1975), *reh den*, 422 U.S. 1049 (1975); *Wolman v. Walter*, 433 U.S. 229 (1977).

## 7.9 (cont.)

(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 if 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 (1973); *Wolman v. Walter*, 433 U.S. 229 (1977).

(5) *Tuition Grants, Reimbursements, and Tax Benefits.* Tuition grants, reimbursements, and tax benefits to parents of nonpublic school pupils 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, the benefits constitute unconstitutional direct aid to sectarian schools. Mere statistical guarantees that aid will be used for secular, neutral, and nonideological purposes are not enough. *Sloan v. Lemon*, 413 U.S. 825 (1973), *reh den*, 414 U.S. 881 (1973). *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973). A recent case, affirmed by the Supreme Court, held that New Jersey's \$1,000 exemption for those supporting dependents in nonpublic elementary and secondary schools was unconstitutional because it had the primary effect of advancing religion. The decision in that case rested largely on a consideration of the breadth of the class benefited by the deduction. The Court said that since, just as in *Nyquist*, the real majority of eligible taxpayers (about 95 percent) secured the tax relief by virtue of supporting dependents in religiously affiliated nonpublic schools, the money involved represented a charge made upon the state for the purpose of religious education. It also found the class benefited by the exemption was too narrowly drawn because it did not include parents supporting children in public elementary and secondary schools. *Public Funds for Public Schools v. Byrne*, 444 F. Supp. 1228 (D.N.J. 1978), *aff'd*, 590 F. 2d 514 (3d cir. 1979), *aff'd*. 442 U.S. 907 (1979).

(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, when to do so would require excessive entanglement between government and the religious institutions. Generally, it would be difficult to determine if the teacher taught only from a secular point of view. *Lemon v. Kurtzman*, 403

7.9 (c)(6) (cont.)

U.S. 602 (1971), *reh den*, 404 U.S. 876 (1971); *Early v. Dicenso*, 403 U.S. 602(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 (1975), *reh den*, 422 U.S. 1049 (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 when 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. The Court has upheld a state statute providing therapeutic and remedial services to nonpublic school pupils at a neutral site off the premises of the nonpublic schools. 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 (1975), *reh den*, 422 U.S. 1049 (1975); *Wolman v. Walter*, 433 U.S. 229 (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 are limited to a percentage of the amount spent for such services at public schools. *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756 (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

**7.9 (c)(10) (cont.)**

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 (1971), *reh den*, 404 U.S. 874 (1971); *Hunt v. McNair*, 413 U.S. 734 (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 (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 during the reading. *School District of Abington Township v. Schempp*, 374 U.S. 203 (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 (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 (1968).

(4) *Release Time for Religious Instruction*. The Court has approved release time programs for religious instruction when the instruction has taken place outside the public school building and at no cost to the state and when 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 the instruction. *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203 (1948); *Zorach v. Clauson*, 343 U.S. 306 (1952).



7.9 (cont.)

(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 (1972).

**(e) Religious Issues Under the Minnesota Constitution**

In *Americans United Inc. v. Independent School District No. 622*, 288 Minn. 196, 213, 179 N.W.2d 146, 155 (1970), the Minnesota Supreme Court stated "...that the limitations contained in the Minnesota Constitution are substantially more restrictive than those imposed by U.S. Const. Amend. 1." Although upholding the use of public funds to transport parochial school students to and from school, the court noted that "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.'" 288 Minn. at 201, 179 N.W. 2d at 149. 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 grant 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 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 Minnesota Supreme 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 section 2 of article XIII of the Minnesota Constitution which proscribes 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 Administrative Procedures**

The administrative procedure act (APA) is compiled as Minnesota Statutes, sections 15.041 to 15.052 (1980). These sections establish

**7.10 (cont.)**

procedures for the promulgation of most agency rules and for the hearing of "contested cases." Drafters of legislation related to state agencies should be familiar with the APA.

**(a) Rulemaking**

If a bill grants rulemaking authority to a state agency, it should specify that the rules must be adopted pursuant to the rulemaking provisions of the APA. An exemption must be specified if the APA need not be followed.

*Time Constraints.* Normally, it takes an agency at least 180 days to adopt rules. If there is a need to have rules adopted more quickly, the bill should specify that the rules may be adopted as temporary rules pursuant to section 15.0412, subdivision 5. Temporary rules cannot remain in effect for more than 180 days. If a longer period is required, the bill should specify the period of time that the temporary rules may remain in effect.

The drafter should not specify a date by which the agency must have rules. These dates are obsolete after a few years but cannot be removed without additional legislation. Moreover, absent a penalty, a deadline date for rules will probably not be sufficient to ensure agency action anyway. The APA currently requires an agency to begin rulemaking proceedings within six months of the effective date of the act requiring rules; it also requires the agency to decide whether to adopt its proposed rules within six months of the hearing examiner's report on the rules. Minnesota Statutes, section 15.0412, subdivisions 8 and 9 (1980). These statutory time requirements should be sufficient for most situations.

*The Use of Policy Guidelines.* A drafter should not include a provision for rulemaking authority in a bill for the sole reason that there might be a need for the agency to fill in "holes" in the new law. The only "holes" left in a bill should be those which are there deliberately because the technical nature of the program involved requires agency expertise to interpret and administer it with rules. Policies and guidelines for the agency should be clearly established in the bill being drafted. Agency rules should only be necessary to implement those policies.

**7.10(a)** (cont.)

For example, if a bill establishes a grant program to distribute money for pollution control projects, the drafter should include a definition of "pollution," "pollution control," and a list of criteria the agency administering the grant program must use when awarding money. The bill should specify who is eligible to apply and a priority system for the awards. These are policy decisions which should not be left to the agency unless absolutely necessary.

Policy guidelines are also important because they set the parameters within which oversight bodies will review the rules for their appropriateness. Hearing examiners, the legislative commission to review administrative rules, and courts will each analyze the rules within the policy context provided with the rule authorization.

*Rules with Force of Law.* When drafting a bill authorizing rulemaking by an agency, the drafter should realize that the Minnesota APA states that all rules have the force and effect of law five days after their publication in the state register. Minn Stat. §15.0413 (1980). Rules, therefore, are just as important as laws passed by the legislature itself. This is another reason for carefully drafting grants of rulemaking authority.

Despite the language of Minnesota Statutes, section 15.0413 (1980), the Minnesota Supreme Court has established a category of rules which it says does *not* have the force and effect of law. That category is "interpretative rules." See: *Minnesota-Dakotas Retail Hardware Ass'n v. State*, 279 NW2d 360 (1979).

It is not clear whether a drafter can "draft around" this court decision in order to ensure that rules for a certain program would have the force of law. However, to do so in a specific bill draft, the following language might be useful:

-----  
Rules adopted pursuant to authority granted by this  
-----  
section shall have the force of law, regardless of  
-----  
whether they are interpretative or legislative rules.  
-----

**(b) Contested Cases**

If the bill provides for an administrative determination to be made after a hearing before a hearing examiner, the bill should specify that

**7.10(b) (cont.)**

the decision is to be made pursuant to the contested case provisions of the APA. Administrative determinations that should come within the contested case provisions include denial of state permits, revocation of most licenses, and disciplinary actions against licensed professionals.

**7.11 Forms**

General Appropriations Bill	
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(Bill subdivisions) .....	300
(Appropriations from sources other than general fund; deficiencies; extension of special authority; procedural rider) .....	301
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(Authorizing individual to "buy back" as exception to general law) .....	325
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**EXAMPLE — GENERAL APPROPRIATIONS BILL (Title and introductory language)**

1 A bill for an act  
2 relating to the organization and operation of state  
3 government; appropriating money for the general  
4 administrative and judicial expenses of state  
5 government with certain conditions; providing for the  
6 transfer of certain moneys in the state treasury;  
7 authorizing land acquisition in certain cases; fixing  
8 and limiting the amount of fees to be collected in  
9 certain cases; amending Minnesota Statutes 1980,  
10 Sections 5.08, Subdivision 2; 5.09; 10.30; 16.025,  
11 Subdivision 1; Laws 1971, Chapter 121, Section 2, as  
12 amended; and repealing Minnesota Statutes 1980,  
13 Sections 4.19; and 299D.03, Subdivision 4.  
14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
16 Section 1. [STATE DEPARTMENTS; APPROPRIATIONS.]  
17 The amounts set forth in the columns designated  
18 "APPROPRIATIONS" are appropriated from the general fund, or  
19 another designated fund, to the agency and for the purpose  
20 specified opposite it in the "AGENCY AND PURPOSE" column. The  
21 sums are available for the fiscal years indicated for each  
22 purpose. The figures "1981," "1982," and "1983" refer to fiscal  
23 years and mean that the appropriation or appropriations listed  
24 under that fiscal year are available for the year ending June  
25 30, 1981, June 30, 1982, or June 30, 1983.

Note that the title is identical to that of substantive law bills.

In Section 1, note the general appropriation language. This is the only time in the entire bill this provision appears.

**EXAMPLE — GENERAL APPROPRIATIONS BILL (Bill subdivisions)**

1 AGENCY AND PURPOSE	APPROPRIATIONS	
2	1982	1983
3       Sec. 2. THE LEGISLATURE		
4       Subdivision 1. House of		
5 Representatives	7,100,000	8,000,000
6       Subd. 2. Senate	5,155,350	5,539.910
7       Subd. 3. Legislative		
8 Coordinating Commission		
9 (a) Legislative Reference Library	258,910	244,460
10 (b) Revisor of Statutes	1,098,401	1,442,317
11 (c) Office of Legislative Research		
12 Science and Technology Project	47,250	47,250

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 (Appropriations from sources other than general fund; deficiencies; extension of special authority; procedural rider)**

1	Subd. 6. Mississippi River		
2	Parkway Commission	10,000	10,000
3	For 1981 - \$3,000		
4	This appropriation is from the trunk		
5	highway fund.		
6	Sec. 3. SUPREME COURT		
7	Subdivision 1. General Operations		
8	and Management	1,821,426	1,897,857
9	Subd. 2. Supreme Court		
10	Contingent	28,750	3,750
11	If the appropriation for either year is		
12	insufficient, the appropriation for the		
13	other year is available.		
14	Subd. 3. Judges' Retirement	690,000	710,000
15	To be disbursed by the executive		
16	director of the Minnesota state		
17	retirement system, subject to the		
18	provisions of Laws 1975, Chapter 418.		

In Sec. 2, Subd. 6, note the provisions that the appropriations are from the trunk highway fund. This is an exception to the general rule that appropriations are from the general fund.

In Sec. 2, Subd. 6, 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, called a "rider," on the appropriation. It is procedural, as opposed to substantive rider, because it relates to the procedure of expenditure of the funds.



**EXAMPLE — GENERAL APPROPRIATION BILL (Substantive rider)**

1	Sec. 6. BOARD ON JUDICIAL STANDARDS		
2		105,000	104,000
3	Approved Complement - 2		
4			
5	The board on judicial standards shall		
6	annually review the compliance of each		
7	district, county, municipal, or probate		
8	judge with the provisions of Minnesota		
9	Statutes, Section 546.27. The board		
10	shall notify the commissioner of		
11	finance of each judge not in compliance.		
12	If the board finds that a judge has		
13	compelling reasons for noncompliance,		
14	it may decide not to issue the notice.		
15	Upon notification that a judge is not		
16	in compliance, the commissioner shall		
17	not pay the judge his salary.		
18	The board may cancel a notice of		
19	noncompliance upon finding that a judge		
20	has returned his status to compliance,		
21	but in no event shall a judge be paid		
22	his salary for the period in which the		
23	notification of noncompliance is in		
24	effect.		
25	Sec. 10. CONTINGENT ACCOUNTS		
26	Subdivision 1. The appropriations in		
27	this section shall be expended with the		
28	approval of the governor after consulta-		
29	tion with the legislative advisory		
30	commission pursuant to section 3.30.		
31	Subd. 2. General	3,387,000	4,681,000
32	Of this appropriation, \$255,468 in the		
33	second year is available for the		
34	Minnesota environmental education board.		
35	\$175,000 each year is available for the		
36	resource recovery grants-in-aid program		
37	in the pollution control agency.		
38	Subd. 3. Game and Fish	50,000	50,000
39	This appropriation is from the game and		
40	fish fund.		

In Sec. 6 note the substantive law. This type of provision should be avoided. It is apparently a permanent law but yet it is attached to an appropriation which is temporary. If the provision is not compiled into Minnesota Statutes because the index of the session laws does not include the detail of every bill, the provision will be difficult to locate in the future.

In Sec. 10, Subd. 1, note the procedural rider on the expenditure of funds. This kind of provision is clearly attached to the appropriation and is clearly not permanent substantive law.

**EXAMPLE — GENERAL APPROPRIATIONS BILL  
(Approved complement; procedural rider)**

1	Sec. 16. ATTORNEY GENERAL		
2	Approved Complement		
3	1982 - 191	1983 - 187	
4	General - 186	184	
5	Federal - 5	3	
6	Subdivision 1. General Operations		
7	and Management	4,945,782	4,875,792
8	Subd. 2. Special Contingent	25,000	25,000
9	This appropriation is not available for		
10	paying the costs of special, legal,		
11	accounting, and investigative personnel		
12	retained in cases arising under		
13	Minnesota Statutes, Section 501.12,		
14	hereafter filed unless the attorney		
15	general shall decide in a case that all		
16	the beneficiaries are not adequately		
17	represented, or that there is a		
18	likelihood that the purpose of the		
19	trust may be frustrated without his		
20	intervention and that the state has a		
21	substantial interest in carrying out		
22	the purpose of the trust.		

In Sec. 16, note the provision for "Approved Complement." This provision is intended to control by law the number of personnel positions on the department's payroll. The provision is common in departmental budgets.

In Sec. 16, Subd. 2 is a procedural rider which restricts the expenditure of funds.

**EXAMPLE — GENERAL APPROPRIATIONS BILL  
(Program budgeting)**

1	Sec. 26. NATURAL RESOURCES		
2	General Operations and		
3	Management	51,194,500	51,174,100
4	Of this appropriation, \$33,775,200 for		
5	the first year and \$33,741,000 for the		
6	second year are from the general fund;		
7	\$1,330,000 each year is from the		
8	special revenue fund; and \$16,089,300		
9	for the first year and \$16,103,100 for		
10	the second year are from the game and		
11	fish fund, including \$526,600 the first		
12	year and \$533,400 the second year		
13	pursuant to Minnesota Statutes, Section		
14	296.421, Subdivision 4.		
15	The amounts that may be expended from		
16	this appropriation for each program are		
17	as follows:		
18	Administrative Management		
19	Services	4,272,100	4,272,100
20	\$252,900 each year is for the		
21	environmental education board.		
22	Of this appropriation, \$171,400 each		
23	year is appropriated from the game and		
24	fish fund for the purchase of legal		
25	services from or through the attorney		
26	general on behalf of game and fish		
27	activities.		
28	Youth Conservation Corps	325,000	325,000
29	The department shall insure that youths		
30	in all parts of the state shall have an		
31	equal opportunity for employment. The		
32	youth conservation corps shall provide		
33	service for the various DNR disciplines		
34	including parks, forestry and stream		
35	improvement. \$100,000 in fiscal 1981		
36	and \$100,000 in fiscal 1982 shall be		
37	used for planting, timber stand		
38	improvement, and forest development on		
39	state owned lands, other than trust		
40	fund lands, for forestry purposes.		

In Sec. 26, note the provision that the general appropriation is composed of various programs followed by a listing of the programs and the amounts to be spent on each program during each year of the biennium. These are examples of "program budgeting" as opposed to "departmental budgeting" found in other sections.

**EXAMPLE — GENERAL APPROPRIATIONS BILL (Project budgeting)**

1	Sec. 33. NATURAL RESOURCES ACCELERATION		
2	Subdivision 1. Legislative		
3	Commission on Minnesota Resources	180,000	180,000
4	Together with any sums received as		
5	grants-in-aid from federal sources and		
6	any sums granted by private sources to		
7	carry out the purposes of the		
8	commission. Federal and private funds		
9	shall not cancel but remain available		
10	until expended.		
11	Subd. 2. Department of		
12	Agriculture	50,255	50,000
13	Framework water plan - phase II. For		
14	the department role in phase II of the		
15	framework water and related land		
16	resources planning effort. The water		
17	resources council, or board if created,		
18	shall coordinate the work programs and		
19	reports of all agencies involved.		
20	Subd. 3. Department of		
21	Economic Development	21,786	20,000
22	Framework water plan - phase II. For		
23	the department role in phase II of the		
24	framework water and related land		
25	resources planning effort. The water		
26	resources council, or board if created,		
27	shall coordinate the work programs and		
28	reports of all agencies involved.		
29	Subd. 4. Energy Agency	106,927	105,000
30	Framework water plan - phase II. For		
31	the agency role in phase II of the		
32	framework water and related land		
33	resources planning effort. The water		
34	resources council, or board if created,		
35	shall coordinate the work programs and		
36	reports of all agencies involved. The		
37	water management information system		
38	shall be developed consistent and		
39	compatible with the Minnesota land		
40	management information system.		

In Sec. 33, Subs. 2, 3, and 4, note the provisions in each of the paragraphs. These are examples of projects which were specially budgeted.

**EXAMPLE — GENERAL APPROPRIATIONS BILL (New substantive law)**

1       Sec. 61. [DETAILS.]  
2       The staffs of the senate finance committee and the house  
3       appropriations committee shall, at the request of agencies  
4       receiving appropriations and the commissioner of finance,  
5       provide wherever available detailed information on the  
6       activities and objects of expenditures that go into the  
7       appropriation totals.  
8       Sec. 66. [4.191] [PLANNING PROGRAMS.]  
9       Prior to commencing a study, research, or planning program,  
10      a state agency or department shall file with the state planning  
11      agency on a form prescribed by the agency, a description of the  
12      proposed project, including title, purpose, staff assigned,  
13      consultants to be used, cost, completion date, and other  
14      information prescribed by the agency as appropriate. The agency  
15      shall develop rules to exclude from the filing requirement  
16      projects that the agency determines are of minor significance.  
17      Upon completion of the project, a copy shall be filed with  
18      the state planning agency. The state planning agency shall  
19      review the planning programs of state departments and agencies  
20      and submit to the legislature by November 15 of each year a  
21      report of findings and recommendations.

In Sec. 61, note that the language is substantive law and while it is unlimited as to time, there is no proposed coding. This form causes problems on whether the provision is intended to be permanent and compiled in the statutes. Compare this section to the better form on page 307.

In Sec. 66, note the tentative coding. This indicates the desire to place the provision in the Minnesota Statutes. This is the proper form for a new permanent substantive provision.

**EXAMPLE — GENERAL APPROPRIATIONS BILL (Temporary substantive provision)**

1           Sec. 61. [DETAILS.]  
2           The staffs of the senate finance committee and the house  
3           appropriations committee shall, during fiscal years 1982 and  
4           1983, at the request of agencies receiving appropriations and  
5           the commissioner of finance, provide wherever available detailed  
6           information on the activities and objects of expenditures that  
7           go into the appropriation totals. This section is repealed July  
8           1, 1983.

In Sec. 61, note that the language has no proposed coding and has a repeal date. It is clear that this is a temporary provision not intended to be coded. Compare this form to the form on page 306.

**EXAMPLE — GENERAL APPROPRIATIONS BILL**  
**(Amendment to existing law)**

1       Sec. 69. Minnesota Statutes 1980, Section 10.30, is  
2 amended to read:  
3       10.30 [EMPLOYEES' COMPENSATION REVOLVING FUND,  
4 REIMBURSEMENT.]  
5       In all cases where any state department owes the employees'  
6 compensation revolving fund, created by sections 176.591,  
7 176.601 and 176.611, for claims paid its employees, and no  
8 direct appropriation is made therefor, such department shall  
9 reimburse the revolving fund from the ~~funds available to it for~~  
10 ~~supplies and expense~~ money appropriated for operation of the  
11 department.  
-----

In Sec. 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.

**EXAMPLE — BONDING AUTHORIZATION**

1 A bill for an act  
2 relating to ..... County; authorizing the  
3 acquisition and betterment of apartments for senior  
4 citizens of low and moderate income and the issuance  
5 of bonds to finance their cost.  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
8 Section 1. [POLICY.]  
9 It is found, and declared that there is a shortage of safe,  
10 convenient and reasonably priced housing available to persons of  
11 low and moderate income residing in ..... County; that the  
12 private building industry has not and is not likely to make the  
13 needed housing available; that elderly citizens of low and  
14 moderate income, generally of a fixed nature, are least able to  
15 provide adequate housing for themselves; and that, in order to  
16 provide the needed housing for the elderly citizens, and in  
17 order to accomplish the purposes specified in Minnesota  
18 Statutes, Section 462A.02, it is necessary to authorize  
19 ..... County to take the actions and exercise the powers  
20 hereinafter authorized.  
21 Sec. 2. [COUNTY POWERS.]  
22 Subdivision 1. [ACQUISITION OF PROPERTY.] .....  
23 County may provide for the acquisition and betterment of  
24 apartment buildings, in accordance with laws applicable to the  
25 construction of county buildings and rent the apartments therein  
26 to elderly persons of low and moderate income, upon the terms  
27 and conditions the county shall deem advisable. The apartment  
28 buildings shall be constructed in close proximity to the county  
29 nursing home, and administered together with the nursing home as  
30 part of an overall program for the care of aged and infirm  
31 persons.  
32 Subd. 2. [ELIGIBILITY REQUIREMENTS.] The county may by  
33 ordinance adopt regulations establishing age, health and income



**EXAMPLE — BONDING AUTHORIZATION (Cont.)**

1 eligibility requirements for the rental of the apartments. The  
2 regulations may provide different rental terms and conditions  
3 for persons of different ages, health conditions and incomes,  
4 but the rentals charged for all the apartments shall be fixed so  
5 that the total amount of the rentals is sufficient to pay the  
6 principal of and interest on all bonds issued by the county to  
7 finance the acquisition and betterment of the apartment  
8 buildings, and, together with any moneys appropriated by the  
9 county in its budget for the purpose, sufficient to pay all  
10 costs of operation and maintenance of the apartments.

11 Subd. 3. [ISSUANCE OF BONDS.] The county board of  
12 commissioners may by resolution authorize the issuance of  
13 revenue bonds to finance the acquisition and betterment of the  
14 apartment buildings, and shall pledge and appropriate the  
15 revenues to be derived from their operation to pay the principal  
16 of and interest on the bonds when due and to create and maintain  
17 reserves for that purpose, as a first and prior lien on all the  
18 revenues, or as a lien on the revenues subordinate to the  
19 current payment of a fixed amount or percentage or all costs of  
20 the operation and maintenance of the facilities. Except as  
21 herein provided, the bonds shall be issued in accordance with  
22 Minnesota Statutes, Chapter 475, and the interest on them shall  
23 be exempt from taxation by the state and all political  
24 subdivisions.

25 Subd. 4. [REVENUES PLEDGED.] The revenues may be pledged  
26 and appropriated for the use and benefit of bondholders  
27 generally, or may be pledged by the execution of an indenture or  
28 other appropriate instrument to a trustee for the bondholders,  
29 and the site and facilities, or any part of them, may be  
30 mortgaged to the trustee to secure the payment of the principal  
31 of and interest on the bonds when due. The county board of  
32 commissioners shall have power to make and enter into any and  
33 all covenants with the bondholders or trustees which are

**EXAMPLE — BONDING AUTHORIZATION (Cont.)**

1 determined by it to be necessary and proper to assure the  
2 marketability of the bonds, the completion of the facilities,  
3 the segregation of the revenues and any other funds pledged, and  
4 the sufficiency of funds for the prompt and full payment of all  
5 bonds and interest. The bonds shall be deemed to be payable  
6 wholly from the income of a revenue producing convenience within  
7 the meaning of section 475.58.

8       Subd. 5. [PLEDGE OF FULL FAITH.] The county board of  
9 commissioners may also pledge the full faith and credit and  
10 taxing powers of the county to the payment of not more than  
11 \$1,500,000 principal amount of the bonds and the interest on  
12 them when due, and in this event the board shall adopt an  
13 initial resolution stating the amount, purpose and, in general,  
14 the security to be provided for the bonds, and shall publish the  
15 resolution once each week for two consecutive weeks in the  
16 official newspaper. The bonds may be issued without the  
17 submission of the question of their issuance to the electors  
18 unless within ten days after the second publication of the  
19 resolution a petition requesting an election signed by more than  
20 ten percent of the qualified electors voting in the county at  
21 the last general election is filed with the county auditor. If  
22 a petition is filed, no bonds shall be issued under this  
23 subdivision unless authorized by a majority of the electors  
24 voting on the question.

25       Subd. 6. [TAX LEVY.] The county board of commissioners may  
26 levy ad valorem taxes on all taxable property in the county to  
27 pay the costs of operation and maintenance of the apartments,  
28 and covenant and agree to levy ad valorem taxes, if needed, over  
29 the period during which any bonds issued pursuant to subdivision  
30 3 are outstanding. The amount and rate of the taxes shall be  
31 subject to statutory limits on county tax levies for general  
32 fund purposes.

33       Sec. 3. [EFFECTIVE DATE.]

See notes on page 312.

**EXAMPLE — BONDING AUTHORIZATION (Cont.)**

1	Sections 1 and 2 are effective on the day following final
2	enactment pursuant to Minnesota Statutes, Section 645.023,
3	Subdivision 1, Clause (a).

In Section 1 and Subds. 1 and 2 of Sec. 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 how 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 (Typical bill)

1                   A bill for an act  
2           relating to taxation; providing for the imposition of  
3           an occupation tax upon persons, copartnerships,  
4           companies, joint stock companies, corporations, and  
5           associations engaged in the business of removing  
6           gravel from gravel pits in Kittson County and Marshall  
7           County; and prescribing penalties.  
8  
9   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
10       Section 1. [KITTSO AND MARSHALL COUNTIES; GRAVEL PITS;  
11       OCCUPATION TAX.]  
12       Any person engaged in the business of removing gravel from  
13       gravel pits in either Kittson County or Marshall County and  
14       subsequently selling the gravel to other persons, shall pay to  
15       the county an occupation tax. The board of county commissioners  
16       may determine the amount of the tax necessary for the purposes  
17       set forth in section 6, but it shall not exceed ten cents on  
18       each cubic yard of gravel removed from a gravel pit after the  
19       effective date of this act. The tax shall be computed and be  
20       due and payable as provided in sections 2 to 8.  
21       Sec. 2. [DEFINITIONS.]  
22       Subdivision 1. [OPERATOR.] For the purposes of sections 1  
23       to 8, the term "an operator" or "the operator" means a person  
24       engaging in the business of removing gravel and selling it to  
25       others.  
26       Subd. 2. [PERSON.] For all purposes of sections 1 to 8,  
27       the term "person" includes individuals, copartnerships,  
28       companies, corporations, and associations.  
29       Sec. 3. [COLLECTION OF TAX.]  
30       Subdivision 1. [REPORT.] Each quarter of each year an  
31       operator shall file with the county auditor, under oath, a  
32       report in such form and containing such information as the  
33       auditor may require. The first report hereunder shall be filed  
34       on July 1, 1979, covering the period between the effective date  
35       of sections 1 to 8 and June 30, 1979, and thereafter on October

**EXAMPLE — SPECIAL LAW (Typical bill, Cont.)**

1 1, January 1, April 1, and July 1 of each year covering the  
2 preceding quarter of the calendar year. In each report the  
3 operator shall state the number of cubic yards of gravel removed  
4 during the quarter and compute the amount of the tax due.  
5 Subd. 2. [COMPUTATION.] The tax computed in the report  
6 shall be paid to the county treasurer on the first day of the  
7 quarter next following the quarter for which the report is filed.  
8 Sec. 4. [FAILURE TO REPORT AND PAY TAX.]  
9 If an operator shall either fail to file the report  
10 required by section 3, subdivision 1, or files an erroneous  
11 report, the county auditor shall determine the amount of the tax  
12 due and shall notify such person by registered mail of the  
13 amount of the tax. The operator may, within 30 days from the  
14 date of mailing of such notice, file written statement of the  
15 objections to the amount of the taxes due. The statement of  
16 objections is a petition under Minnesota Statutes, Chapter 278,  
17 and Sections 278.02 to 278.13 shall be applicable thereto.  
18 Sec. 5. [PROHIBITION.]  
19 No person shall remove any gravel from any gravel pit  
20 unless taxes due under this act have been paid or objections  
21 have been filed as provided in section 4. Violation of  
22 subdivision 1 of this section is a misdemeanor.  
23 Sec. 6. [USE OF REVENUE.]  
24 Subdivision 1. [DEPOSIT.] All occupation taxes collected  
25 under this act shall be deposited in the county treasury and  
26 credited as follows:  
27 (a) ninety percent to the county road and bridge fund; and,  
28 (b) ten percent to a reserve fund for the restoration of  
29 abandoned gravel pits which shall be created in the county  
30 treasury.  
31 Subd. 2. [EXPENDITURE.] All occupation taxes deposited and  
32 credited to the county road and bridge fund or the reserve fund  
33 shall be expended by the board of county commissioners only for

**EXAMPLE — SPECIAL LAW (Typical bill, Cont.)**

1 the maintenance, construction, or reconstruction of roads  
2 traveled by trucks hauling gravel or for the restoration of  
3 abandoned gravel pits. Occupation taxes shall only be expended  
4 for the restoration of abandoned gravel pits upon lands to which  
5 the county holds title or upon lands forfeited to the state of  
6 Minnesota, as trustee, for nonpayment of taxes.

7 Sec. 7. [APPLICABILITY TO STATE.]

8 No report shall be filed by nor any occupation tax paid by  
9 the state of Minnesota or its contractors when the gravel  
10 removed is used in the construction or maintenance of trunk  
11 highways.

12 Sec. 8. [EFFECTIVE DATE.]

13 The provisions of sections 1 to 7 that relate to Kittson  
14 County are effective only after approval by a majority of the  
15 members of the board of county commissioners of Kittson County  
16 at 12:01 a.m. the after compliance with the provisions of  
17 Minnesota Statutes, Section 645.021, Subdivision 3. The  
18 provisions of sections 1 to 7 that relate to Marshall County  
19 shall become effective only after approval by a majority of the  
20 members of the board of county commissioners of Marshall County  
21 at 12:01 a.m. the day after compliance with the provisions of  
22 Minnesota Statutes, Section 645.021, Subdivision 3.

**EXAMPLES — LOCAL LAWS (Applicability provisions)**

All local laws must contain an applicability provision.

If the bill is to apply only to one or more local governmental units, the units to which it applies must be named. The naming is required by the Minnesota Constitution, Article XII, Section 2 and Minnesota Statutes, Section 645.021, Subdivision 1. Neither the Constitution nor the statute require the naming to be in any particular form. On some occasions the naming occurs in the text of the law. However, the preferred standard form to name the unit or units is:

```
Sec. . . . . [APPLICABILITY.]  
On its effective date, section ... applies to the city  
-----  
[town, county, school district] of .....  
-----
```

Provided that the law is substantively a local law, this provision is all that is necessary to trigger the constitutional and statutory provisions relating to local laws.

It is not necessary to say that "Section 1 is a special law enacted pursuant to the Minnesota Constitution, Article 12, Section 2." This recitation is a nullity. The naming of the local unit, not the gratuitous offering that the bill is a special law, is the requirement of the Constitution and statutory law. Since a local unit is named, the recitation that the law is a special law is verbiage.

With limited exceptions, it is also not necessary to put in a provision specifically providing for local approval. Examples of the exceptions are shown in the following examples of local approval sections. A local approval section is not normally necessary since the mechanics for local approval are provided by Minnesota Statutes, Section 645.021, Subdivision 2. Because of this statutory standard procedure, a local approval section in a bill is, strictly speaking, usually redundant.



**EXAMPLES — LOCAL LAWS (Approval provisions)**

All local laws must contain an approval provision.

(1) If a local law applies to two or more units, by normal operation of Minnesota Statutes, Section 645.021, Subdivision 1, the governing body of all of the units must approve the law before it goes into effect. However, if it is desired to have the laws apply separately to each of the units which desire to come under the law, then an applicability and a local approval section should be included and drafted as follows:

```

Sec. . . . . [APPLICABILITY.]

On its effective date, section ... applies to those
-----
cities [towns, counties, school districts] among the cities
-----
[towns, counties, school districts] of ..... which
-----
approve it.
-----
Sec. . . . . [LOCAL APPROVAL.]

Section ... is effective in any of the cities (towns,
-----
counties, school districts) named in section ... upon the
-----
approval by the city council [town board, county board,
-----
school board] of the city, [town, county, school district]
-----
but only for a city [town, county, school district] whose
-----
city council [town board, county board, school board]
-----
approved it.
-----

```

(2) If it is desired that a local law be submitted for the approval of the voters (rather than the governing body), of the local government unit, the approval section should read:

```

Sec. . . . . [LOCAL APPROVAL.]

Notwithstanding the provisions of Minnesota Statutes,
-----
Section 645.021, Subdivision 2, section ... is effective
-----
only upon its approval by a majority of the voters of the
-----
city [town, county, school district] of ..... voting
-----
on the question at an election on the question of approval
-----
of section ....
-----

```

or, if appropriate, it may read:

```

Sec. . . . . [LOCAL APPROVAL.]

Notwithstanding the provisions of Minnesota Statutes,
-----
Section 645.021, Subdivision 2, section ... is effective
-----
only upon its approval by a majority of the electors of the
-----
town of ..... voting on the question at the annual
-----

```

**EXAMPLE — LOCAL LAWS (Approval provisions, Cont.)**

town meeting or any special town meeting called for that  
purpose.

(3) If the request requires submission 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. . . . . [LOCAL APPROVAL.]

Section . . . is effective upon approval by the governing body of the city [town, county, school district] of . . . . . If the governing body does not approve this act within . . . days after the day of approval of sections 1 to . . . by the governor, and notwithstanding the provisions of Minnesota Statutes, Section 645.021, Subdivision 2, the governing body shall submit the question of approval to the voters of the city [town, county, school district] at the next general election [town meeting] in the city [town, county, school district]. If approved by a majority of the voters voting on the question, this act shall become effective.

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.

Although this form has been used, its validity has been questioned. It has not been tested in court. It should be avoided unless a requester specifically asks for it.

(4) If the requester asks that the bill 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:

Sec. . . . . [BALLOT QUESTION.]

At the election on the question of approval of section . . . , the question submitted to the voters shall be:  
"Shall the 1979 legislative act authorizing the city of . . . . . to provide ambulance service be approved?"

Yes . . . . .  
No . . . . ."

In the ballot question, do not use "shall this act" or "shall Laws . . . . , Chapter . . . ." It would be meaningless to the voters since only the ballot question and not the entire bill appears on the ballot.

**EXAMPLE — LOCAL LAWS (Approval provisions, Cont.)**

(5) Another variant on local approval is the reverse referendum. Under this provision, a local law is effective without local approval (but only if making the law effective without local approval is permitted by one of the exceptions in Minnesota Statutes, Section 645.023, Subdivision 1), unless a petition is filed requesting that the act be submitted to the voters for local approval. A typical example would be:

```

Sec. . . . . [LOCAL APPROVAL.]

Pursuant to Minnesota Statutes, Section 645.023,
-----
Subdivision 1, Clause (a)[or (b) or (c)], sections 1 to . . .
-----
shall be effective without local approval unless the voters
-----
of the city (town, county, school district) of . . . . .
-----
request a referendum on approval of sections 1 to . . . .
-----
The voters may request a referendum by filing a
-----
petition with the governing body of the city [town, county,
-----
school district] of . . . . . The petition must state
-----
the text of sections 1 to . . . and indicate that those who
-----
signed the petition are residents of the city [town,
-----
county, school district] of . . . . . and are 18 years
-----
of age. The petition must be signed by a number of persons
-----
not less than ten percent of the number of persons who cast
-----
votes for governor within the city [town, county, school
-----
district] of . . . . . at the last general election.
-----

```

Although this form as been used, its validity has also been questioned. It has not been tested in court. It should be avoided unless a requester specifically asks for it.

(6) 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. A hearing provision should read:

```

Sec. . . . . [PUBLIC HEARING REQUIRED.]

Before approval of this act by the governing body of
-----
the city [town, county, school district] of . . . . .,
-----
the governing body shall hold a public hearing on the
-----
question. Notice of the time and place of the hearing
-----
shall be published in a newspaper of general circulation in
-----
the city [town, county, school district] once in each week
-----
for two successive weeks prior to the hearing. The
-----

```

**EXAMPLE — LOCAL LAWS (Approval provisions, Cont.)**

-----  
published notice shall be in a form determined by the  
governing body. The form shall be sufficient in size and  
-----  
prominent in format in order to attract the attention of  
-----  
the reader. The notice shall set forth the intent of the  
-----  
city council [town board, county board, school board] to  
-----  
consider approval of this act. The text of sections 1 to  
-----  
... of this act shall be stated in the notice.  
-----

(7) A requester may ask to have a law submitted for local approval despite the fact that it clearly complies with one of the exceptions to local approval provided in Minnesota Statutes, Section 645.023, Subdivision 1. If local approval is requested, the section should read:

Sec. . . . . [LOCAL APPROVAL.]  
-----  
Notwithstanding the provisions of Minnesota Statutes,  
-----  
Section 645.023, Subdivision 1, Clause (a) [or (b) or (c)],  
-----  
section ... is effective only upon its approval by a  
-----  
majority vote of all members of the city council [town  
-----  
board, county board, school board] of the city [town,  
-----  
county, school district] of .....  
-----

(8) Some local laws become effective without local approval. However, the occasions upon which local approval may be dispensed with are limited to the specific cases listed in Minnesota Statutes, Section 645.023, Subdivision 1. If there is any doubt as to whether the local law being drafted falls within any of the exceptions, then it is best to submit the law to local approval. If local approval is dispensed with, the appropriate effective date provision should be used.

**EXAMPLES — LOCAL LAWS (Effective date provisions)**

In addition to an applicability section, and any local approval or other provision, the local law may contain an effective date provision. Section 645.02 provides that every act is effective at 12:01 a.m. on the day it becomes effective and that local laws are effective the day after the approval certificate is filed. Nevertheless, it is customary to include an effective date provision that duplicates section 645.02. This serves to remind those affected to comply with the statutory filing requirements.

If a local law is to be subject to local approval, the following effective date provision should be used:

```
Sec. . . . . [EFFECTIVE DATE.]  
  
Section . . . is effective after local approval at 12:01  
-----  
a.m. on the day after compliance with Minnesota Statutes,  
-----  
Section 645.021, Subdivision 3.  
-----
```

If a local law is to be effective without local approval, the following effective date provision should be used:

```
Sec. . . . . [EFFECTIVE DATE.]  
  
Pursuant to Minnesota Statutes, Section 645.023,  
-----  
Subdivision 1, Clause (a)[or (b) or (c)], section . . . is  
-----  
effective without local approval on . . . . . [date or  
-----  
"the day after final enactment"].  
-----
```

The recitation of the provision authorizing dispensation with local approval is included to ensure that it is evident that a choice has been made against local approval rather than mere accidental omission of local approval.

**EXAMPLES — PENSION “BUY BACK” PROVISIONS  
(Authorizing an individual to “buy back”)**

1 A bill for an act  
2 relating to retirement; authorizing purchase of  
3 service credit by certain members of the Minnesota  
4 state retirement system.  
5  
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
7 Section 1. [INDIVIDUAL PENSION "BUY BACK" AUTHORIZED.]  
8 An employee covered by the Minnesota state retirement  
9 system who was employed in the maintenance and improvement of  
10 Camp Ripley during the period from 1936 to 1940 may obtain  
11 allowable service credit for not more than 13 months of such  
12 service by paying to the Minnesota state retirement system an  
13 amount equal to four percent of the member's current annual  
14 salary rate. Payment shall be made either in a lump sum or by  
15 payroll deductions prior to the termination of state service.  
16 Sec. 2. [EFFECTIVE DATE.]  
17 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. Interest is usually included at the rate of six percent per annum from the date the service was rendered until the date of payment or repayment. (This was not done in the example, probably because payment is based upon current salary - presumably a much higher figure.)

**EXAMPLES — PENSION “BUY BACK” PROVISIONS  
(Authorizing new members of group to “buy back”)**

1       Sec. ... [359.019] [RETIREMENT; PUBLIC EMPLOYEES  
2 RETIREMENT ASSOCIATION; MINNESOTA MUNICIPAL UTILITIES  
3 ASSOCIATION EMPLOYEES.]  
4       Subdivision 1. From and after July 1, 1976, employees of  
5 the Minnesota Municipal Utilities Association, hereinafter  
6 referred to as the association, shall become coordinated members  
7 of the public employees retirement association unless  
8 specifically exempt under section 353.01, subdivision 2b, and  
9 the association shall be deemed to be a governmental subdivision  
10 for purposes of this chapter.  
11       Subd. 2. A person who becomes a member of the public  
12 employees retirement association pursuant to subdivision 1 may  
13 purchase prior service credit with respect to full time  
14 employment with the association subsequent to October 19, 1975  
15 by (a) paying to the public employees retirement association  
16 prior to August 1, 1976 an employee contribution in an amount  
17 equal to four percent of his or her salary at the time the prior  
18 service was rendered, as certified by the association, plus  
19 interest at the rate of six percent per annum; (b) the member at  
20 the same time shall pay additionally an amount equal to five and  
21 one-half percent of salary at the time the prior service was  
22 rendered, plus interest at the rate of six percent per annum;  
23 provided the association may, in its sole discretion, for all  
24 employees included hereunder, pay the public employees  
25 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.

**EXAMPLE — PENSION “BUY BACK” PROVISIONS  
(Authorizing individual to “buy back” as exception to general law)**

1           Sec. 10. [WINONA POLICE CHIEF; PENSION COVERAGE.]  
2           Notwithstanding Minnesota Statutes, Section 353.64,  
3           Subdivision 1 or any other law to the contrary, the person  
4           employed by the city of Winona on the effective date of this  
5           section as chief of police shall be a member of the public  
6           employees police and fire fund established by sections 353.63 to  
7           353.68 and not of the local policemen's relief association  
8           established pursuant to sections 423.801 to 423.815. An amount  
9           equal to the employer and employee contributions which would  
10          have been required pursuant to section 353.65, had the person  
11          been a member of the public employees police and fire fund from  
12          the commencement of his employment with the police department of  
13          the city of Winona, plus interest at the rate of six percent per  
14          annum compounded annually from the year the payment would  
15          otherwise have been made to the year the payment is made, shall  
16          be paid to the public employees police and fire fund, which  
17          shall credit the chief of police with service as a member for  
18          this period upon the receipt of the payments required under this  
19          section. An amount equal to the employer contributions plus  
20          interest as herein specified shall be transferred from the  
21          Winona policemen's relief association to the public employees  
22          police and fire fund. An amount equal to the employee  
23          contributions plus interest as herein specified shall be paid by  
24          the chief of police to the public employees police and fire  
25          fund. The chief of police shall be entitled to receive, upon  
26          making written application, a refund of his accumulated  
27          contributions to the Winona policemen's relief association plus  
28          interest at the rate actually received by the relief association  
29          as determined by the board of trustees of the relief association.



**EXAMPLES — PENSION "BUY BACK" PROVISIONS  
(Authorizing limited group to "buy back")**

1       Sec. 11. [MINNEAPOLIS; PENSION "BUY BACK."]  
2       Any person who was employed by the city of Minneapolis  
3       between February 15, 1972 and March 15, 1972, who attained the  
4       age of 65 years on December 17, 1974, who was excluded from  
5       membership in the Minneapolis municipal employees retirement  
6       fund during the period of his employment, and who was terminated  
7       from employment by the city of Minneapolis on December 30, 1976,  
8       shall be entitled to purchase four years and ten months of  
9       service credit in the Minneapolis municipal employees retirement  
10      fund. To purchase the prior service credit, the person shall be  
11      required to make an employee contribution to the executive  
12      secretary of the Minneapolis municipal employees retirement fund  
13      in an amount equal to the employee contribution rate in effect  
14      and on the salaries in effect during the period of prior service  
15      plus interest at the rate of six percent per annum compounded  
16      annually from the date the contribution would otherwise have  
17      been made to the date the payment is made. Upon the completion  
18      by the person of the payment required by this action, the city  
19      of Minneapolis shall make an employer contribution to the  
20      executive secretary of the Minneapolis municipal employees  
21      retirement fund in an amount equal to the employer and employer  
22      additional contribution rates in effect and on the salaries in  
23      effect during the period of prior service plus interest at the  
24      rate of six percent per annum compounded annually from the date  
25      the contributions would otherwise have been made to the date the  
26      payment is made. In addition, the person making the purchase of  
27      prior service pursuant to this section shall be entitled to  
28      receive a proportionate annuity pursuant to Minnesota Statutes,  
29      Section 356.32, Subdivision 1, notwithstanding the fact that the  
30      person did not retire at age 65. The annuity shall be payable  
31      on the first day of the month next following the completion of  
32      the purchase of prior service, and the first check or warrant  
33      shall include payment retroactive to January 1, 1977.

**PRACTICAL AIDS TO DRAFTING**

- 8.1 Preliminary Research
- 8.2 Successive Drafts
- 8.3 Team Drafting
- 8.4 Photocopies or Computer Printouts
- 8.5 Cut and Paste Drafting
- 8.6 Tables and Reference Cards
  - (a) Session Laws Amended or Repealed
  - (b) Coded Laws Amended, Repealed or New
  - (c) Local Law Tables
  - (d) Internal Cross-Reference Table
- 8.7 Subject Cards for Bill Requests
- 8.8 Comparison Tables
- 8.9 Engrossing Files
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- 8.11 Other Aids
  - (a) House and Senate Index and Bill Status System
  - (b) Legislative Reference Library
  - (c) Statutes from other Jurisdictions
  - (d) Personal Files
  - (e) Footnotes to Statutes
- 8.12 Forms

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. In drafting complex legislation, a drafter may be required to spend up to 50 percent of the total effort in preliminary research and marshalling of facts.

Only rarely is a drafter assigned to a project which is unique. The chances are that somebody, somewhere in the United States, if not within Minnesota, has already drafted a bill which is either exactly on point or which can be borrowed from in drafting the request. A drafter who spends time finding an existing draft or law and then improves it is

**8.1 (cont.)**

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. It is obvious that a person with normal human failings does not have the ability to draft a complex bill correctly the first time. The correctness of a draft is determined on both objective and subjective standards. The final draft should include all necessary provisions to accomplish the objectives of the requester and in the method and manner requested.

As stated elsewhere in this manual, the best method of insuring clarity in drafting is to read a draft from the viewpoint of someone who is hostile to its objectives. Repetitive readings of a draft as a hostile reader will reveal areas where improvement is needed.

The bill file folders in the Revisor's office have space for up to seven rough or preliminary drafts of a bill. That number of drafts may be required on a complex bill.

**8.3 Team Drafting**

Several people working together have more knowledge collectively than any of the individuals. The drafter who has others examine and comment upon a draft is much more likely to produce a quality product than a "lone wolf" drafter.

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, exchange drafts, and then combine them into the final draft. A joint discussion among the drafters is helpful.

#### **8.4 Photocopies or Computer Printouts**

In drafting a bill requiring amendments to existing law, use a photocopy 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 photocopy 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 photocopy 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 photocopies or computer printouts reduces the margin of error, permits rapid identification of coded law on the computer terminals, and permits proofreading of local laws without the cumbersome use of the session law book.

#### **8.5 Cut and Paste Drafting**

More bill drafts deal with the amendment of existing law than with the creation of entirely new law. When drafting amendatory law, the work can be eased and high accuracy maintained by using the cut and paste method of preparing the first draft of the bill. This method consists of photocopying pages from Minnesota Statutes and cutting out the section or subdivision to be amended. It is then affixed to paper by tape. Changes are then inserted in handwriting by striking out words and showing insertions by marginal notes with arrows to show the point of insertion. Bill sections and draft pages bear a one-for-one relationship.

A drafter should not attempt either to write existing wording or to have it typed. To do so is to invite error by omitting or inadvertently changing portions of the existing law. It is also a good deal slower than using the cut and paste method.

**8.5 (cont.)**

Subsequent drafts should then be changed by handwritten changes on computer printed copy. Computer preparation is necessary in order to ensure accuracy of quotation of existing statutory text.

Examples of the method of preparation of a bill by cut and paste and subsequent modification are found at the end of this chapter.

From time to time dictation is attempted as a method of initial drafting. It is used because of a belief that it may be faster than even the cut and paste method. The method is faster for the drafter but slower for the person who must transcribe the words to print. Difficulties are encountered in orally identifying precisely where strikes and insertions are to be made. Another difficulty is the lack of a written record to determine after the first written draft, or anytime later, whether the drafter's instructions have been accurately carried out.

A drafting file should be maintained with one copy of all preliminary drafts. These drafts are sometimes useful in tracing the drafting history of a bill. One specific use of early drafts is when it is decided to reverse the insertion of some provisions put in by earlier drafts. The earlier drafts can be used to locate where all those provisions are located in the bill.

**8.6 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 most of 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) Session Laws Amended or Repealed**

Table 1 in any edition of the session laws is the table of session laws amended or repealed. As the name implies, it 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.

8.6 (cont.)

**(b) Coded Laws Amended, Repealed or New**

Table 2 of the session laws lists coded laws amended, repealed, and new in that volume. It 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**

The local law table in the session laws shows uncoded laws passed during the specified year affecting local governmental units. 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.

The cumulative local law table is found in Minnesota Statutes. 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. Actions of the legislature amending or repealing a local law are 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.

**(d) Internal Cross-Reference Table**

Table 4 in Minnesota Statutes is a numerical table of the sections

**8.6(d)** (cont.)

of the statutes that are referred to by coded section number in other sections of the statutes. The referring section or sections and the specific subdivisions, if any, are set out opposite the referenced 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 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.

**8.9 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

**8.9 (cont.)**

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.

**8.10 Computer Searches**

The office of the Revisor of Statutes maintains a computer data base composed of all of the material published by the Revisor in Minnesota Statutes. With the assistance of computer specialists, this data base may be searched for specified information. The results of a search may 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." The results of the search would furnish the drafter with all sections of the statutes where the term "legislature" is used. With this information the drafter can be sure that he has not overlooked sections that require amendments to accomplish the requester's objective.

Second, using multiple words in logical combinations a search can be narrowed to particular subject matters, thereby eliminating extraneous material that the drafter does not need. For example, with a proper combination of words used in the search, every provision of the statutes may be found that requires an appointment by the Governor to be confirmed by either or both houses of the legislature.

In both cases, the search can only be made with the assistance of persons specially trained in the method of conducting searches. A person requesting 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 Revisor's office.

**8.11 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



**8.11(a)** (cont.)

in the House 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 on bills they have drafted. Others simply note on a yellow pad the bill draft number and a brief summary of the subject matter for easy identification. It may be easier to find a particular draft using your own identification system rather than using the subject index file that contains all bill drafting requests.

**(e) Footnotes to Statutes**

A section or subdivision of a coded law is sometimes amended more than once in the same session of the legislature without reference to and overlooking the other amendments. If the amendments are reconcilable, they will be construed together and incorporated into the section or subdivision with the same effect as if only one amendment had been made. If the amendments are irreconcilable, the latest act, together with provisions of the earlier acts that can be read together, will appear in the statutes in regular print. An editorial note will then follow the sections as a footnote, calling attention to the fact that there were multiple amendments and the provisions have been construed together when possible. A requester may desire the irreconcilable provisions to be incorporated into the law. If this is accomplished, the draft should also repeal the session law that caused the footnote.

**8.12 Forms**

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**EXAMPLE — COMPLETED BILL DRAFTING REQUEST**

**REVISOR OF STATUTES  
DRAFTING REQUEST**

Date 1/23/81 Time 3:00 P.M. File No. \_\_\_\_\_

Requester: Rep. John G. Smith by Pat Smith

For:  Bill    Const. Amend.    Mem. Res.    Conc. Res.    Simple Res.    Joint Res.  
           Commemorative Res.    Amendment    Amendment to Amendment    Motion    Other

Index Subject: Cometaria; Indian burial grounds; inclusion of Indian burial grounds in law making it a crime to damage a cemetery.

Requester's Instructions:

*Some law presently on books makes it a crime to destroy cometaria. However, a recent court decision (District Court not Supreme Court) says that old Indian burial grounds are not cometaria. The result is that defacing property in an Indian burial ground is not a crime but in a modern cemetery it is a crime. Change the law to ensure Indian burial grounds are covered.*

*Part of the problem is that most Indian burial grounds are not marked. Someone could dig in one without knowing what he or she is doing. They should probably be marked.*

If an amendment, amends <sup>House</sup> Senate File No. \_\_\_\_\_ B.D. No. \_\_\_\_\_

If a bill, indicate:

If a bill draft is furnished with this request, who is the original drafter? \_\_\_\_\_  No draft

Revisor may consult others? Yes  No \_\_\_\_\_ Who? Pat Jones-Smith's AA

Does requester desire to examine a preliminary draft? Yes  No \_\_\_\_\_

Was it indicated that the draft need only have minimal effort? Yes \_\_\_\_\_ No ; was it indicated that extraordinary effort was desired? Yes \_\_\_\_\_ No

When would the requester like the bill to be delivered? two weeks

Person taking request Doer by \_\_\_\_\_ mail \_\_\_\_\_ in person  phone \_\_\_\_\_

EXAMPLE — ROUGH (CUT AND PASTE) DRAFT OF BILL

*A bill etc.  
relating to cemeteries; prohibiting certain  
activities on Indian burial grounds;  
requiring the posting of Indian burial  
grounds; imposing penalties; and  
amending M. S. 1980, Section 307.08*

*BE IT etc.*

*Section 1. Minnesota Statutes 1980, Section  
307.08 is amended to read: ~~subdivision 1.~~ [PENALTY]*

307.08 DAMAGES; DISCHARGE OF FIREARMS; PENALTY. Every person who shall wilfully destroy, mutilate, injure, or remove any tombstone, monument or structure placed in any cemetery, or any fence, railing, or other work erected for protection or ornament, or any tree, shrub, or plant within the limits thereof, and every person who, without authority from the trustees or owner, shall discharge any firearms upon or over the grounds of any cemetery, shall be guilty of a misdemeanor.  
-R. S. 1980-1-0000-

*Subd. 2. [POSTING REQUIRED.] Every authenticated  
and identified Indian burial ground shall be  
posted every 75 feet around its perimeter  
with signs listing the activities prohibited by  
subdivision 1 and the penalty for violation.*

**EXAMPLE — PRELIMINARY DRAFT OF BILL**

1 A bill for an act  
2 relating to cemeteries; prohibiting certain activities  
3 on Indian burial grounds; requiring the posting of  
4 Indian burial grounds; imposing penalties; amending  
5 Minnesota Statutes 1980, Section 307.08.  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
8 Section 1. Minnesota Statutes 1980, Section 307.08, is  
9 amended to read:  
10 307.08 [DAMAGES; DISCHARGE OF FIREARMS; PENALTY.]  
11 Subdivision 1. [PENALTY.] Every person who shall wilfully  
12 destroy, mutilate, injure, or remove any tombstone, monument, or  
13 structure placed in any cemetery, or any fence, railing, or  
14 other work erected for protection or ornament, or any tree,  
15 shrub, or plant within the limits thereof, and every person who,  
16 without authority from the trustees or owner, shall discharge  
17 any firearms upon or over the grounds of any cemetery, shall be  
18 guilty of a misdemeanor.  
19 Subd. 2. [POSTING REQUIRED.] Every authenticated and  
20 identified Indian burial ground shall be posted every 75 feet  
21 around its perimeter with signs listing the activities  
22 prohibited by subdivision 1 and the penalty for violation.

*Section 307.08  
amended to read:  
307.08 [DAMAGES; DISCHARGE OF FIREARMS; PENALTY.]*

*authenticated  
and identified  
Indian burial  
ground*

**EXAMPLE — FINAL DRAFT OF BILL**

1                   A bill for an act  
2           relating to cemeteries; prohibiting certain activities  
3           on Indian burial grounds; requiring the posting of  
4           Indian burial grounds; imposing penalties; amending  
5           Minnesota Statutes 1980, Section 307.08.  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
8           Section 1. Minnesota Statutes 1980, Section 307.08, is  
9           amended to read:  
10           307.08 [DAMAGES; DISCHARGE OF FIREARMS; PENALTY.]  
11           Subdivision 1. [PENALTY.] Every person who shall wilfully  
12           destroy, mutilate, injure, or remove any tombstone, monument, or  
13           structure placed in any cemetery or authenticated and identified  
14           Indian burial ground, or any fence, railing, or other work  
15           erected for protection or ornament, or any tree, shrub, or plant  
16           within the limits thereof, and every person who, without  
17           authority from the trustees or owner, shall discharge any  
18           firearms upon or over the grounds of any cemetery or  
19           authenticated and identified Indian burial ground, shall be  
20           guilty of a misdemeanor.  
21           Subd. 2. [POSTING REQUIRED.] Every authenticated and  
22           identified Indian burial ground shall be posted every 75 feet  
23           around its perimeter with signs listing the activities  
24           prohibited by subdivision 1 and the penalty for violation.

**EXAMPLE — ROUGH DRAFT OF AMENDMENT**

Mr. Smith moves to amend S.F. No. 4066  
as follows:

Page 1, line 16, strike ", and" and  
insert "is guilty of a misdemeanor."

Page 1, line 17, strike "shall discharge"  
and insert "discharges"

Page 1, lines 22 and 23, delete "within  
75 feet around its perimeter" and insert  
"at each entrance"



**EXAMPLE — FINAL DRAFT OF AMENDMENT**

1	Mr. Smith moves to amend S.F. No. 4066 as follows:
2	Page 1, line 16, strike ", and" and insert "is guilty of a
3	misdemeanor." -----
4	Page 1, line 17, strike "shall discharge" and insert "
5	discharges" -----
6	Page 1, lines 22 and 23, delete "every 75 feet around its
7	perimeter" and insert "at each entrance" -----

**EXAMPLE — AMENDMENT ENGROSSED INTO BILL**

1	A bill for an act
2	relating to cemeteries; prohibiting certain activities
3	on Indian burial grounds; requiring the posting of
4	Indian burial grounds; imposing penalties; amending
5	Minnesota Statutes 1980, Section 307.08.
6	
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
8	Section 1. Minnesota Statutes 1980, Section 307.08, is
9	amended to read:
10	307.08 [DAMAGES; DISCHARGE OF FIREARMS; PENALTY.]
11	Subdivision 1. [PENALTY.] Every person who shall wilfully
12	destroy, mutilate, injure, or remove any tombstone, monument, or
13	structure placed in any cemetery or authenticated and identified
14	Indian burial ground, or any fence, railing, or other work
15	erected for protection or ornament, or any tree, shrub, or plant
16	within the limits thereof, and is guilty of a misdemeanor.
17	Every person who, without authority from the trustees or owner,
18	<del>shall discharge</del> discharges any firearms upon or over the grounds
19	of any cemetery or authenticated and identified Indian burial
20	ground, shall be guilty of a misdemeanor.
21	Subd. 2. [POSTING REQUIRED.] Every authenticated and
22	identified Indian burial ground shall be posted at each entrance
23	with signs listing the activities prohibited by subdivision 1
24	and the penalty for violation.



## ENGROSSING AND ENROLLING

- 9.1 The Engrossing Process
- 9.2 Origin and Action upon Documents by the Engrossing Process
  - (a) Motions in Committee
  - (b) Floor Amendments
  - (c) Conference Committee Reports
- 9.3 Examination of an Engrossment
- 9.4 Unengrossable Amendments
- 9.5 Correction of Errors
- 9.6 Identification of Engrossments
- 9.7 Unofficial Engrossments
- 9.8 The Enrolling Process
- 9.9 Examination of an Enrollment
- 9.10 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 was not agreed to by the legislature.

### 9.2 Origin and Action upon Documents by 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 either to the unengrossed original or to the last official engrossment, if any, of the bill.

**9.2(a)** (cont.)

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 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 indicates 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 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 Examination of an Engrossment**

The engrossing process requires elaborate double checking to ensure that:

(1) all directed changes to the bill in amendments are accomplished;

(2) all changes are accomplished where the amendments give no direction but which are required by directed changes (such as internal cross-reference changes and section renumbering);

(3) additional amendments are not necessary to fully accomplish any amendment's intent; and

(4) no changes have been inadvertently incorporated in a bill that were not directed or required by an amendment.

In order to ensure that this checking is correctly done, the Revisor's staff uses the check list found in the form section of this chapter. The checks are interrelated with the intention that supervisors, drafting assistants, and attorneys double check each other.

### **9.4 Unengrossable Amendments**

In engrossing floor amendments to a bill, each adopted amendment is applied in the order each was adopted. For that reason 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;

(2) words to be inserted are underlined or stricken when they should not be or are not underlined or stricken when they should be;

(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);

9.4 (cont.)

(4) the amendment directs the insertion of text following a locator word, line, or section which was deleted by a previously adopted amendment;

(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.

**9.5 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 the bill was referred.

In the process of engrossing, other administrative staff may correct manifest clerical and typographical errors. However, if there are other errors, the correction can be made but the change should be reported to the Secretary or Chief Clerk for his or her directions.

### **9.6 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.

### **9.7 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.

### **9.8 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. No." or "S.F. No." and dates of passage inserted.



9.8 (cont.)

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 presiding and chief administrative officers of each house are obtained. After the Governor's approval and signature, the bill 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.

**9.9 Examination of an Enrollment**

Before a bill is enrolled, it is engrossed for the final time following all the checking procedures of that process. The enrollment is then created and it is subject to additional double checks. The checks used by the Revisor's staff are found briefly indicated on the check form found in the form section at the end of this chapter.

**9.10 Forms**

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EXAMPLE — COMMITTEE REPORT

1 Mr. .... from the Committee on Commerce to which was  
2 referred

3 S.F. No. 971: A bill for an act relating to insurance;  
4 providing financial requirements for nonprofit health service  
5 plan corporations; amending Minnesota Statutes 1976, Section  
6 62C.09, Subdivision 3.

7 Reports the same back with the recommendation that the bill  
8 be amended as follows:

9 Page 1, line 17, strike "calendar" and insert "fiscal"  
-----  
10 Page 1, line 18, delete "dental" and insert "medical"  
-----  
11 Page 1, line 20, after "specified" insert "benefits"  
-----  
12 Page 1, line 20, after "and" insert "limits for average"  
-----  
13 Page 1, line 21, after "benefits" insert "of not greater  
-----  
14 than \$1,000 per year per insured"  
-----

15 And when so amended the bill do pass. Amendments adopted.  
16 Report adopted.

17  
18  
19 *L. M. Chin*  
.....  
20 (Committee Chairman)

21  
22 February 10, 1981.....  
23 (Date of Committee recommendation)

24

ADOPTED BY THE SENATE STATE OF MINNESOTA  FEB 12 1981 <i>Patrick C. Johnson</i> SECRETARY OF THE SENATE	ADOPTED BY THE HOUSE STATE OF MINNESOTA <i>Edward A. Berdick</i> Chief Clerk, HOUSE OF REPRESENTATIVES
--	--

1

Note: Double stamp indicating both houses have passed this bill. This amendment is ready to be engrossed into the bill.

**EXAMPLE — COMMITTEE REPORT**

1	Mr. .... from the Committee on Agriculture and
2	Natural Resources, to which was referred
3	S.F. No. 344: A bill for an act appropriating money to the
4	department of natural resources for the installation of a box
5	culvert under a highway in Stearns County, providing a waterway
6	connection between certain lakes to enable water craft to cross
7	from one lake to the other.
8	Reports the same back with the recommendation that the bill
9	be amended as follows:
10	Page 1, line 11, delete "the department of natural
11	resources" and insert "Stearns County"
12	-----
12	Amend the title as follows:
13	Page 1, lines 2 and 3, delete "the department of natural"
14	and insert "Stearns County"
15	And when so amended the bill do pass. Amendments adopted.
16	Report adopted.
17	
18	
19	
20	<i>L. M. Chi</i>
21	(Committee Chairman)
22	
23	<i>May 8, 1981</i>
24	(Date of Committee recommendation)
25	

**ADOPTED BY THE SENATE  
STATE OF MINNESOTA  
MAY 10 1981**

*Patricia L. Johnson*  
SECRETARY OF THE SENATE

Note: 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.**

1                                   A bill for an act  
2                   appropriating money to the department of natural  
3                   resources for the installation of a box culvert under  
4                   a highway in Stearns County, providing a waterway  
5                   connection between certain lakes to enable water craft  
6                   to cross from one lake to the other.  
7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
9                   Section 1. [APPROPRIATION.]  
10                   The sum of \$47,000 is appropriated from the general fund to  
11                   -----  
12                   the department of natural resources for the purpose of  
13                   -----  
14                   installing a 12 foot by 10 foot concrete box culvert,  
15                   -----  
16                   approximately 90 feet in length, under Stearns County state-aid  
17                   -----  
18                   highway No. 71, providing a waterway connection between Big  
19                   -----  
20                   Cedar Lake and Little Cedar Lake in Stearns County enables that  
21                   -----  
22                   boats, pontoons, and recreational water craft up to ten feet in  
23                   -----  
24                   width, to cross back and forth between the lakes. The sum is  
25                   -----  
26                   available until expended.  
27                   -----

1 A bill for an act  
2  
3 appropriating money to Stearns County for the  
4 installation of a box culvert under a highway in  
5 Stearns County, providing a waterway connection  
6 between certain lakes to enable water craft to cross  
7 from one lake to the other.  
8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
10 Section 1. [APPROPRIATION.]  
11 The sum of \$47,000 is appropriated from the general fund to  
12 -----  
13 Stearns County for the purpose of installing a 12 foot by 10  
14 -----  
15 foot concrete box culvert, approximately 90 feet in length,  
16 -----  
17 under Stearns County state-aid highway No. 71, providing a  
18 -----  
19 waterway connection between Big Cedar Lake and Little Cedar Lake  
20 -----  
21 in Stearns County, enabling boats, pontoons, and recreational  
22 -----  
23 water craft, up to ten feet in width, to cross back and forth  
24 -----  
25 between the lakes.  
26 -----

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

1 A bill for an act  
2 relating to business or agricultural loans; rate of  
3 interest therein; amending Minnesota Statutes 1980,  
4 Section 334.011, Subdivisions 1 and 4.

5 May 16, 1981

6 The Honorable .....  
7 President of the Senate  
8

9 The Honorable .....  
10 Speaker of the House of Representatives  
11

12 We, the undersigned conferees for S.F. No. 49,  
13 report that we have agreed upon the items in dispute and  
14 recommend as follows:  
15

16 That the Senate accede to the House amendments and that  
17 S.F. No. 49, the unofficial engrossment, be further amended as  
18 follows:

19 Page 1, line 18, insert after "four" the words "and  
20 one-half"  
21 -----

22 We request adoption of this report and repassage of the  
23 bill.  
24

25 Senate Conferees: (Signed)

26 *John Doe* ..... *Jean Banks* *Richard Roe*

28 House Conferees: (Signed)

29 *Mary Smith* *Michael Johnson* *John Q. Public*  
30  
31  
32

ADOPTED BY THE SENATE  
STATE OF MINNESOTA

MAY 16 1981

*Patricia L. Flanagan*  
SECRETARY OF THE SENATE

ADOPTED BY THE HOUSE  
STATE OF MINNESOTA

*Edward A. Bendick*

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.)**

15 lender may, in the case of loans for business or agricultural  
16 purposes, charge on any loan or discount made or upon any note,  
17 bill or other evidence of debt, interest at a rate of not more  
18 than ~~five~~ four percent in excess of the discount rate on 90 day  
19 commercial paper in effect at the Federal Reserve Bank in the  
20 Federal Reserve District encompassing Minnesota.  
21 For the purposes of this subdivision, the term

BEFORE ENGROSSING. Note page and line number.

15 lender may, in the case of loans for business or agricultural  
16 purposes, charge on any loan or discount made or upon any note,  
17 bill or other evidence of debt, interest at a rate of not more  
18 than ~~five~~ four and one-half percent in excess of the discount  
19 rate on 90 day commercial paper in effect at the Federal Reserve  
20 Bank in the Federal Reserve District encompassing Minnesota.  
21 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.

**EXAMPLE — FLOOR AMENDMENT**

1 ..... moves to amend H.F. No. 187 as follows:  
2 Delete everything after the enacting clause and insert:  
3 "Section 1. Minnesota Statutes 1980, Section 128A.03,  
4 Subdivision 3, is amended to read:  
5 Subd. 3. ~~The councils shall expire and~~ The terms,  
6 compensation and removal of members of the councils shall be as  
7 provided in section 15.059 however, the councils shall expire on  
8 December 31, 1985.  
9 Sec. 2. [EFFECTIVE DATE.]  
10 Minnesota Statutes 1980, Section 128A.03, is effective the  
11 day following final enactment of this act, notwithstanding Laws  
12 1980, Chapter 271, Section 99.  
13 Sec. 3. [EFFECTIVE DATE.]  
14 Sections 1 and 2 are effective the day following final  
15 enactment."  
16 Amend the title as follows:  
17 Line 3, after "councils" insert "; amending Minnesota  
18 Statutes 1980, Section 128A.03, Subdivision 3"

**EXAMPLE — FLOOR AMENDMENT (Cont.)**

1                   A bill for an act  
2       relating to education; braille and deaf schools;  
3       providing for appointment of advisory councils.  
4  
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
6       Section 1. [EFFECTIVE DATE.]  
7       Minnesota Statutes 1980, Section 128A.03, Subdivisions 1  
8       and 2 are effective the day following final enactment of this  
9       act, notwithstanding Laws 1980, Chapter 271, Section 99.  
-----

BEFORE ENGROSSING.

1                   A bill for an act  
2       relating to education; braille and deaf schools;  
3       providing for appointment of advisory councils;  
4       amending Minnesota Statutes 1980, Section 128A.03,  
5       Subdivision 3.  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
8       Section 1. Minnesota Statutes 1980, Section 128A.03,  
9       Subdivision 3, is amended to read:  
10       Subd. 3. ~~The councils shall expire and~~ The terms,  
11       compensation and removal of members of the councils shall be as  
12       provided in section 15.059 however, the councils shall expire on  
13       December 31, 1985.  
-----  
14       Sec. 2. [EFFECTIVE DATE.]  
15       Minnesota Statutes 1980, Section 128A.03, is effective the  
16       day following final enactment of this act, notwithstanding Laws  
17       1976, Chapter 271, Section 99.  
-----  
18       Sec. 3. [EFFECTIVE DATE.]  
19       Sections 1 and 2 are effective the day following final  
20       enactment.  
-----

AFTER ENGROSSING.

Amendment on page 359.

**EXAMPLE — ENGROSSING CHECK LIST**

<b>CHECK LIST</b>		
<b>S U P E R V I S O R</b>	MASTER REMOVED	
	COMPILED	
	CROSS REFERENCES CHECKED	
	ALL DOCUMENTS STAMPED	
<b>E N G R O S S I N G  A S S I S T A N T</b>	<b>T E X T</b>	FILE FOLDER & DOCUMENTS
	CHECK FOR ALTERED AMENDMENTS	
	AMENDMENTS ENGROSSED	
	TITLE & HEADNOTES CHECKED AND CHANGED	
	CROSS REFERENCES CHANGED	
	PROOFED	
	<b>C O V E R S</b>	S.F. NO.
	TITLE CHANGE	
	STAMPED	
	PROOFED	
	<b>D U P L I C A T I N G</b>	COUNT PAGES
	COPIES PREPARED	
	TITLE SHEETS PREPARED	
	JOURNAL CORRECTIONS	
	ASSEMBLE FILE & DOUBLE CHECK	
<b>S U P E R V I S O R</b>	CORRECT MASTER	
	AMENDMENTS CORRECTLY ENGROSSED	
	TITLE CHANGE CORRECT	
	COVERS CORRECT	
	COUNT PAGES	
	ROLLING BULK CHECK	
JOURNAL CORRECTIONS PREPARED		
<b>A T T O R N E Y</b>	CORRECT BASE DOCUMENT USED	
	ALL AMENDMENTS ENGROSSED	
	TITLE & HEADNOTES CHECKED	
	COVERS CHECKED	
	GENERAL CHECK	
JOURNAL CORRECTIONS O.K.		

**EXAMPLE — ENROLLING CHECK LIST**

ENROLLMENT			
H. F. _____			
SUPERVISOR	ENROLLING ASSISTANT	SUPERVISOR	
Master _____	Master _____	Master _____	
PASSAGE DATES	Light Check _____	H. F. No. _____	
	Passage Dates _____	Seal Up _____	
HOUSE	H. F. No. _____	Signature Sheet _____	
	Seal Up _____	Correct Bill _____	
	Count Pages _____	Enrolled _____	
	Proofer _____	Date _____	
SENATE			
Date _____			
<b>ATTORNEY</b> _____			
Correct Bill Enrolled _____			
Passage Dates _____			
H. F. No. _____			
SIGNATURES _____ Date _____			
TO GOVERNOR _____ Date _____			

**GRAMMAR, LANGUAGE, MECHANICS, AND  
STYLE**

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- 10.2 Capitalization
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  - (d) Quotation Marks
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  - (f) The Semicolon
  - (g) The Colon
  - (h) The Apostrophe
- 10.11 Spelling
- 10.12 Tense
- 10.13 Voice
- 10.14 Miscellaneous

**10.1 Abbreviations**

Avoid an abbreviation unless the abbreviation is part of a corporate name or legal citation.

10.1 (cont.)

**Examples:**

Use: Personnel Contractors, Inc.; P.L. 94-108

Do not use: dist., div.

In the text of a bill, never use an abbreviation when referring to or citing a chapter, article, section, or subdivision.

**Examples:**

Use: as described in section 290.01, subdivision 21

Do not use: as described in sec. 290.01, subd. 21

When dividing a bill into sections and subdivisions, spell out the first "section" and the first "subdivision" of each section. Abbreviate a subsequent "section" or "subdivision."

**Examples:**

- Section 1.
- Subdivision 1.
- Subd. 2.
- Subd. 2a.
- Sec. 2.
- Subdivision 1.
- Subd. 1a.
- Subd. 2.
- Sec. 3.

Acronyms should not be used even if a definition states what the acronym stands for.

**Examples:**

Use: the Public Employees Retirement Association; the association

Do not use: PERA

## 10.2 Capitalization

### (a) Capitalized Words

Capitalize a proper name.

**Examples:** Mexico, Wisconsin, Independent School District No. 15, Hennepin County, Mississippi River, Cedar Avenue

(Note: In these examples, “County,” “River,” and “Avenue” are parts of proper names. When the words are not used as parts of proper names, do not capitalize them.)

Capitalize a derivative of a proper name.

**Examples:** Vietnamese, Indian

Capitalize the words “Chapter,” “Section,” “Subdivision,” and “Clause” when used in connection with the words “Minnesota Statutes.”

**Examples:** Minnesota Statutes 1978, Section 171.15, Subdivision 2, Clause (2); Laws 1978, Chapter 785, Section 4, Subdivision 8

Capitalize the name of an institution of higher education.

**Examples:** University of Minnesota, Southwest State University, College of St. Thomas

(Note: In these examples, “University” and “College” are parts of proper names of institutions. When the words are not used as parts of proper names, do not capitalize them.)

Capitalize section and subdivision headnotes.

**Examples:**

488A.11 [FORCIBLE ENTRY AND UNLAWFUL  
DETAINER ACTIONS.]

Subdivision 1. [RETURN DAYS.]



**10.2(a)** (cont.)

Capitalize the enacting clause of a bill.

**Example:** BE IT ENACTED BY THE STATE OF MINNESOTA:

**(b) Uncapitalized Words**

Do not capitalize a generic word referring to a political subdivision.

**Examples:** district, state of Minnesota, county, municipality, city, town, street

Do not capitalize the name of a board, commission, department, or other governmental body.

**Examples:** board of regents, legislature, department of natural resources, bureau of Indian affairs

Do not capitalize the title of an official.

**Examples:** governor, president, commissioner, representative, senator, director, executive secretary, attorney general, treasurer

(Note: A title is capitalized when referring to a particular person, such as "Governor Ramsey.")

**10.3 Consistency**

Try to make a bill draft consistent with related existing statutes in grammar, punctuation, and style. If a law which is being amended is so old that its grammar, punctuation, and style are antiquated, then consult the requester about rewriting the entire law.

A problem with consistency frequently occurs with capitalization. In former years "down style" was used. Virtually nothing was capitalized. To avoid the poor appearance of nonuniform capitalization, do not capitalize words in an amendment to a statute when capitalization would make the provision inconsistent with existing unamended portions of the same statute or related statutes.

Within a bill draft 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**

Use the indicative mood to state what the law is. Do not use the imperative mood for that purpose.

**Examples:**

Use: This act does not apply to....

Do not use: This act shall not apply....

Use the imperative mood, not the indicative mood, to direct an official to carry out a duty.

**Examples:**

Use: The commissioner of administration shall administer....

Do not use: The commissioner of administration administrates....

#### **10.5 Number and Gender**

A statute provides the following: "The singular includes the plural; and the plural, the singular; words in the masculine gender include the feminine and neuter...." Minn. Stat. § 645.08 (2) (1980).

Despite the provisions of that section, a drafter is not free to use either singular or plural or either masculine or feminine at the drafter's discretion.

Ordinarily, the drafter should use the singular instead of the 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."

The policies relating to gender and number apply to new legislation. When an existing law is being amended, the policies apply if the drafter can apply them 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

Write out the numbers one through ten. Use figures for numbers greater than ten.

#### Examples:

Use: one, ten; 25, 101

Do not use: 1, 10; twenty-five, one hundred and one

Use figures for numbers in groups.

#### Examples:

Use: 8, 10, or 27

Do not use: eight, ten, or 27

Express numbers beginning a sentence, other than dollar amounts, in words.

#### Examples:

Use: Twelve days following....

Do not use: 12 days following....

Hyphenate compound numbers.

**Examples:** twenty-five, thirty-four, one hundred and thirty-seven

### (b) Order

Write out the ordinal numbers one through ten.

#### Examples:

Use: first, second, third, fifth

**10.6(b)** (cont.)

Do not use: 1st, 2nd, 3rd, 5th

Write ordinal numbers greater than ten in numbers and letters.

**Examples:**

Use: 11th, 22nd, 23rd, 81st

Do not use: eleventh, twenty-second, twenty-third, eighty-first

**(c) Dates**

Express dates in figures only.

**Examples:**

Use: September 2

Do not use: September 2nd

**(d) Money**

Express a dollar amount that begins a sentence as a figure.

**Example:** \$100 is appropriated....

Express an even dollar money amount by the dollar sign, omitting the decimal and zeros.

**Examples:** \$7, \$5,789

In a running series, express money amounts by the dollar sign, omitting the decimal and zeros for those figures which represent even dollar amounts.

**Examples:** \$4, \$9.50, \$23.35, and \$67

However, in tabulations show the decimal point and zeros for even dollar amounts.

**10.6(d)** (cont.)

**Examples:**

\$ 6.00  
133.58  
53.29  
48.00

**(e) Fractions**

When the denominator is ten or less, write the fraction in words.

**Examples:** one-half, three-fourths, nine-tenths

When the denominator is over ten, express the fraction with figures.

**Examples:** 3/11, 4/17, 8/31

Express all mixed numbers in figures with hyphens.

**Examples:** 1-1/2, 37-3/8, 811-1/32

**10.7 Official Titles**

When referring to a public officer or a state department or agency, use the official and correct title of that public officer or state department or agency. 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 table of governmental agencies and agency heads which is found in chapter 7 will be helpful for determining the correct title of a state officer, department, or agency.

**10.8 Particular Words**

**(a) "Such," "Said," "Same," "Any," "Each," "Every," "All," and "Some"**

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, and they can be omitted without other words being substituted. Do not use "any," "each," "every,"

**10.8(a)** (cont.)

“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.” A statute states that “shall” is mandatory and “may” is permissive. Minn. Stat. § 645.44, subd. 15 and 16 (1980).

**(c) “When,” “If,” and “Where”**

Use “when” or “if” not “where” to introduce a hypothetical situation.

**Examples:**

Use: When the seller of goods has a voidable title thereto, but his title has not....

Do not use: Where the seller of goods has a voidable title thereto

See Minnesota Statutes, sections 512.01 to 512.79 (1961), 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 an amendatory bill.

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

**10.8(d)** (cont.)

act as previously amended, but excluding the present amendment.

The supreme court of Iowa, in *State v. McEwen*, 250 Iowa 721, 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 drafter 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 problems occur because of the use of the phrase "this act" in amendatory laws. The rule of statutory construction as set out in 1A J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, sec. 22.35, (4th ed. C. Sands 1972) is as follows: "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 of the problems caused by use of the phrase, note 1953 Minnesota Laws, chapter 460, amending Minnesota Statutes, section 145.12 (1949), as amended by a 1951 act. The 1951 amendment had the following language: "...under the provisions of section 1, subdivision 3 of this act..." 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 editions of Minnesota Statutes. The 1953 amendment should have referred to the proper section in the statutes or to the 1951 act.

Another illustration of the problems caused by the use of "this act" is in 1957 Minnesota Laws, chapter 646, which amended Minnesota Statutes, section 645.07 (1953), dealing with 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 the following: "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 ex rel. Minnesota Amusement Co. v. County Board of Commissioners*, 255 Minn. 413, 96 N.W.2d 580 (1959).

The 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

**10.8(d)** (cont.)

sections of the act may be coded in a number of different chapters of the statutes. Minnesota Statutes, section 648.34 (1980) 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 user's 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 instructions.

(1) When drafting 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 saying "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 the specific behavior prohibited. Say, for example, "any person selling goods below cost," instead of "any person violating the provisions of this act."

(4) Connect a penalty provision to a specific section. Say, for example, "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."



**10.8(d)** (cont.)

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 as the term "this act."

**(e) Other Objectional Phrases**

<u>AVOID</u>	<u>SUBSTITUTE</u>
is directed to	shall
has 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
including, but not	
limited to	including
in cases in which	when, whenever
in the case of	when
in case	if
in the event that	if
is able to	may
absolutely null and	
void	void
per annum	a year
per day	a day
null and void and	
of no effect	void
full force and effect	force (or effect)
sole and exclusive	sole (or exclusive)
together with	and

**10.9 Person**

Use the third person (he, she, they), not the first person (I) or second person (you).

### **10.10 Punctuation**

Use punctuation consistent with modern English usage. In an amendment to an existing law, when possible, change antiquated punctuation and correct any incorrect punctuation.

#### **(a) The Period**

Use a period after the title of a bill.

Do not use a period after statutory coding.

#### **Examples:**

Use: [325.478]

Do not use: [325.478.]

Use a period after a headnote.

**Example:** [COMMISSIONER OF REVENUE; SALARY.]

#### **(b) The Hyphen**

Only hyphenate a word in which a hyphen is included in the proper spelling of the word. Do not hyphenate a word at the end of a line.

#### **(c) Dashes, Parentheses, and Brackets**

Avoid the use of dashes and parentheses whenever possible. Use brackets only for headnotes and proposed coding.

#### **(d) Quotation Marks**

Use quotation marks for definitions.

**Example:** The words “blighted area” mean....

Do not use quotation marks in text to indicate words used in a special sense.

10.10 (cont.)

(e) **The Comma**

Avoid the overuse of commas. The overuse and incorrect use of commas are probably the most common errors in drafting.

Use the comma in the following circumstances.

(1) Use the comma to separate main clauses joined by “and,” “but,” “or,” “nor,” and “for.”

**Example:** The Minnesota public relief advisory committee is abolished, and its powers and duties are transferred to the legislative advisory commission.

(2) Use the comma to set off a subordinate clause preceding a main clause, or a long introductory phrase preceding a main clause.

**Examples:**

When an appropriation is made to the commissioner of administration for an improvement or building costing more than \$50,000, the commissioner shall prepare the plans for it.

In addition to the powers and duties prescribed by the constitution, the governor shall be the custodian of all property of the state not especially entrusted by law to other officers.

(3) Use the comma to set off a nonrestrictive clause or phrase (one which can be omitted without altering the meaning of the main clause) or any other parenthetical element.

**Examples:**

The state board of education may become a member of the council of chief state school officers, which is an association of state departments of education, or of the education commission of the states.

The University of Minnesota may accept, in trust or otherwise, any gift for educational purposes.

**10.10(e)** (cont.)

(4) Use the comma to separate words, phrases, or clauses in a series. When a series contains three or more items and the last item is preceded by “and,” “or,” or “nor” place a comma before the conjunction.

**Examples:**

Use: words, phrases, or clauses

Do not use: words, phrases or clauses

**(f) The Semicolon**

Use the semicolon in drafting to separate a series of equal elements which themselves contain commas.

**Example:** For the purpose of this section “security” means any note; stock; bond; evidence of indebtedness; assumption of any obligation or liability as a guarantor, endorser, or surety; or collateral trust certificate

**(g) The Colon**

Place a colon after the enacting clause of a bill. Use the colon to end an introductory clause before a tabulation of elements separated by either commas or lists in paragraph (indented) form.

**Examples:**

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

“construction worker” means any of the following: a carpenter, electrician, plumber, plasterer, or bricklayer

**(h) The Apostrophe**

In legislative drafting, use the apostrophe to indicate the possessive. Avoid contractions.

**10.11 Spelling**

Use WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1971) for spelling. The first listed spelling in the

**10.11 (cont.)**

dictionary is not necessarily 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 is tempted 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.

**Examples:**

Use: Any person who drinks intoxicating liquors or who uses profane language on any passenger railway car is guilty....

Do not use: Any person who shall drink intoxicating liquors or who shall use profane language...shall be guilty....

Also, use the perfect tense rather than the future perfect.

**Examples:**

Use: When the officers who have canvassed the election returns have found....

Do not use: When the officers who shall have canvassed the election returns shall have found....

**10.13 Voice**

Use the active voice. Avoid the passive voice.

**Examples:**

**Use:** The administrator shall issue certificates to applicants who have filed two affidavits.

Do not use: Applicants who have filed two affidavits shall be issued certificates by the administrator.

**10.14 Miscellaneous**

Do not use symbols such as \*, #, %, ¢, &, , and @.

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### **A BIBLIOGRAPHY OF MATERIALS ON BILL DRAFTING AND STATUTORY CONSTRUCTION**

A wide variety of materials is available on the general practice and specific problems of legislative drafting. The materials are collected here to assist Minnesota drafters in locating the material.

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