MINNESOTA REVISOR'S MANUAL with Styles and Forms

INDEX OF EXAMPLES

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MINNESOTA
REVISOR'S MANUAL
with
Styles and Forms

By the staff of the
OFFICE OF THE REVISOR OF STATUTES
St. Paul, Minnesota 55155
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Intellectually, the draftsman's skills are the highest in the practice of law. Judges at bottom need merely reach decisions, and, as the new breed of computer programmers for law have discovered with some horror, the judges are not held to very high standards of explaining how they got there; negotiators and advocates need understand only as much of a situation as will gain a victory for their clients; counselors can be bags of wind because it is only rarely that anyone can successfully pin a bad mistake on a lawyer's advice. But the documents survive, and to draw them up well requires an extraordinary understanding of everything they are supposed to accomplish.

Martin Mayer, *The Lawyers*

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Introduction

1.1 Authority

This manual is prepared by the staff of the Office of the Revisor of Statutes to carry out Minnesota Statutes, section 3C.03, subdivision 4, which provides that the revisor of statutes shall "prepare and issue a bill drafting manual containing styles and forms for drafting bills, resolutions, and amendments."

1.2 Functions of Manual

The manual serves several functions. First, it is used by the revisor's office as a text to teach new drafters general methods of drafting legislative bills and the specialties of drafting for the Minnesota legislature. Second, the manual is a ready reference for those who are familiar with Minnesota bill drafting. No drafter can keep all procedural and substantive matters in mind all the time, so a wide variety of cases, laws, rules, and principles available in other publications have been collected here. Third, the manual serves as a guide to ensure uniformity in drafting to assist the legislative process. Fourth, the manual enforces the necessary uniformity required by the computerized text management system. The computerized system was developed to provide speed and accuracy. The system is flexible enough to accommodate most needs but must be properly used.

The manual is not an office manual or the standard operating procedures for the revisor's office. The procedures, forms, and activities of the revisor's office that are unique to it have been left out.

The reader should read other materials on the subject of bill drafting. The bill drafting manuals produced by the legislatures of virtually every state can provide perspective and information for comparison. A bibliography is provided at the end of this manual.

1.3 Organization of Manual

The manual is organized to provide both ready reference and a manual of instruction. Ready reference is provided by examples on colored paper, tab marking for chapters, and a subject matter index. An experienced

drafter can rapidly locate either example pages or the cases, laws, rules, and principles that may govern a problem. Bills, resolutions, and amendments are treated separately because each of those classes of documents has its own problems. Practical helps, writing style, mechanics, and certain complex subject areas are also treated separately but apply to all legislative documents.

1.4 Statements of Standards

A new feature of this edition of the manual is a number of brief statements of drafting standards which appear throughout the text. They fall into three classes:

(1) Mandates: provisions that drafts must comply with.

(2) Directives: provisions that drafts should comply with unless the context requires otherwise.

(3) Recommendations: provisions that express the revisor's view of the best form and style of drafting, which drafts should comply with unless the drafter's best judgment requires otherwise.

All the standards are in boldface capital type. They do not attempt to summarize the text of the manual, but rather to emphasize matters discussed in the text. Mandates are preceded by three stars, directives by two, and recommendations by one.

1.5 Acknowledgement

This edition of the manual has benefited from many suggestions by its users and, in particular, by review by the members of the Senate Counsel and Research Office and the House Research Office. The revisor's staff thanks all who have given us their help and asks users to continue to give us their comments, criticisms, and suggestions.

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Statutory Construction

2.1 Introduction

In Shakespeare's *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 pleas to be merciful, to follow the implication of the words rather than their letter, or to take other compensation for the penalty. Portia then interprets the words of the bond as narrowly as Shylock previously professed to desire:

> Tarry a little; there is something else.
> This bond doth give thee here no jot of blood;
> The words expressly are "a pound of flesh";
> Take then thy bond, take thou thy pound of flesh;
> But, in the cutting it, if thou dost shed
> One drop of Christian blood, thy lands and goods
> Are, by the laws of Venice, confiscate
> Unto the state of Venice.
>
> (act 4, scene 1)

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

As one authority observes,

> The principal reason for the necessity of construction or interpretation of a statute 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 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), sec. 45.01 (4th ed. D. Sands, 1973) (citations omitted).]

The imprecision in language is also due to the 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. The process of getting a large number of people to agree on a controversial subject often involves compromise. The process of obtaining a compromise may result in parties to the agreement reading different meanings into the bill's language. Nonlegislators may find more different meanings in the same language. A court may then decide which "meaning" is correct. 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. A drafter should realize the limited precision of language and may even occasionally use vagueness as an ally.

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

The difference between "ambiguity" and "vagueness" is subtle. "Ambiguity" is doubt about which of two or more alternatives a word refers to. 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.

A drafter desirous of crystallizing legislative policy in statutory prose without kindling the prospect of misunderstanding and lawsuits must avoid careless writing. A drafter should possess sufficient mastery of the English language not only to avoid obvious pitfalls of grammar and usage, but should also write with sufficient clarity and precision to discourage lawyers, judges, and other fault finders from creative misinterpretation.

In *Legal Writing: Sense and Nonsense* (New York: Charles Scribner's Sons, 1982, p. xi), David Mellinkoff succinctly identifies drafting with writing. He says:

> Too many lawyers are long on law and short on English, especially writing it. They don't even like to think of themselves as writing at all but only *drafting*. To those who love her, *drafting* is not confined to *legislative drafting*. If it's about the law, you don't write it, you *draft* it. That comforting old word suggests the precision of another draftsman, who works with compass and rule, drawing lines of incomparable accuracy. Legal drafting isn't like that. *Drafting* is another name for *writing*, and only serves to let some lawyers feel that they can ignore the language and grammar of mere *writers*.

2.2 Practical Test for Clarity of Intent

The best test a drafter can use to ensure that later interpretation will be consistent 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 probably 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. The court avoids trotting out the cliches of construction by use of a rule of interpretation known as the plain meaning rule. *Pacific Indemnity Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548 (Minn. 1977).

Mellinkoff (p. 17) outlines the contours of the plain meaning rule as follows:

> Like other "rules" of interpretation, *plain meaning* is a label the judge stamps on a writing. "Plain meaning" is a stamp of approval. The judge is saying: "The place to begin is the words of the writing. I understand them. They have been used with such care that any normal person (like me) should understand them. I accept their plain meaning."

In construing a statute allocating costs for the installation of certain new equipment at a sewage plant, the court, in *Minneapolis-St. Paul Sanitary Dist. v. City of St. Paul*, 240 Minn. 434, 61 N.W.2d 533 (1953), stated: "It is elementary that where the language of a statute is clear and unambiguous the statute is not open to construction." 240 Minn. 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. at 494 (footnote 10).

The plain meaning rule is codified in Minnesota Statutes, section 645.16. In pertinent part, the statute provides: "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."

The plain meaning rule at first impression seems an attractive and intellectually respectable way to approach the problem of construing statutes. However radiant and transparent the concept, courts have often been less than illuminating in applying the rule. The interpretive problem concerns the standard by which clarity is judged. A reading of the cases offer a few hints at how courts embellish this rule and judicially refine the concepts of clarity and ambiguity.

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 testimony and various opinions that the language of the statute did not mean what it appeared to say.

Third, the courts usually claim 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 an admitted 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 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 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. [Sutherland, sec. 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 unemploy-

ment 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, 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. 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.]

The court in *State v. Target Stores*, Inc., 279 Minn. 447, 156 N.W.2d 908 (1968), held that it could not judicially notice legislative motive. The statute in question prohibited the sale of specific classes of commodities on Sunday. The court invalidated the statute on grounds that it was so vague that it violated due process. In the *Target* decision the court very carefully delineated 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 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. [Sec. 45.14, citations omitted.]

2.6 Intrinsic Aids

(a) Introduction

Sutherland, in sec. 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, sec. 47.01.

The court in *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 because of two factors. First, rules of construction must be applied to the infinite variety of factual variables found in specific cases. Sometimes courts must strain to stretch a rule to fit the circumstances of a case. This leads to uncertainty of application. Second, an inherent problem in relying on a court's use of the rules of construction to discover the meaning of a statute is that there are conflicting rules of statutory construction. 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 a comparison of the rules of statutory construction:

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

Thrust	**but**	**Parry**
1. A statute cannot go beyond its text.		1. To effect its purpose a statute may be implemented beyond its text.
2. Statutes in derogation of the common law will not be extended by construction.		2. Such acts will be liberally construed if their nature is remedial.
3. Statutes are to be read in the light of the common law and a statute affirming a common law rule is to be construed in accordance with the common law.		3. The common law gives way to a statute which is inconsistent with it and when a statute is designed as a revision of a whole body of law applicable to a given subject it supersedes the common law.
4. Where a foreign statute which has received construction has been adopted, previous construction is adopted too.		4. It may be rejected where there is conflict with the obvious meaning of the statute or where the foreign decisions are unsatisfactory in reasoning or where the foreign interpretation is not in harmony with the spirit or policy of the laws of the adopting state.
5. Where various states have already adopted the statute, the parent state is followed.		5. Where interpretations of other states are inharmonious, there is no such restraint.
6. Statutes in pari materia must be construed together.		6. A statute is not in pari materia if its scope and aim are distinct or where a legislative design to depart from the general purpose or policy of previous enactments may be apparent.
7. A statute imposing a new penalty or forfeiture, or a new liability or disability, or creating a new right of action will not be construed as having a retroactive effect.		7. Remedial statutes are to be liberally construed and if a retroactive interpretation will promote the ends of justice, they should receive such construction.

8. Where design has been distinctly stated no place is left for construction.	8. Courts have the power to inquire into real—as distinct from ostensible—purpose.
9. Definitions and rules of construction contained in an interpretation clause are part of the law and binding.	9. Definitions and rules of construction in a statute will not be extended beyond their necessary import nor allowed to defeat intention otherwise manifested.
10. A statutory provision requiring liberal construction does not mean disregard of unequivocal requirements of the statute.	10. Where a rule of construction is provided within the statute itself the rule should be applied.
11. Titles do not control meaning; preambles do not expand scope; section headings do not change language.	11. The title may be consulted as a guide when there is doubt or obscurity in the body; preambles may be con- 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. (Minnesota Statutes, section 648.36 is contrary to the last premise.)
12. If language is plain and unambiguous it must be given effect.	12. Not when literal interpretation would lead to absurd or mischievous consequences or thwart manifest purpose.
13. Words and phrases which have received judicial construction before enactment are to be understood according to that construction.	13. Not if the statute clearly requires them to have a different meaning.
14. After enactment, judicial decision upon interpretation of particular terms and phrases controls.	14. Practical construction by executive officers is strong evidence of true meaning.

15. Words are to be taken in their ordinary meaning unless they are technical terms of words of art.	15. Popular words may bear a technical meaning and technical words may have a popular signification and they should be so construed as to agree with evident intention or to make the statute operative.
16. Every word and clause must be given effect.	16. If inadvertently inserted or if repugnant to the rest of the statute, they may be rejected as surplusage.
17. The same language used repeatedly in the same connection is presumed to bear the same meaning throughout the statute.	17. This presumption will be disregarded where it is necessary to assign different meanings to make the statute consistent.
18. Words are to be interpreted according to the proper grammatical effect of their arrangement within the statute.	18. Rules of grammar will be disregarded where strict adherence would defeat purpose.
19. Exceptions not made cannot be read.	19. The letter is only the "bark." Whatever is within the reason of the law is within the law itself.
20. Expression of one thing excludes another.	20. The language may fairly comprehend many different cases where some only are expressly mentioned by way of example. example.
21. General terms are to receive a general construction.	21. They may be limited by specific terms with which they are associated or by the scope and purpose of the statute.

22. It is a general rule of construction that where general words follow an enumeration they are to be held as applying only to persons and things of the same general kind or class specifically mentioned (ejusdem generis).	22. General words must operate on something. Further, ejusdem generis is only an aid in getting the meaning and does not warrant confining the operations of a statute within narrower limits than were intended.
23. Qualifying or limiting words or clauses are to be referred to the next preceding antecedent.	23. Not when evident sense and meaning require a different construction.
24. Punctuation will govern when a statute is open to two constructions.	24. Punctuation marks will not control the plain and evident meaning of language.
25. It must be assumed that language has been chosen with due regard to grammatical propriety and is not interchangeable on mere conjecture.	25. "And" and "or" may be read interchangeably whenever the change is necessary to give the statute sense and effect.
26. There is a distinction between words of permission and mandatory words.	26. Words imparting permission may be read as mandatory and words imparting command may be read as permissive when such construction is made necessary by evident intention or by the rights of the public.
27. A proviso qualifies the provision immediately preceding.	27. It may clearly be intended to have a wider scope.
28. When the enacting clause is general, a proviso is construed strictly.	28. Not when it is necessary to extend the proviso to persons or cases which come within its equity."

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

(b) Canons of Construction

(1) *Noscitur a sociis (associated words)*. The meaning of doubtful words may be determined by their reference to associated words. *State v. Suess*, 236 Minn. 174, 52 N.W.2d 409 (1952), upheld a criminal statute prohibiting hunters from locating or taking 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 phrase "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*. This rule is that general words following a listing of specific words are interpreted to be limited to the same sort of words specifically listed. This canon has been codified in Minnesota Statutes, section 645.08, clause (3), as follows: "General words are construed to be restricted in their meaning by preceding particular words; ...."

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

However, the ejusdem generis rule is inapplicable when the legislative intent is obviously otherwise. In *Olson v. Griffin Wheel Co.*, 218 Minn. 48, 15 N.W.2d 511 (1944), the court held that the rule was inapplicable in the construction of a provision of the Workers' Compensation Act that provided that several specific injuries enumerated or "any other injury which totally incapacitates" shall constitute total disability because the legislative intent to include all cases of total disability not specifically enumerated was apparent. The *Olson* decision demonstrates the 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, their limitation will apply to the last antecedent in the list. For instance, in 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 1982, section 219.39, 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, sec. 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).

(c) Pertinent Context

Sutherland, sec. 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 that 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).

(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, and that this intent 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 interpretation. The "whole act" interpretation reads all the provisions of an act together for purposes of interpretation. Sutherland, sec. 47.02 and sec. 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. This rule means that statutes dealing with the same topic should be read together and given the same interpretation. 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, 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. sec. 340.95) 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. 428, 437.]

Minnesota Statutes, section 645.08, 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 that 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 repealed and there is no specific saving clause in the repealing law or an applicable general saving 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. 504, 510.

The court had to decide how to rule when the repealing act did not contain a specific saving clause and also expressly provided that Minnesota Statutes, section 645.35, a general saving 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 that 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. 555, 563.

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. sec. 645.21.

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. sec. 645.31, subd.1.]

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. sec. 645.32.

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 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. sec. 645.35.]

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. sec. 645.37. 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. sec. 645.43.]

The second class of saving clauses preserves rights from confusion by 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.

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. sec. 645.26, subd. 2, 3, and 4.]

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. sec. 645.33.]

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. sec. 645.28.]

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. sec. 645.30.]

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. sec. 645.39.]

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. sec. 645.34.]
>
> 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. sec. 645.36.]

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

(5) *Headnotes*. The court, in *In re Dissolution of School District No. 33*, 239 Minn. 439, 60 N.W.2d 60 (1953), held that headnotes to a statutory section have no value as aids to statutory construction for determination of legislative intent because the revisor of statutes inserts them as required by section 3C.06. However, in the Uniform Commercial Code the headnotes are made part of the act by section 336.1-109 and are 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 (1982). The rule provides that where there is a conflict between a general provision of law and a special provision in the same or another law, the two shall be construed together and, if possible, harmonized and reconciled and effect given to both. Section 645.26, subdivision 1 (1982), reads:

> When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

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

State v. Kalvig, 296 Minn. 395, 209 N.W.2d 678 (1973), relied on 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, 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—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. 123, 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, 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. 154, 162.

The resulting rule is that unless a special 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. sec. 645.08.

(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 basing 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 road or of any roads which connect with each other running into more than one town, or....' " 231 Minn. 33, 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 part of the English language, and it can be used for 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.

In 1979 the legislature removed the third sentence and therefore recognized that punctuation performs a role in statutory construction.

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.

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, sec. 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. sec. 645.08, cl. (2).

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

"[W]ords in the masculine gender include the feminine and neuter;...." Minn. Stat. sec. 645.08.

Sutherland, sec. 47.32, states:

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

As indicated in chapter 10 of this manual, Minnesota's policy is to draft legislation to be sex neutral. See section 10.37 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. 1984), section 5.06(e), states: "To carry out the obvious intention of the legislature the word 'or' may be construed to mean 'and' or 'nor' and the word 'and' may be construed to mean 'or.' " (citations deleted)

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 a 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. Pohl, 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 the inmates of any state penal or corrective institution, or state hospital for the insane, maintained wholly or partly within such district, such county shall be redistricted by its county board," is mandatory. The court stated:

> There is no universal rule by which directory provisions in a statute may, under all circumstances, be distinguished from those which are mandatory. Consideration must be given to the legislative history, the language of the statute, its subject matter, the importance of its provisions, their relation to the general object intended to be accomplished by the act, and, finally, whether or not there is a public or private right involved. 214 Minn. 221, 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 based its holding on the statute's silence as to the consequences of noncompliance. In support of its conclusion, the court states:

> In our view, this case comes squarely within "the well established rule of statutory construction that statutory provisions defining the time and mode in which public officers shall discharge their duties, and which are obviously designed merely to secure order, uniformity, system, and dispatch in public business, are generally deemed directory."

269 N.W.2d 31, 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, sec. 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. In pertinent part, it says: " 'May' is permissive.... 'Shall' is mandatory."

The quoted language from Sutherland and section 645.44 states the conventional wisdom about "shall" and "may". In fact, the context usually shows whether a mandate or a permission is intended. Context almost always prevails over an inappropriate verb and, to avoid confusion, the drafter should conform the verb to the context.

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:

(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 is discussed below.

(b) Legislative History

Due to technical advances in recording, 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 explicitly prohibits the use of these materials in the determination of legislative intent. "It is the intention that testimony and discussion preserved under this rule not be admissable in any court or administrative proceeding on an issue of legislative content." (Senate Rule 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 admissable in any court or administrative proceeding on an issue of legislative intent." (Rule 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.

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. (Minn. Const. 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. sec. 599.12.]

The courts have used legislative journals as a means of determining matters other than legislative intent. In *Randal Jacques v. Pike Rapids Power Co.*, 172 Minn. 306, 215 N.W. 221 (1927), the court 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. (Senate Rule 61; House Rule 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 Rule 2.06.) Conference committee reports indicate how the final version of a piece of legislation is extracted from its House and Senate sources.

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.

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. sec. 645.16.

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

The intent of legislation whose subject area is based in the common law may be discerned by examining the common law. In *State v. Arnold*, 182 Minn. 313, 235 N.W. 373 (1931), the 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. 313, 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. 313, 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 that one of the parties to the case claimed still existed.

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

On the other hand, where the legislation seeks to reform or modify the existing language, the resulting legislation is a hybrid of legislative construction of existing intent along with injections of newly pronounced legislative intent. The general rule is that: "[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. sec. 645.28.

However, this general statement is modified by Minnesota Statutes, section 645.39, 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.

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.

(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 (Minn. Const. 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 (Minn. Const. art. V, sec. 3). This "state of the state" message influences legislative intent in that it forms part of the backdrop for all the legislation passed in that session. In this sense, "state of the state" messages are indicative of legislative intent because they provide in part "...the circumstances under which it [legislation] was enacted." Minn. Stat. sec. 645.16.

Messages communicated by the governor before special sessions of the legislature also indicate legislative intent. In this instance, they not only set "the circumstances" but also provide "the occasion and necessity for the law." Minn. Stat. sec. 645.16. In other words, the governor's message, calling a special session, sets the subject matter for the session and thereby outlines in general terms the legislative intent of legislation passed in that session. (Minn. Const. 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 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...*reenacted 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. secs. 8.07, 121.17, 270.07 and 270.09, subd. 1 (1982).

(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, but courts have replied that 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 interpreta-

tion 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). 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 a 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. 463, 470.]

This rule is statutorily recognized by Minnesota Statutes, section 645.17, which in pertinent part states: "When a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language;...."

However, as noted in *Murray v. Floyd*, 216 Minn. 69, 11 N.W.2d 780 (1943): "[T]he statutory rule is that courts 'may be guided' by the presumption in construing statutes, the presumption is but an aid in ascertaining the legislative intent...." 216 Minn. at 73 (citations deleted).

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

(g) Construction of Statutes in pari materia

Laws that pertain to the same subject matter are in pari materia 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, sec. 51.03.

Minnesota has apparently adopted a 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. 542, 549 (emphasis added).

The basic rule of construction with regard to statutes in pari materia is to construe the statutes in a consistent fashion, so as to harmonize one with the other and gain a uniform result. *Minneapolis Eastern Ry. Co. v. Minneapolis*, 247 Minn. 413, 77 N.W.2d 425 (1956); *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 153 N.W.2d 209 (1967). Where there is a conflict between clauses, the statute enacted later in time controls, as this is considered 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 considered 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.

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

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). The court in *Wallace* stated the principle as follows:

> In considering the issue of whether a change in Federal law may alter the force and effect of provisions in a prior state law governing the same subject, it may be said that the principle which controls is that a state legislature may not delegate its legislative powers to any outside agency, including the Congress of the United States. [289 Minn. 220, 226.]

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. sec. 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, 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. 220, 226-227; citing *Featherstone v. Norman, supra.* (emphasis added).]

Therefore, the court endorsed the adoption by reference of existing foreign legislation. Only the adoption by reference of future foreign legislation constitutes an unconstitutional delegation of legislative authority. In the words of the court: "The legislature did not, or could not, grant to Congress the right to make future modifications or changes in Minnesota law." 289 Minn. 220, 228.

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....

To see that the Minnesota legislature took the *Wallace* court at its word with regard to the adoption by reference of "existing method(s)," one need only look to Minnesota Statutes, section 16.84, subdivision 4. This section adopts by reference administrative rules: " 'Code' means the state building code or any amendment thereof promulgated by the commissioner in accordance with the terms of sections 16.83 to 16.867."

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.

The Minnesota Supreme Court almost reversed its interpretation of the delegation principle in *Minnesota Recipients Alliance v. Noot*, 313 N.W.2d 584 (1981). This case concerned an adoption by reference by a Minnesota public welfare statute of federal public welfare regulations dealing with AFDC grants and income disregard formulas. The statute in question, Minnesota Statutes 1980, section 256.73, subdivision 6, reads in part as follows:

> All net earned or unearned income not specifically disregarded by the social security act, the code of federal regulations, a state law, rules and regulations, shall be income applicable to the budgetary needs of the family.

The plaintiff in *Noot* argued "that the state statute must be construed according to federal regulations as they read when the statute was enacted in 1977." 313 N.W.2d 584, 586. The plaintiff based its argument on the holding in *Wallace v. Commissioner of Taxation*, 289 Minn. 220, 184 N.W.2d 588 (1971), "that a state statute parallel to federal law should be construed as the parallel law read *at that time* and not as it may have been amended subsequently ..." 313 N.W.2d 584, 586.

The court in *Noot* decided that the new formulas of the federal public welfare law were consistent with Minnesota Statutes, section 256.73, subdivision 6, even though the formulas were adopted subsequent to passage of the statute. The court in *Noot* cited the *Wallace* court for acknowledging state statutes which are "auxiliary in nature and seek to achieve uniformity in implementation of national programs and policies" may incorporate future federal legislation. 313 N.W.2d 584, 586; citing *Wallace v. Commissioner of Taxation, supra.* The court justifies the exception to the principle that prohibits delegation by stating: "It would be unworkable and illogical to lock the state's AFDC program into federal regulations dating, in some cases, back to 1937." [313 N.W. 2d 584, 587.]

The nondelegation principle as interpreted by the court in *Noot* presumably retains some vitality. In adopting foreign legislation by reference, a drafter should adopt foreign legislation which is in existence at the time of enactment of the adopting legislation. If a drafter is adopting a federal law by reference that involves a cooperative state-federal program, the drafter may

provide that the state law incorporate subsequent changes in federal legislation. However, since the scope of the exception has not been defined with precision by the Minnesota Supreme Court, the drafter should carefully assess the need for adopting future federal law and should do so only in the limited circumstances indicated by the *Noot* court.

(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 uniform law. An unofficial tally of the Minnesota statutory index reveals 50 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. sec. 645.22.

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

3

Laws and Rules About Bills

3.1 Generally

Certain fundamental rules regulate the form and substantive content of every bill. The rules are 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 should be familiar with the following constitutional provisions, statutes, and legislative rules.

3.2 Provisions Governing the Form of a Bill

(a) Approval of Bill Form by Revisor

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

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]." The logo is official identification of a bill although it also appears on other documents. Second, the four jacketed copies of a bill prepared for introduction in the House contain an initialled certification by the revisor. Only those persons at the House desk and in the House offices who deal with the jacketed House bill see this certification.

(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 how to draft bill titles see section 4.2 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.

(f) Forms of Reference

"Bills shall refer to Minnesota Statutes as follows:

'Minnesota Statutes ...., Section .....'

Bills shall refer to the session laws as follows:

'Laws ...., Chapter ...., Section .....' " 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. sec. 645.46.

"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. sec. 645.47.

"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. sec. 645.48.

(g) Showing New Language

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

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

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

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

(h) Removing Old Language

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

(i) Numbering Sections and Subdivisions

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

(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 Minnesota Statutes, section 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. sec. 648.36.

(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 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 in Minnesota Statutes, chapter 645, and discussed in chapter 2 of this manual.

(b) Effective Dates

645.02 [EFFECTIVE DATE AND TIME OF LAWS.]

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

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

Each act takes effect at 12:01 a.m. on the day it becomes effective, unless a different time is specified in the act.

(c) Measuring Time

645.071 [STANDARD OF 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 standard time or advanced standard time provided by federal law. 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 federal standard time or advanced standard time.

645.14 [TIME; COMPUTATION OF MONTHS.]

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

645.15 [COMPUTATION OF TIME.]

Where the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, the 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 the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

(d) General Definitions Applying to the Statutes

Certain common words have been given a special meaning for purposes of their use in Minnesota Statutes. Chapter 645 of the statutes contains the definitions of a number of common, and some uncommon, terms and phrases that appear frequently throughout the statutes. Many statutes contain special definitions or use terms that 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. 1a. [APPELLATE COURTS.] "Appellate courts" means the supreme court and the court of appeals.

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

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.

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

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

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

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

645.45 [DEFINITIONS, CONTINUED.]

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

(1) "Abode," means domicile;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Notary," a notary public;

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

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

645.451 [DEFINITIONS, CONTINUED.]

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

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

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

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

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

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

645.46 [REFERENCE TO SUBDIVISION.]

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

645.47 [REFERENCE TO PARAGRAPH.]

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

645.48 [USE OF THE WORD "TO" WHEN REFERRING TO SEVERAL SECTIONS.]

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

(e) Minnesota Bill of Rights

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

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

"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.

Bills of attainder are legislative acts which inflict punishment upon certain persons or classes of persons without prior trial or judicial determination of guilt. An example of such an act might be one which legislatively determines that a named corporation 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 a past action punishable as a crime under a new provision of law, which deprives an accused of any substantial right to which he or she 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.

The prohibition of laws that impair contracts does not operate predictably. 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. 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. Nevertheless, reasonable regulation of commercial activities is almost always upheld by courts.

(2) Freedom of Religion

"The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. 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. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted." Minn. Const. art. I, sec. 2.

"Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." Minn. Const. art. I, sec. 8.

(g) Equal Protection of Law

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

(h) Prohibition of 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.

(i) 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.

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

"The governor .... with the advice and consent of the senate ... may appoint notaries public and other officers provided by law.... 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 judicial power of the state is vested in a supreme court, a court of appeals, if established by the legislature, 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.

"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." Minn. Const. art. IV, sec. 23.

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

(j) 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;

(i) to improve and rehabilitate railroad rights-of-way and other rail facilities whether public or private, provided that bonds issued and unpaid shall not at any time exceed $200,000,000 par value; and

(j) as otherwise authorized in this constitution.

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

The constitutional restriction on state involvement with internal improvements and the constitutional directive that taxes be used only for public purposes are discussed in section 5.2.

(k) 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.

(l) 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.

"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 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. The state treasurer shall maintain a separate and special state bond fund on his official books and records. 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 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 and shall not be sold for less than par and accrued interest. 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] under the provisions of this section shall mature not more than 20 years from their respective dates of issue and each law authorizing the issuance of bonds shall distinctly specify the purposes thereof and the maximum amount of the proceeds authorized to be expended for each purpose." 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 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 section 2. The proceeds shall be paid into the trunk highway fund. Any bonds shall mature serially over a term not exceeding 20 years and shall not be sold for less than par and accrued interest. 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.

(m) Public Purpose Doctrine

"Taxes ... shall be levied ... for public purposes...." Minn. Const. art. X, sec. 1. See discussion under section 5.2 of this manual.

(n) 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.

"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 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.

"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.

(o) 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.

3.23 [APPROPRIATIONS.]

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

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

3.24 [STANDING APPROPRIATION REPEALED.]

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

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

16A.28 [TREATMENT OF UNUSED APPROPRIATIONS.]

Subdivision 1. [LAPSE.] Except as specifically provided for in appropriation acts, a part of an appropriation subject to this section unexpended and unencumbered at the close of a fiscal year lapses. The commissioner shall see that the remainder is returned to the fund from which the appropriation was made.

Subd. 2. [REINSTATEMENT; FINAL LAPSE.] The commissioner may reinstate a lapsed appropriation within three months of the lapse. A reinstated appropriation lapses again no later than three months after it first lapsed. A payment under a reinstated appropriation may be made only under section 16A.15, subdivision 3.

Subd. 3. [PERMANENT IMPROVEMENTS.] An appropriation for permanent improvements, including the acquisition of real property does not lapse until the purposes of the appropriation are determined by the commissioner, after consultation with the affected agencies, to be accomplished or abandoned.

> Subd. 4. [CANCELED SEPTEMBER 1.] On September 1 all allotments and encumbrances for the last fiscal year shall be canceled unless an agency head certifies to the commissioner that there is an encumbrance for services rendered or goods ordered in the last fiscal year. The commissioner may: reinstate the part of the cancellation needed to meet the certified encumbrance or charge the certified encumbrance against the current year's appropriation.
>
> Subd. 5. [EXCEPTIONS.] Except as otherwise expressly provided by law, subdivisions 1 to 4 apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made, but do not, unless expressly 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 that are by law appropriated for special purposes by standing, continuing, or revolving appropriations.

(p) Administrative Rulemaking

"Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.01 to 14.70, and only pursuant to authority delegated by law and in full compliance with its duties and obligations. If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules. Except as provided in section 14.06, sections 14.01 to 14.70 shall not be authority for an agency to adopt, amend, suspend, or repeal rules." Minn. Stat. sec. 14.05, subd. 1.

" 'Agency' means any state officer, board, commission, bureau, division, department, or tribunal, other than a judicial branch court and the tax 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." Minn. Stat. sec. 14.02, subd. 2.

" 'Rule' means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by it or to govern its organization or procedure. It 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; (b) rules of the commissioner of corrections relating to the internal management of institutions under the commissioner's control and those rules governing the inmates thereof prescribed pursuant to section 609.105; (c) rules of the division of game and fish published in accordance with section 97.53; (d) rules relating to weight limitations on the use of highways when the substance of the rules is indicated to the public by means of signs; (e) opinions of the attorney general; (f) the systems architecture plan and long range plan of the state education management information system provided by section 121.931; (g) the data element dictionary and the annual data acquisition calendar of the department of education to the extent provided by section 121.932; (h) the comprehensive statewide plan of the crime control planning board provided in section 299A.03; (i) special terms and conditions for an

interim certificate of confirmation of the Minnesota cable communications board provided in section 238.09; (j) occupational safety and health standards provided in section 182.655; or (k) rules of the commissioner of public safety adopted pursuant to section 169.128." Minn. Stat. sec. 14.02, subd. 4.

(q) 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...." 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.

(r) 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.

(s) 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, sec. 4.

In 1928 the Minnesota Supreme Court announced that Article XIII, section 3, made the University of Minnesota inviolably independent. *State ex rel. University of Minnesota v. Chase,* 175 Minn. 259, 220 N.W. 951 (1928). With just a little hedging that conclusion has been maintained. *State ex rel. Peterson v. Quinlivan,* 198 Minn. 65, 268 N.W. 2d 858 (1936), *Regents of the University of Minnesota v. Lord,* 257 N.W. 2d 796 (Minn. 1977).

4

Bill Drafting

A drafter who is working through the details discussed in this manual may find it useful to refer from time to time to the general principles that are the framework of all legislative drafting. This introduction tries to provide a summary of the framework.

A lawyer must draft a bill so that its substance and form are constitutional. Or, at least, a lawyer must advise requestor of the constitutional problem before delivering a bill or rule.

A lawyer must draft a bill with knowledge of its common law background and the probable interrelationship of the common law with the new statutory provision.

A lawyer must draft a bill or rule with knowledge of the constitutional, statutory, and common law principles on the construction of statutes. A lawyer must utilize those principles to avoid construction difficulties and to ensure construction consistent with the requestor's intent.

A lawyer must know legal relationships in order to effectively research a law to avoid creation of a law in conflict with other laws.

A lawyer must draft a bill or rule to provide continuity with existing laws. This involves the selection of all legally appropriate sections to amend or repeal and the proper placement of new sections (by proper coding) in order to preserve the "seamless web" of statutory law.

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 uses the enacting clause that is 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 new law
(b) to amend existing law
(c) to repeal existing law
(d) to propose an amendment to Minnesota's Constitution.

The framework of each bill draft is standard only in a broad sense. Each bill is a custom product and the drafter may modify the framework if it is necessary to draft an effective bill.

Bills can usually follow this outline:

(a) Title
(b) Enacting clause
(c) Legislative intent and purpose provisions (if used)
(d) Basic provisions
(e) Miscellaneous special provisions
    (1) Interpretation clause (if used)
    (2) Saving or nonsaving clauses (if used)
    (3) Appropriations
    (4) Repeals
    (5) Effective date

The following discussion considers each of the parts of the bill separately.

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

4.2 Title

(a) General Requirements

The Minnesota Constitution provides in article IV, section 17, that "No law shall embrace more than one subject, which shall be expressed in its title." Joint Rule 2.01 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 TITLE MUST EXPRESS THE ONE SUBJECT OF THE BILL.**

The one subject rule is intended to prevent logrolling and riders. Despite the seeming simplicity of this rule, it can be very difficult to comply with. One reason is that legislation may treat a subject comprehensively and cover a wide range of material. 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 about 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. Drafters are sometimes required by a member to ignore the one subject rule and to draft a bill combining what, to the drafter, are clearly two subjects.

(c) Expression in the Title

The requirement that the contents of a bill be expressed in the title is intended to give fair notice to everyone of what the bill contains. It prevents legislation by deception. It also reinforces the anti-logrolling and anti-rider restriction of the "one subject" rule.

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 usually better to draft the title after drafting the bill.

**** THE TITLE SHOULD MENTION THE VARIOUS PARTS OF THE BILL.**

If the first phrase in a title refers to a broad topic, several or many parts of that topic may be legitimately treated in the bill. The various parts treated should also be mentioned in the title, both for convenience for the reader and insurance that the subject matter is adequately covered. The drafter must find a middle way between a single laconic generality and a verbose index or recapitulation of the whole bill.

(d) Drafting Format

In Minnesota the format of a bill's title is formalized and has several parts divided by layout or punctuation. They are:

(1) *Opening Phrase*. The opening five words are always "A bill for an act." If the bill is ultimately passed, the phrase is changed in the enrolling process to the words "AN ACT."

(2) *The General Subject*. The general subject almost always begins "relating to .... ." The general subject is always the broad area involved. Examples are: education, taxation, highways, state government, energy, or crimes. If the law is a broad recodification, the general subject should be expressed as "recodifying the laws governing...."

The drafter should consider that the general subject is often used to determine the first 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.

(3) *The Objects or Parts of the Subject*. These phrases begin with a participle other than "relating to." It may be:

"augmenting"
"adding"
"authorizing"
"empowering"
"providing"
"creating"

"abolishing"
"limiting"
"restricting"

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

In two instances legislative custom requires that specific language must be added following the object or specific subject. When a criminal penalty is imposed, the phrase "providing penalties" must be inserted. When the bill contains an appropriation, the phrase "appropriating money" must be inserted in the title after the other specific subject phrase or phrases.

***** THE TITLE MUST MENTION CRIMINAL PENALTIES AND APPROPRIATIONS THAT ARE IN THE BILL.**

(4) *A List of Existing Sections Amended.* When a section or subdivision of Minnesota Statutes is amended, that section or subdivision must be recited in the title. The format is: "amending Minnesota Statutes 1984, section 12.34."

If only a subdivision is amended, the section and subdivision are designated. An example is: "amending Minnesota Statutes 1984, section 12.34, subdivision 4."

Other variations are set out in the forms at the conclusion of this chapter.

(5) *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 to be coded must be recited in the title. The format is: "proposing coding for new law 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 because the proposed coding is prospective in application, not retrospective as are amendments and repeals. The proposed coding is not binding but is usually used when the next edition of Minnesota Statutes is prepared.

If new law is an entire proposed new chapter, the appropriate format is: "proposing coding for new law as Minnesota Statutes, chapter 123."

The listing of chapters affected, as well as the sections amended and repealed, gives notice to 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 an index of statutory sections affected by bills.

(6) *A List of Existing Sections Repealed.* Sections or subdivisions repealed are listed like the amended sections. If a series of consecutive sections is repealed, they may be cited by the first and last numbers of the series. For example "repealing Minnesota Statutes 1984, sections 123.45 to 123.77."

***** THE TITLE MUST LIST ALL THE AMENDED, REPEALED, AND NEWLY CODED SECTIONS, SUBDIVISIONS, AND CHAPTERS.**

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 6 for the various forms of "resolving clauses" used in resolutions.

***** THE BILL MUST HAVE AN ENACTING CLAUSE.**

4.4 Short Title - Purpose or Policy

(a) Citation or Short Title

Very rarely a lengthy or comprehensive bill may require a citation or short title for convenience or public information. Use of a citation or short title is not encouraged, but one may be used when desirable or if a requester insists.

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

```
1           Section 1.  [CITATION.] Sections 1 to 21 may be cited
2       as the "Minnesota property tax refund act."
```

When written as part of a single section, the short title should be the first or last subdivision.

```
1           Subd. 7.  [SHORT TITLE.] This section is the "uniform
2       simultaneous death act."
```

A short title of this kind seldom needs preliminary coding.

(b) Statement of Purpose or Policy

A statement of purpose or policy, sometimes termed "legislative intent" should be used only when specifically requested. If the bill is otherwise clear, as should be the case, a recitation of what the legislature intended should serve no purpose. However, courts sometimes use policy statements to interpret law, and a statement may be appropriate if litigation about intent is expected.

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

A better though also wordy example is Minnesota Statutes, section 168B.01. It deals with the purpose of the abandoned motor vehicle recycling program.

168B.01 [PURPOSE.]

> Abandoned motor vehicles constitute a hazard to the health and welfare of the people of the state in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. Abandoned motor vehicles and other scrap metals also constitute a blight on the landscape of the state and therefore a detriment to the environment. The abandonment and retirement of motor vehicles and other scrap metals constitutes a waste of a valuable source of useful metal. It is therefore in the public interest that the present accumulation of abandoned motor vehicles and other scrap metals be eliminated, that future abandonment of motor vehicles and other scrap metals be prevented, that the expansion of existing scrap recycling facilities be developed and that other acceptable and economically useful methods for the disposal of abandoned motor vehicles and other forms of scrap metal be developed.

An example of a statement of purpose that was written in anticipation of litigation is Laws 1982, third special session chapter 1, article 1, section 1. The section states the purpose of the legislature in enacting a series of tax increases and spending cuts to resolve the budget crisis of December 1982. It provides:

> Section 1. [FINDINGS AND PURPOSE.]
>
> The legislature finds and declares that the state is presently confronted with a grave economic emergency in that the state will not receive revenue sufficient to meet its legal duty to avoid a deficit while still upholding its responsibility to protect the health, safety, and welfare of its citizens. The legislature further finds that for the state to continue to be a viable governmental entity it is vital that significant and immediate reductions in state expenditures be made and that mechanisms to increase state revenues be immediately adopted.
>
> In recognition of the economic plight facing citizens of the state of Minnesota and other states, the legislature also finds and declares that legislation designed to correct this economic emergency must not create undue economic or social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemployment, or jeopardize the financial integrity of state government.
>
> Therefore, the legislature finds and declares that the most effective means to serve all of these important goals and solve the present economic emergency is to enact the following combination of provisions for reductions in state expenditures and increases in state revenues.

In *AFSCME Councils, 6, 14, 65 and 96 v. Sundquist*, 338 N.W. 2d 560 (Minn. 1983), the court used the statement of purpose to support its decision upholding the act.

> Thus, the purpose of the Act, as stated by the legislature, is to correct the state's grave fiscal condition without creating undue economic displacement. [338 N.W. 2d at 570-71.]

In a footnote, the court stated:

> In challenges to statutes under the equal protection clause, we accept legislative expressions regarding the purposes of the legislation as the actual purposes unless our review of the legislative history and the statutory scheme convinces us that they "could not have been a goal of the legislation." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n. 7, 101 S.Ct. 715, 723 n. 7, 66 L.Ed.2d 659 (1981) (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n. 16, 95 S.Ct. 1225, 1233 n. 16, 43 L.Ed.2d 514 (1975). Here, a review of the legislative history and the statutory scheme confirms that the purposes stated in the Act's preamble are its actual purposes.
>
> In its Preamble, the Act states that Minnesota "is presently confronted with a grave economic emergency" and that "legislation designed to correct this economic emergency must not create undue economic or social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemloyment, or jeopardize the financial integrity of state government." [338 N.W. 2d at 571 n 14.]

When a policy statement is included in a bill, the drafter should be careful not to put a substantive provision in the middle of it. The substantive provision may be lost in the verbiage and its presence will create editorial problems.

*** AVOID POLICY STATEMENTS.**

4.5 Definitions

A definition section is frequently used to:

(1) define unfamiliar words or phrases;

(2) indicate that, for the purpose of the bill, a term has a different or more limited meaning than the meaning by which the term is usually understood; or

(3) reduce the length of a bill by eliminating repetition of a long title of, for example, a board, commission, or agency.

Write definitions after you have written the body of the bill. As you review your draft to see which terms need defining, make sure you have not varied your terms or created needless jargon. A clearly written draft will need very few definitions.

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

```
1           Section 1.  [123.45] [DEFINITIONS.]

2           Subdivision 1.  [APPLICABILITY.] The definitions in
            --------------                   ------------------
3       this section apply to sections 1 to 20.
        -----------------------------------
4           Subd. 2.  [ENGINEERING.] "Engineering" means....
            --------                 ----------------------
5           Subd. 3.  [PRACTICE OF ENGINEERING.] "Practice of
            --------                             ------------
6       engineering" excludes....
        -------------------------
7           Subd. 4.  [BOARD.] "Board" means the board of
            --------          -------------------------
8       architecture, engineering, land surveying, and landscape
        ---------------------------------------------------------
9       architecture.
        -------------
```

In the example above, subdivision 1 is the standard opening subdivision of a section that has several definitions; subdivision 2 shows a term requiring definition; subdivision 3 shows a term having a special limited meaning; and subdivision 4 is an example of a definition used to avoid repetition.

(1) *Start each subdivision with the subdivision number; write the term you are defining as a headnote.* Start the sentence with the term you are defining, in quotation marks.

The next word will usually be *means, includes*, or *refers to*, depending on what follows. These words are singular, even when you're defining a plural term. Make them plural only if you're defining two words at once. Use only one term. Don't say "means and includes."

(2) *The definition should be the same part of speech as the word being defined.* The definition of a verb should be in the same verb form, the definition of an adjective should be an adjective or a participle. For example, do not write: " 'Reasonable access' means no more than twelve miles distant from the transportation system." Instead, write: " 'Reasonable *access*' (noun) means *location* (noun) less than twelve miles from the transportation system." Or write " *'To have reasonable access'* means *to be less than twelve miles* from the transportation system."

When it isn't possible to use a grammatical equivalent in a definition, use *refers to* instead of *means*. Example: " 'Settle' and 'settlement' refer to the consideration, adjustment, determination, and disposition of a claim..."

Sometimes you can correctly use something other than *means, includes,* or *refers to*. For example, you can write: " 'Should' is used in a directory sense."

(3) *Usually, alphabetize your definitions word by word.* It is better not to use initials, but if you must, make their meanings easy to find: alphabetize under the abbreviation, not the expanded form. Example: Efficiency, EIS, EPA. A reader who is trying to learn what LPG is should not have to look through all the L's to find "Liquefied petroleum gas." Sometimes, when a series of unfamiliar terms have interlocking definitions, it is appropriate to begin the list of definitions with the terms that introduce the reader to the subject, disregarding alphabetical order.

(4) *Don't define terms needlessly.* English words used in their ordinary senses don't need definitions. "Temporary sign" does not need the explanation that it is a sign intended to be displayed for a short time.

Certain terms are already defined in Minnesota Statutes, chapter 645, to apply to all of Minnesota Statutes. See section 3.3 (d) of this manual. The terms defined in chapter 645 should not be redefined, unless some variance in meaning is intended. If a variant definition is intended, then the bill draft should specifically state that it is an exception from the general definition.

If a definition in Minnesota Statutes, other than one in chapter 645, 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 shorter. However, the drafter should beware of incorporating a definition by reference if the other statute is in unrelated subject matter. The incorporation might give a false impression that the old and new statutes are related.

(5) *Don't do violence to the ordinary meaning of words.* Don't write " 'Hospitals' includes day care centers." The reader is not likely to look up the word "hospitals" and so may never learn that it includes other things. Use the included terms in the body of the bill.

(6) *Watch your sense of categories as well as your grammar.* For example, don't write: " 'Senility' means *an individual with* a physical disability and mental weakness brought on by old age." Senility is a condition, not a person. Write "Senility means a physical disability and mental weakness brought on by old age."

(7) *Try not to define words in terms of other words also being defined.* This rule is sometimes impossible to keep; it may call for too much repetition. But remember that most readers will not read your work from beginning to end and won't want to be forced to look up a second definition in order to understand the first.

(8) *Don't write substantive requirements into your definitions.* Here is an example of a definition that is too substantive: " 'Lockup facility' means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners not more than 90 days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards." This definition should end at "90." The rest of the material should appear in the body of the bill.

**** MINIMIZE DEFINITIONS.**

4.6 Basic Provisions

(a) Sections Amending Existing Law

(1) *Order and Format.* Sections of Minnesota Statutes or the Supplement are amended in a bill in numerical order, followed by amendments to sections of session laws.

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. After the introductory phrase, the existing law is set forth in the same form as in the latest edition of Minnesota Statutes. For example:

```
1           Sec. 42.  Minnesota Statutes 1983 Supplement, section
2       15A.082, is amended to read:
3           15A.082 [COMPENSATION COUNCIL.]
4           Subdivision 1.  [CREATION.] A compensation council is
5       created to assist the legislature in each even-numbered
6       year . . . .
```

The requirement to reproduce the statutory text in the form in which it appears in Minnesota Statutes is without exception. However, capital letters replace boldface type for headnotes. Also, it is not necessary to show existing statutory editorial headings when amending existing statutes.

If an entire section is amended and it includes both subdivisions that appear only in Minnesota Statutes and subdivisions that appear only in the Supplement, reference should be to Minnesota Statutes as amended by the relevant session laws.

The language that is to be deleted is lined out (stricken) and new language is underlined (underscored). New language follows stricken old language or punctuation. Language should not be stricken and then reinserted with underlining.

(2) *Amending Subdivisions*. The subdivision is the smallest part that may be amended (Joint Rule 2.01).

When individual subdivisions of a statutory section are cited to be amended in a bill, each subdivision must be amended in a separate section of the bill. For example:

```
1           Sec. 51.  Minnesota Statutes 1982, section 16A.04,
2       subdivision 1, is amended to read:
3           Subdivision 1.  [BUDGET, CASH FLOW.] The department of
4       finance shall prepare a biennial budget and a ~~ten~~ four year
5       ~~cash receipts and~~ . . . .
6           Sec. 52.  Minnesota Statutes 1982, section 16A.04,
7       subdivision 4, is amended to read:
8           Subd. 4.  [RULES.] The ~~department~~ commissioner of
9       finance may make rules ~~and regulations~~ governing the
10      powers, duties, and . . . .
```

When a section is amended by adding a subdivision, the subdivision is inserted in a logical order between or following the existing subdivisions. If

the new subdivision must be added between existing subdivisions, it is numbered "1a," "1b," or the like. Try to avoid renumbering the existing subdivisions, since cross-references to them might be affected. The existing language of the section should not be shown in the bill unless the existing subdivisions are also amended, or unless the new subdivision cannot be written to make sense on its own. In those cases the section must be amended by reproducing it and showing the new subdivision in its proper context with the new subdivision numbers and all new language underlined.

Sometimes, when many but not all of the subdivisions of a section are being amended, it is shorter and simpler to amend the entire statutory section showing the whole text including the unaltered subdivisions in one section of the bill.

(3) *Changes in Headnotes*. If necessary, changes are made 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).

(4) *Repeal or Amend?* When making major amendments to existing law, a drafter may be presented with a choice: 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? Use a new law if the intent is that the law be 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 usually easier to repeal and replace a law than to amend it. But to a reader, a new law and an amended old law that have the same substantive effect may have an entirely different appearance. The preference is to amend rather than repeal and replace.

(b) Sections Proposing New Law

(1) *Location*. Many drafts consist both of amendments to existing sections and totally new sections. When this occurs, the sections of new law with their proposed coding are inserted into the draft in numerical order among amended existing sections. The result is that a new section may be followed by an amended section that 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.

(2) *Format*. The basic format for a section proposing new law that is permanent and general is to show the bill section number, the proposed coding, the headnote, and then the text of the new law. For example:

```
1           Sec. 14.  [293.21] [REFUND OF TAX ERRONEOUSLY
2       COLLECTED.]
3           The commissioner of revenue shall refund any tax
4       erroneously paid or collected and shall reimburse the
5       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's section number, proposed coding, 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 use an introductory clause to specify what chapter is being amended. For example:

```
1            Sec. 14.  Minnesota Statutes 1984, chapter 293, is
2       amended by adding a section to read:
3            [293.21] [REFUND OF TAX ERRONEOUSLY COLLECTED.]
4            The commissioner of revenue shall refund any tax
             -----------------------------------------------
5       erroneously paid or collected, and reimburse the general
        ---------------------------------------------------------
6       fund for the expenses of implementing this chapter.
        ---------------------------------------------------
```

The first form is preferred because it takes fewer words to achieve the same result. The second form, however, is also correct.

(3) *Headnotes.*

**** PROVIDE A HEADNOTE FOR EACH SECTION.**

The bill drafter must draft headnotes for each section, using all capital letters enclosed in brackets and ending with a period. Headnotes should also be put in subdivisions. Headnotes for sections tend to be longer and usually are phrases. The headnotes for subdivisions are usually one to three catchwords. Headnotes are not drafted for subdivisions if the new section is coded in a part of the statutes where subdivisions do not have headnotes.

Quick reference in bills depends on headnotes. When you write section headnotes, ask yourself how they will look as a table of contents, whether they will show the reader your method of organization, and whether they will present the questions the reader is likely to ask. Try to keep headnotes short, but make clarity your first priority. Pay attention to subdivision headnotes; they are the reader's only guides within a section. You may decide to change the order of your subdivisions on the basis of the looks of your headnotes.

Use semicolons sparingly. Use them to separate really distinct subjects, as in "Suspending Licenses; Hearing; Relicensing." Don't use semicolons to replace prepositions. Instead of writing "Officers, Teachers; Neglect of Duty; Penalty," write "Penalty for Officers' or Teachers' Neglect of Duty."

Prefer *-ing* to *-ion*. Instead of writing "Tax-forfeited Lands; Acquisition," write "Acquiring Tax-forfeited Lands."

Don't depend too much on the context to complete a headnote's meaning. In subdivision headnotes you can control context somewhat, but you have no idea what other headnotes will be near your section headnote, so be very specific. Don't write "Who May Use," or "Must Be Displayed." Instead, write, "Who May Use County Law Libraries," or "Displaying Licenses."

Headnotes do not become law if the bill is passed, but they can provide information for the construction of the provisions and guidance to those who make headnote decisions during the editorial process.

(4) *Coding.*

**** PROVIDE PROPOSED CODING FOR EACH SECTION OF PERMANENT LAW.**

The drafter must propose coding for new law which is intended to be compiled in Minnesota Statutes. Proposed coding appears in brackets without a period.

A section that is not proposed to be coded is shown like a coded section, including use of headnotes, starting text on a new line, and underscoring.

The proposed coding does not become law if the bill is passed, but does provide guidance to those who make coding decisions during the editorial process.

(5) *Dividing Bills and Sections.* 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. Sections, subdivisions, and other divisions should be used to assist the reader.

In addition to dividing a section into subdivisions, subdivisions may be divided into paragraphs (Minnesota Statutes, section 645.47) and paragraphs may be divided into clauses or items. Further divisions are almost never needed. A breakdown of the various parts of a section is:

Part	**Example**
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. Whether or not there are paragraph elements, numbers and not letters should usually be used for clauses or items. Each subdivision should be a complete sentence. Each subdivision should contain enough of the law to make sense on its own, so that its meaning is not obscure when reproduced by itself, without the remainder of the section, as when it is later amended.

If a subdivision is divided into paragraphs, each paragraph should be a complete sentence.

If the drafter wants to divide a sentence of a section, subdivision, or paragraph into designated clauses or items, the designation must be by number and the clauses or items may be shown indented in paragraph form. The clause elements must be grammatical clauses not sentences or paragraphs. For that reason the first letter of the first word is not capitalized and each clause other than the last ends in a semicolon.

(6) *Articles*. A long and complex bill may also be divided by grouping sections of a bill into an article or a group with or without a bracketed centered heading.

The division of a bill into articles is easily visible. Each article is preceded by the centered and capitalized article number and, on the next line, the name of the article. For example:

```
1                          ARTICLE 4
2                    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 last sections in each article are the repealer and effective date provisions.

(7) *Headings*. A second method of dividing a bill is the use of centered headings for groups 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 325G. The heading is a centered and capitalized word or group of words. For example, if a bill were divided using headings, a heading might appear as:

```
1                    CAMPAIGN FINANCING
```

When a group heading is used, 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. The use of a group heading does not affect the bill format in any other way.

Neither articles nor group divisions are necessarily carried forward into the statutes although they are considered for use as editorial headings if appropriate. The drafter should divide a bill to facilitate understanding when necessary. Use of either type of division is rare. Not more than 20 bills out of several thousand in a session use these types of divisions.

When drafting legislation with numerous interrelated provisions containing exceptions and exceptions to exceptions, it is better to use the "outline" system permitted by the possible divisions rather than to create sentences that are paragraphs, or even pages, long. See the chapter on clear drafting for suggestions on how to draft complicated material.

Regardless of how a section is divided, short and simple sentences should be used.

4.7 Miscellaneous Special Provisions

Following the primary drafting of new or amendatory law, various other provisions must usually be added. These sections have common features. They are temporary sections needed to implement or coordinate with existing law. The sections are not coded and are not intended to be

included in Minnesota Statutes. They may be technical provisions such as repealers or the effective date of the act.

(a) Interpretation Clause

All statutes are supposed to be construed to accomplish the intention of the legislature and secure their most beneficial operation. The statement of this principle is set forth in general permanent Minnesota law (see section 2.4 of this manual). In view of this, a statement directing that a section be "liberally interpreted" or otherwise instructing courts or administrators to have a constructive attitude, is redundant. The section should not be inserted unless specifically required 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.

**** OMIT INTERPRETATION CLAUSES.**

(b) Severability or Nonseverability Clause

Minnesota Statutes, section 645.20 makes the provisions of all laws severable. This makes a severability clause unnecessary. If you don't want the provisions of your bill to be severable, specify that they are not. Otherwise, you need write nothing at all about severability.

**** OMIT SEVERABILITY CLAUSES.**

(c) Saving or Nonsaving Clause

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

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

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

There are instances when 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 explicitly that the general saving statute does not apply. This gives rise to the possible use of a "nonsaving clause," in effect, the reverse of a saving clause. In this regard, a statement that "Minnesota Statutes, section 645.21, [or other appropriate sections] does not apply to section 12" may be sufficient. The provision should cite only the particular section or sections of the statutory saving clauses that are relevant. The bill's intended treatment of the affected actions or rights should be clear and explicit.

**** OMIT SAVINGS CLAUSES.**

(d) Repealers

A drafter should check existing law for provisions inconsistent with the bill being drafted. Conflicting or superseded laws should be amended as necessary to make them consistent or repealed. The repeal is contained in a separate section of the bill. The form used is:

```
1           Sec. 10.  [REPEALER.]

2           Minnesota Statutes 1984, sections 51.02; 51.04,
            ----------------------------------------------
3       subdivisions 1, 3, and 5; and 51.06, are repealed.
        ---------------------------------------------------
```

If a series of sections is being repealed, each should be listed rather than using a reference like "sections 51.02 to 51.06." An inclusive reference of that kind may be used in the title of a bill.

The drafter of a bill containing a repealer should check each reference to the repealed sections or subdivisions elsewhere in the statutes and make appropriate changes in them. 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, coded in Minnesota Statutes.

A general repealer providing that "all laws in conflict with section 1 are repealed" or similar words has no legal effect and should not 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. Table I of Minnesota Statutes can assist with this problem; all affected special laws should be found and repealed and a general repealer avoided.

**** AVOID GENERAL REPEALERS.**

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.

"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. Rather than creating a ghost, the old section should be amended or a new section enacted to state the law as binding on the limited classification of people, places, and times.

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

(1) the repeal of an amendatory law does not revive the provisions it amended;

(2) the repeal of an original law also repeals all subsequent amendments;

(3) the repeal of any provision does not affect any right accrued under the former law; and

(4) the repeal of a repealer does not revive the law originally repealed.

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

(e) Instructions to the Revisor

Some bills include a provision that instructs the revisor to change statutes 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, such as changing "workmen's compensation" to "workers' 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, the revisor's office does not encourage drafting instructional provisions into bills. The office has had considerable difficulty implementing some 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 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 besides 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.

Sometimes instructions are requested which accomplish a substantive and not just a name or title change, such as instructions 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 should not be used.

Another type of direction to the revisor requires the renumbering of statutory sections. This type of direction has occurred in bills with increasing frequency. It usually occurs as parts of bills that substantially revise larger portions of Minnesota Statutes. This kind of section should not be necessary. The revisor has statutory power to renumber statutes. If renumbering is believed necessary, a letter can be sent to the revisor requesting the renumbering. The revisor will agree to reasonable requests of this type. A

request will be acknowledged so that it will be known for sure that the change will be accomplished.

When sections of the statutes are extensively rewritten, it is often necessary to make changes in cross-references to statutes not otherwise changed. Of course, it is possible to set out each of the sections containing a cross-reference and amend it in the usual fashion. However, many sections of the statutes have a large number of cross-references to them. As a result, the bulk of a bill may be unduly extended for what are basically technical changes. A method of accomplishing numerous changes is to use an instruction to the revisor. The instruction to the revisor should not be in the form of an instruction "to change internal cross-references in Minnesota Statutes as required by this act." That kind of instruction could be impossible to implement because of difficulty in determining the proper new cross-reference.

An example of an instruction to the revisor can be found at the end of this chapter.

**** MINIMIZE INSTRUCTIONS TO THE REVISOR.**

***** DO NOT GIVE POLICY DISCRETION IN AN INSTRUCTION TO THE REVISOR.**

(f) Appropriations

(1) *The Budget Process*. Minnesota state government operates on a biennial budget, enacted in omnibus appropriations bills before July 1 each odd-numbered year and intended to last to June 30 in the next odd-numbered year. Adjustments to the budget are enacted in the regular session in the even-numbered year and in special sessions as necessary. Most of the money appropriated by the legislature is contained in the omnibus appropriations bills such as those for operation of state government, buildings and capital improvements, and school aids. Omnibus appropriations bills are discussed in section 5.1 of this manual.

There are, however, numerous requests for the appropriation of money for special projects or programs not included in the omnibus appropriation bills. Many other bills have appropriation provisions that will, in the legislative process, be finally passed as part of an omnibus appropriations bill. All of these must be drawn so they will work if passed separately, as occasionally happens. 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 near the end of the bill and followed only by any repealer and effective date provisions.

(2) *Ordinary Appropriations*. To construct an appropriation provision, the drafter must answer the questions: How Much? From Where? To Whom? For What? and When? A typical direct appropriation section would be:

```
1           Sec. 10.  [APPROPRIATION.]

2           $100,000 is appropriated from the general fund to the
            ----------------------------------------------------
3       commissioner of administration to administer sections 1 to
        ----------------------------------------------------------
4       9, to be available until June 30, 1987.
        ---------------------------------------
```

**** SHOW AMOUNT, SOURCE, RECIPIENT, PURPOSE, AND TIME FOR EACH APPROPRIATION.**

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

The verb "appropriated" should be used to make an appropriation. Any other language invites dispute about what is meant. Minnesota Constitution, article XI, section 1.

***** USE THE WORD "APPROPRIATED" TO MAKE AN APPROPRIATION.**

Do not say "$..... is hereby appropriated." "Hereby" is surplusage.

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.

The appropriation should name the official, board, or agency that has statutory power to spend money. Appropriations are ordinarily made to the commissioner of a named department, not to the department itself. This is customary in order to emphasize the responsibility for the expenditure of the money. If an appropriation is made either to a department or, worse, to some official subordinate to the commissioner, then the possibility of confusion or conflict within a department is created. If the appropriation is to a board or agency, the legal name of the board or agency must be used. Sometimes an agency will informally adopt a name different from 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. Do not give the appropriation an account name. That is the business of the commissioner of finance. If the purpose is more fully described elsewhere in the bill, and you wish to refer the appropriation to it, you might be tempted to write "for the purposes of section 10." However a drafter should try to avoid bill section references in stating a purpose because the sections may be renumbered as the bill is being put together, without a corresponding change in the purpose clause. Thus "for the purposes of sections 5 to 10" becomes incorrect when sections 5 to 10 are renumbered 8 to 13. As an alternative, a drafter should consider reference to a common name for the funded program, or to prior existing coded statutory sections (if any) that describe the program.

A drafter should specifically consider the period for which the appropriation will be available. If the appropriation is made in the odd-numbered year, it is usually intended to be available for the next biennium. If the bill has no effective date, it will become effective the following July 1 under Minnesota Statutes, section 645.02. This is normal and desirable. However, it will also lapse on June 30 of the next year, under section 16A.28, contrary to the usual intent. To extend the appropriation for the second year of a biennium, the phrase ", to be available until June 30, 1987" is inserted after the purpose.

While the legislature budgets on a biennial basis, state agencies budget separately for each fiscal year. If the appropriation is for a biennium, but you can determine how much is budgeted for each fiscal year, the drafter may want to show the allocation by fiscal year:

```
1           Sec. 10.  [APPROPRIATION.]
2           $100,000 is appropriated from the general fund to the
3       commissioner of administration to administer sections 1 to
4       9, $20,000 to be available for the fiscal year ending June
5       30, 1986, and $80,000 to be available for the fiscal year
6       ending June 30, 1987.
```

When the allocation by fiscal year is shown, but the author wants the appropriation for the first year to carry over to the second year if unexpended, the following sentence may be used:

"The unencumbered balance remaining in the first year does not lapse but is available for the second year."

When the allocation by fiscal year is shown, but the author wants the full amount to be available in either year if necessary, as is often the case with a grant program, the following sentence may be used:

"If the appropriation for either year is insufficient, the appropriation for the other year is available for it."

If the appropriation is made in the even-numbered year, it is usually intended to be available for only the second year of the biennium. It does not require either an effective date or an anti-lapse provision.

The drafter should consider the possibility that the bill may become effective the day following final enactment, either as drafted for introduction or as the result of an amendment. If the bill is made effective the day following final enactment, the appropriation will lapse on the next June 30, under section 16A.28, unless an anti-lapse provision is added. To guard against this unintended result, it is wise to include an anti-lapse provision that specifies the date of lapse, even when the bill does not have an early effective date.

Appropriations for permanent improvements, including the acquisition of real property, are available until expended, under section 16A.28. Other appropriations should not normally "remain available until expended."

If the bill contains several appropriation items, each item should be separately lettered and the component parts of each item, if any, should be numbered. Legislative tactics affect the decision to divide appropriations into more or fewer identifiable "items." If more than one agency receives an appropriation, the appropriation for each should have a separate subdivision.

(3) *Open Appropriations.* Do not create an open or "sum sufficient" 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.

**** AVOID OPEN APPROPRIATIONS.**

(4) *Standing Appropriations*. Do not say "$100,000 is annually appropriated" unless a standing appropriation that would be repeated each year is consciously intended. Recipients may prefer a standing appropriation, but legislative policy opposes it. Minnesota Statutes, section 3.23.

**** AVOID STANDING APPROPRIATIONS.**

(5) *Open and Standing Appropriations*. Open and standing appropriations, which say that "the amount necessary for this purpose is annually appropriated from the general fund," are used almost exclusively for appropriations to pay aids and credits to individuals and local governments for income tax and property tax relief. The appropriation for each aid or credit is codified in Minnesota Statutes and the amount that will be spent under each is adjusted each biennium by amendments to a statutory formula. These amendments are normally included in the omnibus tax bill.

(6) *Open Appropriations of Dedicated Receipts*. A dedicated receipt account is used to keep track of money received by a state agency from the public or another agency, when the receipts are to be appropriated to the state agency for a specific purpose. Dedicated receipts are classified for accounting purposes as

(a) special revenue accounts, if the revenue is simply restricted to expenditure for a specific purpose;

(b) enterprise accounts, if the state is acting like a private business;

(c) internal service accounts, if goods or services are provided by one state agency to another;

(d) trust accounts; and

(e) agency accounts, if the state is acting as the agent for a governmental unit, individual, or fund.

These dedicated receipt accounts are often referred to in conversation as "revolving accounts" but in laws, that term should be reserved for dedicated receipt accounts used for making loans, payments, and the like, and regularly replenished from repayments and the like.

Money in a dedicated receipt account may be appropriated by a direct appropriation, as in the case of most accounts in the game and fish, state airports, and trunk highway funds, but most appropriations of dedicated receipts are by open appropriations.

While legislative policy does not favor either dedicated receipts or open appropriations, it may sometimes be desirable to appropriate the proceeds of a fee to the agency administering the program in order to pay program costs.

(7) *Examples*. Examples of various appropriation sections, including open appropriations of dedicated receipts, used in bills basically on other subjects, can be found at the end of this chapter.

(8) *Omnibus Appropriation Bills*. Even if not involved with omnibus appropriation bills, all drafters should be familiar with their drafting. The method is discussed in section 7.1 of this manual.

(g) Effective Date

(1) *For General Laws*. Minnesota Statutes, section 645.02, provides that an act without a special effective date, except one making appropriations, is effective at 12:01 a.m. August 1 next following final enactment. Unless another effective date is specified, all parts of an act containing one or more appropriations are effective at the beginning of July 1 next following its final enactment.

If a requester wants to speed an act into effect, or to provide a delay to allow preparations to be made for an act's implementation, 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] ...." Be sure the section or sections have one single effective date.

There has been a tendency to use immediate effective dates for emphasis or just as a reflex. Bills should not be made effective the day following their final enactment unless there is an urgent need. People should have a chance to read a law before they start to violate it. This is critical for criminal laws.

**** AVOID IMMEDIATE 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.

When a special law requires local approval, the law becomes effective when the requirements of Minnesota Statutes, section 645.021, subdivision 3, 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 use of local approval provisions is described in full in section 7.4 of this manual.

(3) *For Tax laws*. 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, such as income tax laws, can be made effective retroactively.

(h) State Parks, Additions and Deletions

The boundaries of state parks are set by laws that are compiled in Minnesota Statutes in a special way. Each of these laws includes descriptions, one or more, of land added to or removed from various parks. Although the land descriptions are not included in Minnesota Statutes, a citation to each change is included in the history note that follows the provision that establishes the park. The bills also have an unusual feature. The land description is preceded by a bracketed reference to the section and subdivi-

sion of Minnesota Statutes that establishes the park and the name of the park in brackets. A similar procedure is used for state monuments, reserves and waysides. An example quoting part of Laws 1984, chapter 599, section 1, appears at the end of this chapter of the manual.

4.8 Advisory Bills

House Rule 5.3 provides that a member may introduce an advisory bill proposing some matter for consideration by a standing committee. 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 members who are asked to prepare the form should do so.

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. An advisory bill is often like a bill drafting request but sent to a committee. 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.

4.9 Examples

EXAMPLES - TITLES (Usual order of parts)

Opening boilerplate:	A bill for an act
General subject:	relating to education;
Objects or parts	authorizing school districts
of the subject:	to provide houses for teachers;
Penalties:	providing penalties;
Appropriations:	appropriating money;
Amendments:	amending
most recent statutes	Minnesota Statutes 1984, section 123.45;
most recent supplement	Minnesota Statutes 1985 Supplement, section 234.56;
session laws	Laws 1985, chapter 56, section 7;
New law:	proposing coding for new law
less than a chapter	in Minnesota Statutes, chapter 323; [OR]
a whole chapter	as Minnesota Statutes, chapter 429;
Repealers:	repealing
most recent statutes	Minnesota Statutes 1984, section 525.67;
most recent supplement	Minnesota Statutes 1985 Supplement, section 634.57;
session laws	Laws 1985, chapter 88, section 3.

EXAMPLES - TITLES (References to affected law)

General title, only one section affected:

```
1       relating to ....; amending [or repealing] Minnesota
2       Statutes 1984, section 12.34.
```

General title, only one subdivision affected:

```
1       relating to ....; amending [or repealing] Minnesota
2       Statutes 1984, section 456.78, subdivision 3.
```

Section amended by adding a subdivision when the whole section is not set out:

```
1       relating to ....; amending Minnesota Statutes 1984,
2       section 78.91, by adding a subdivision.
```

General title, several sections that are not in a series affected:

```
1       relating to ....; amending [or repealing] Minnesota
2       Statutes 1984, sections 12.34; 12.36; 217.38; and
3       325.40.
```

General title, several sections in a series repealed:

```
1       relating to ....; repealing Minnesota Statutes 1984,
2       sections 123.45 to 123.48.
```

Amended since publication of statutes:

```
1       relating to ....; amending [or repealing] Minnesota
2       Statutes 1984, section 234.56, as amended.
```

Subdivision added since the cited publication:

```
1       relating to ....; amending [or repealing] Minnesota
2       Statutes 1984, section 123.45, subdivision 6, as added.
```

EXAMPLES - TITLES (References to affected law, Cont.)

Section amended and published in the supplement:

```
relating to ....; amending [or repealing] Minnesota
Statutes 1985 Supplement, section 123.45.
```

Amendment since publication of supplement:

```
relating to ....; amending [or repealing] Minnesota
Statutes 1985 Supplement, section 123.45, as amended.
```

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 been amended:

```
relating to ....; amending Laws 1953, chapter 123,
section 7, as amended.
```

New law proposed (existing chapter):

```
relating to .....; proposing coding for new law in
Minnesota Statutes, chapter 268.
```

New law proposed (new chapter):

```
relating to ....; proposing coding for new law as
Minnesota Statutes, chapter 540.
```

Chapter amended by adding a section and the whole chapter is not set out (rare):

```
relating to ....; amending Minnesota Statutes 1984,
chapter 540, by adding a section.
```

Entire chapter amended (rare):

```
relating to ....; amending Minnesota Statutes 1984,
chapter 123.
```

EXAMPLE - AMENDATORY BILL (Amending a section)

```
                          A bill for an act

      relating to cemeteries; prohibiting certain activities
      on public and private cemeteries and Indian burial
      grounds; requiring the posting of Indian burial
      grounds; amending Minnesota Statutes 1984, section
      307.08.

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

      Section 1.  Minnesota Statutes 1984, section 307.08, is

amended to read:

      307.08 [DAMAGES; TO CEMETERY OR DISCHARGE OF FIREARMS;
                      --------------
PENALTY.]

      Subdivision 1.  [PENALTY.] Every person who shall wilfully
      --------------
destroy, mutilate, injure, or remove any tombstone, monument, or

structure placed in any public or private cemetery or
                     -----------------        --
authenticated and identified Indian burial ground, or any fence,
-------------------------------------------------
railing, or other work erected for protection or....

      Subd. 2.  [POSTING REQUIRED.] An authenticated and
      --------                      --------------------
identified Indian burial ground shall be posted every 75 feet
-------------------------------------------------------------
around its....
--------------
      Subd. 3.  (text)
      --------
      Subd. 4.  (text)
      --------
      Subd. 5.  (text)
      --------
      Subd. 6.  (text)
      --------
      Sec. 2.  [EFFECTIVE DATE.]

      This act is effective the day following final enactment.
      ------------------------------------------------------
```

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

The title contains a description of the statutes the bill amends.

A bill always begins with "Section 1" even if there is only one section. Note that "Section" is written out in section 1 but is abbreviated in subsequent sections.

In section 1 note that coding is not in brackets since it already exists in the statutes. The headnote is always in brackets whether the provision is new or amendatory.

EXAMPLE - AMENDATORY BILL (Amending a section, Cont.)

Note the change of the section headnote shown by striking and underlining. Despite the striking of the language in the headnote, the headnote is not part of the law. The addition to the headnote is shown by underlining. Entirely new headnotes for sections are not underlined.

Note that the text of the statutory section begins with an indented paragraph on the first line after the headnote. The language intended to be omitted is stricken through, and the new language is underlined.

The section amended here did not have subdivisions. The existing text is changed to a subdivision by the addition of "Subdivision 1" before it. Additional subdivisions are then appended at the end and numbered appropriately. Note that "Subdivision" is written out in subdivision 1 but that it is abbreviated in the second and subsequent subdivisions. Unlike section coding and headnotes, "Subdivision 1.", "Subd. 2.", etc. become a part of the section to which the word "Subdivision" is being added. Note that the period at the end of the subdivision number is also underlined. Each subdivision has a headnote, which will not become part of the law. The headnote is not underlined, when it is entirely new.

Note that section 2 has a headnote even though the section will not be coded. It is customary to indicate the contents of each section of the bill by headnote.

EXAMPLE - AMENDATORY BILL (Amending a subdivision)

A bill for an act

relating to taxation; providing an exception to the application of tax in certain cases of cigarettes stored or used in Minnesota; amending Minnesota Statutes 1984, section 297.22, subdivision 3.

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

Section 1. Minnesota Statutes 1984, section 297.22, subdivision 3, is amended to read:

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

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day after final enactment.

Nothing smaller than a subdivision of a section can be amended, so it is necessary to show the entire subdivision in the bill, even if it is long.

Note the punctuation in lines 15 and 16. Punctuation in law must be treated the same way as words. New punctuation must be underlined and punctuation to be omitted must be stricken. In this example, the period which existed before is moved to the end of the new language and is not underlined.

EXAMPLE - AMENDATORY BILL (Adding a subdivision)

A bill for an act

relating to state parks; prohibiting littering; providing a penalty; amending Minnesota Statutes 1984, section 85.20, by adding a subdivision.

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

Section 1. Minnesota Statutes 1984, section 85.20, is amended by adding a subdivision to read:

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

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

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

A bill for an act

relating to the designer selection board; defining terms; amending Minnesota Statutes 1984, section 16.822, subdivision 5, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1984, section 16.822, subdivision 5, is amended to read:

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

Sec. 2. Minnesota Statutes 1984, section 16.882, is amended by adding a subdivision to read:

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

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

Section 2 adds a new subdivision to an existing section. Therefore, the language, including the phrase "Subd. 5a." is underlined.

The words "section" or "subdivision," are in lower case except when they begin a sentence.

Section 2 of the bill adds a subdivision in an existing statutory section. If several subdivisions of a section are amended or added, the bill may be simpler and clearer if the entire amended section is shown as one section of the bill.

EXAMPLE - AMENDATORY BILL (Amending the Supplement to Minnesota Statutes)

A bill for an act

relating to certain counties; requiring the filing of certain surveys with ....; amending Minnesota Statutes 1985 Supplement, section 389.08.

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

Section 1. Minnesota Statutes 1985 Supplement, section 389.08, is amended to read:

389.08 [COUNTY SURVEYORS; FILING OF SURVEYS IN CERTAIN COUNTIES.]

In any county ~~in which the office of~~ where there is a county surveyor ~~is a full time position~~ and the surveyor ~~has~~ maintains an office on a full-time basis in a building....

EXAMPLE - AMENDATORY BILL (Adding a section)

```
                          A bill for an act

      relating to public employees; providing for (etc.);
      amending Minnesota Statutes 1984, chapter 352E, by
      adding a section.

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

      Section 1.  Minnesota Statutes 1984, chapter 352E, is
amended by adding a section to read:

      [352E.045] [ATTORNEY'S FEES FOR CLAIMING BENEFITS.]

      A fee for legal services relating to a claim made under
      ------------------------------------------------------
sections 352E.01 to 352E.05 is not....
-------------------------------------
      Sec. 2.  [EFFECTIVE DATE.]

      Section 1 is effective for fees charged for services
      ---------------------------------------------------
performed by an attorney after July 31, 1985.
---------------------------------------------
```

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

In the title and section headings, note the listing of the chapter to which the section is being added.

In the section heading in lines 10 and 11, 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 the Supplement to Minnesota Statutes by adding a subdivision)

A bill for an act

relating to crimes and criminals; exempting guards from pistol permit requirements when on duty; amending Minnesota Statutes 1985 Supplement, section 624.714, by adding a subdivision.

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

Section 1. Minnesota Statutes 1985 Supplement, section 624.714, is amended by adding a subdivision to read:

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

EXAMPLE - AMENDATORY BILL (Amending a session law)

A bill for an act

relating to the city of Duluth; authorizing a liquor license for the arena-auditorium complex; amending Laws 1967, chapter 406, section 1, subdivision 1; repealing Laws 1955, chapter 188, section 8.

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

Section 1. Laws 1967, chapter 406, section 1, subdivision 1, is amended to read:

Subdivision 1. In addition to the licenses now authorized by law, and notwithstanding any provision of law to the contrary contained in the charter or ordinances of such city, or statutes applicable to such city, the city of Duluth is authorized to issue an "on sale" liquor license for the premises known and used as the Duluth arena-auditorium complex. The fee for such license shall be....

Sec. 2. [REPEALER.]

Laws 1955, chapter 188, section 8, is repealed.

Sec. 3. [EFFECTIVE DATE.]

Sections 1 and 2 are....

The effective date provision has a headnote. All bill sections have headnotes.

EXAMPLE - AMENDATORY BILL (Amending a session law as amended)

A bill for an act

relating to the city of Mound; authorizing retroactive payment of firefighters service pensions; amending Laws 1973, chapter 175, section 1, as amended.

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

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

Section 1. [MOUND~~, CITY OF~~; VOLUNTEER ~~FIREMEN'S~~ FIREFIGHTERS RELIEF ASSOCIATION PENSIONS.]

Notwithstanding any provision to the contrary of Minnesota Statutes, section 69.06, ~~after the effective date of this act~~ the Mound volunteer fire department relief association shall pay to ~~any~~ retired firefighters and newly retiring ~~firemen~~ firefighters qualifying with 20 years of service and having attained the age of 50, a monthly annuity not to exceed $120 per month. Payments may be made retroactive to January 1, 1975.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is....

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

A bill for an act

relating to municipalities; clarifying (etc.); amending Minnesota Statutes 1984, section 471.616, subdivision 1; Minnesota Statutes 1985 Supplement, section 471.561; and Laws 1980, chapter 151, section 1.

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

Section 1. Minnesota Statutes 1985 Supplement, section 471.561, is amended to read:

471.561 [COUNTIES, CITIES ~~AND~~, SCHOOL DISTRICTS, AND OTHER AGENCIES; INVESTMENT OF FUNDS.]

Subdivision 1. In addition to other investments authorized by law, a city, county ~~or~~, school district, or its agency or instrumentality, may....

Sec. 2. Minnesota Statutes 1984, section 471.616, subdivision 1, is amended to read:

Subdivision 1. [BIDDING REQUIRED.] No governmental subdivision~~, political subdivision,~~ or any other body....

Sec. 3. Laws 1980, chapter 151, section 1, is amended to read:

Section 1. [MAPLEWOOD~~, CITY OF~~; PARAMEDIC SERVICE; TAX LEVY.]

Notwithstanding the provisions of Minnesota Statutes 1974, chapter 275 or any other law to the contrary, the city of Maplewood is hereby authorized to collect in taxes payable in 1981 the sum of ~~$180,000~~ $250,000 in excess of the tax levy limitation, without penalty, for the purpose of financing the paramedic program provided for in Laws 1975, chapter 426, section 4.

Sec. 4. [EFFECTIVE DATE.]

Sections 1 to 3 are....

EXAMPLE - NEW LAW (Statutory sections without subdivisions)

A bill for an act

relating to crimes and criminals; providing for transportation of certain persons to place of arrest; proposing coding for new law in Minnesota Statutes, chapter 629.

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

Section 1. [629.78] [TRANSPORTATION AFTER ARREST.]

A county or municipality that causes to be issued a warrant for arrest of a person under section 628.05 or 629.41 shall cause the person, at the person's request, to be transported to the location of the arrest after a trial or final hearing on the matter. This section does not apply:

(1) if the arrest is made outside the state under sections 629.01 to 629.291;

(2) if the person is convicted or pleads guilty to an offense;

(3) if the arrest is made under section 629.61; or

(4) if the person has sufficient money in hand to return to the location of the arrest.

The section is to be coded in Minnesota Statutes so it must have a proposed Minnesota Statutes section number. Proposed statutory coding is enclosed in brackets; existing coding is not. Note that a headnote ends with a period, but coding does not. The proposed code number, "[629.78]," and the headnote, "[TRANSPORTATION AFTER ARREST.]," will be printed in Minnesota Statutes but not be a part of the law.

Note the use of numbered clauses. Numbers and not letters are used since the elements are clauses and not sentences.

EXAMPLE - NEW LAW (Statutory sections with subdivisions)

```
1
2
3                          A bill for an act
4       relating to public welfare; establishing a senior
5       companion program; appropriating money; proposing
6       coding for new law in Minnesota Statutes, chapter 256.
7
8   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
9       Section 1.  [256.977] [SENIOR COMPANION PROGRAM.]
10      Subdivision 1.  [CITATION.] Sections 1 to 4 may be cited as
11  the "Minnesota senior companion act."
12      Subd. 2.  [ESTABLISHMENT.] The Minnesota Board on Aging
13  shall establish a senior companion program to engage the
14  services of low....
15      Subd. 3.  [COMPENSATION.] A person serving as a senior
16  companion shall be compensated for no more than 20 hours....
17      Subd. 4.  [GRANTS.] The Minnesota board on aging may make
18  grants-in-aid for the purchase of senior companion....
19      Sec. 2. .......
20      Sec. 3. .......
21      Sec. 4. .......
22      Sec. 5.  [APPROPRIATION.]
23      $100,000 is appropriated from the general fund to the
24  commissioner of public welfare for use by the Minnesota board on
25  aging to implement the senior companion program created by
26  section 1.  The sum is available until June 30, 1985.
27      Sec. 6.  [EFFECTIVE DATE.]
28      Sections 1 to 5 are....
```

Note the proposed coding in section 1 and the absence of proposed coding in sections 5 and 6. The last two sections will not be printed in Minnesota Statutes.

EXAMPLE - NEW LAW (Uncoded without subdivisions)

A bill for an act

relating to independent school district No. 466; permitting the sale of certain land.

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

Section 1. [LAND SALE AUTHORIZED.]

Independent school district No. 466 may sell and execute a deed of conveyance for any presently unused school property notwithstanding its possible later use for school purposes.

Sec. 2. [EFFECTIVE DATE.]

Pursuant to Minnesota Statutes, section 645.023, subdivision 1, paragraph (a), section 1 is effective without local approval on the day following final enactment.

EXAMPLE - NEW LAW (Uncoded without subdivisions, land sale)

A bill for an act

relating to natural resources; authorizing a private sale of certain state fisheries land.

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

Section 1. [SALE OF CERTAIN FISHERIES LAND.]

Notwithstanding Minnesota Statutes, sections 94.09 to 94.16 or any other law, the commissioner of natural resources may sell certain land to John W. and Edna Loomer of Clitherall, Minnesota in accordance with this section before July 1, 1986.

The land described in this section may be sold by private sale for a consideration not less than its appraised value. The conveyance must be in a form approved by the attorney general.

The land that may be sold is a tract of state fisheries land of about 1.27 acres located in Otter Tail county described as: residential lot No. 2 of Whiting's addition to the city of Clitherall.

The tract of land, formerly owned by the Loomers, was conveyed to the department of natural resources for spawning purposes. The land is no longer used for any purpose and is surplus land for the department.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment.

Section 1 of this uncoded special act is divided into paragraphs, each of which contains one of the usual elements of a state land sale act: parties, terms, description, and reason.

EXAMPLE - NEW LAW (Uncoded with subdivisions, park boundaries)

Subd. 3. [85.012] [Subd. 16.] [FLANDRAU STATE PARK.] The following area is added to Flandrau State Park:

Outlot 303 to the city of New Ulm and that part of Highland Avenue adjacent to said Outlot 303.

Subd. 4. [85.012] [Subd. 18.] [FORT SNELLING STATE PARK.] The following area is deleted from Fort Snelling State Park:

That part of government lots 1, 2, and 3 of section 7 lying northerly and westerly of the new channel of the Minnesota River; that part of government lot 1 of section 18 lying northerly of the new channel of the Minnesota River; all in township 27 north, range 23 west.

Subd. 5. [85.012] [Subd. 30.] [JAY COOKE STATE PARK.] The following area is deleted from Jay Cooke State Park:

That part of the unplatted portion of government lot 1 of section 8, township 48 north, range 16 west, lying northerly and easterly of the former Lake Superior and Mississippi Railroad Company Fond Du Lac Branch right-of-way, southerly of the former Burlington Northern Inc.'s St. Paul to Duluth Branch right-of-way and easterly of the right-of-way of Minnesota Highway 210.

EXAMPLE - NEW LAW (Uncoded with subdivisions)

A bill for an act

relating to the city of Duluth; providing for certain city tax revenues.

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

Section 1. [CITY OF DULUTH; SALES AND USE TAX.]

Subdivision 1. [EXCEPTED FROM GENERAL LAW.] Minnesota Statutes, section 477A.01, subdivision 18, does not prohibit the city of Duluth from amending its sales and use tax ordinances to impose a sales or use tax at the rate of....

Subd. 2. [ADDITIONAL TAX AUTHORIZED.] Notwithstanding Minnesota Statutes, section 477A.01, subdivision 18, or any other law, ordinance, or city charter provision, the city of Duluth may, by ordinance, impose an additional sales tax....

Sec. 2. [CITY OF DULUTH; TAX ON RECEIPTS BY HOTELS AND MOTELS.]

Notwithstanding Minnesota Statutes, section 477A.01, subdivision 18, or any other law, or ordinance, or city charter provision, the city of....

Sec. 3. [ALLOCATION OF REVENUES.]

Revenues received from the taxes authorized by section 1, subdivision 2, and section 2 must be used to pay for activities ....

Sec. 4. [EFFECTIVE DATE; LOCAL APPROVAL.]

Sections 1 to 3 are effective the day after compliance with Minnesota Statutes, section 645.023, subdivision 1, by the governing body of the city of Duluth.

EXAMPLE - CONSTITUTIONAL AMENDMENT TO MINNESOTA CONSTITUTION

A bill for an act

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

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

Section 1. [CONSTITUTIONAL AMENDMENT PROPOSED.]

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

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

Sec. 2. [SUBMISSION TO VOTERS.]

The proposed amendment must be submitted to the people at the 1986 general election. The question submitted shall be:

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

Yes .....

No ....."

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.

EXAMPLE - REPEAL (Subdivision)

```
                        A bill for an act

      relating to game and fish; ....; repealing Minnesota
      Statutes 1984, section 98.50, subdivision 3.


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

      Section 1.  [REPEALER.]

      Minnesota Statutes 1984, section 98.50, subdivision 3, is
      ----------------------------------------------------------
repealed.
---------
```

EXAMPLE - REPEAL (Section)

```
                        A bill for an act

      relating to ....; repealing Minnesota Statutes 1984,
      section 138.04, as amended.


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

      Section 1.  [REPEALER.]

      Minnesota Statutes 1984, section 138.04, as amended by Laws
      -----------------------------------------------------------
1985, chapter 14, section 4, is repealed.
-----------------------------------------
```

This form is used even if the amendment has subsequently been published in Minnesota Statutes 1985 Supplement. It would be improper to use "as amended by Minnesota Statutes 1985 Supplement" since it is Laws not the Supplement that amended Minnesota Statutes. The Supplement only published the amendment.

EXAMPLE - REPEAL (Chapter)

```
                        A bill for an act

      relating to ....; repealing Laws 1973, chapter 713.


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

      Section 1.  [REPEALER.]

      Laws 1973, chapter 713, is repealed.
      ------------------------------------
```

EXAMPLE - INSTRUCTION TO REVISOR

```
1       Sec. 14.  [INSTRUCTION TO REVISOR.]

2       The revisor of statutes is directed to change the words
3  "workmen's compensation" wherever they appear in Minnesota
4  Statutes to "workers' compensation" in Minnesota Statutes 1984
5  and subsequent editions of the statutes.
```

Instructions to the revisor should be restricted to name changes or similar simple substitutions. A check should be made as to whether there are any variants on the change which are to be included in the instruction. In the above example, for instance, it should be determined that "workmen's compensation," and "compensation of injured workmen" either

(a) do not occur in the statutes;

(b) are not to be changed; or

(c) should be the subject of a broader instruction.

Name changes can only be accomplished in the next complete publication of Minnesota Statutes and not in any intervening Supplement.

EXAMPLE - INSTRUCTION TO REVISOR (Renumbering statutes)

Sec. 50. [INSTRUCTION TO REVISOR.]

The revisor of statutes shall renumber each section of Minnesota Statutes specified in column A with the number set forth in column B. The revisor shall also make necessary cross-reference changes consistent with the renumbering.

Column A	Column B
15.041	14.01
15.0411, Subd. 2 (third and fourth sentences)	14.02
15.0411, Subd. 2 (except the third and fourth sentences)	14.03
15.0412, Subds. 1, 1a, 2, 2a, 3, 4a, 4b	14.04, Subds. 1 to 7
15.0412, Subds. 4, 4c, 4d, 4e, 4f, 4g	14.05, Subds. 1 to 6
15.0412, Subd. 4h	14.06
15.0412, Subd. 5	14.07
15.0412, Subd. 6	14.08
15.0412, Subd. 7	14.09
15.0412, Subd. 8	14.10
15.0412, Subd. 9	14.11
15.0412, Subd. 10	14.12
15.0413, Subds. 1, 2	14.13
15.0413, Subds. 3, 3a, 3b	14.14
15.0415	14.15
15.0416	14.16
15.0417	14.17
15.0418	14.18
15.0419	14.19
15.0421	14.20
15.0422	14.21
15.0424	14.22
15.0425	14.23
15.0426	14.24
15.052	14.25

EXAMPLE - INSTRUCTION TO REVISOR (Cross-reference changes)

Sec. 55. [REVISOR'S INSTRUCTION.]

In each section of Minnesota Statutes referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C. The references in column C may be changed by the revisor to the section of Minnesota Statutes in which the bill sections are compiled.

Column A	Column B	Column C
3.855, Subd. 3	43.064	Section 18, Subd. 4
3.855, Subd. 3	43.113	Section 18, Subd. 2
12.24, Subd. 2	43.327	Section 18
15.06, Subd. 8	43.09, Subd. 2a	Section 8, Subd. 2
15.61, Subd. 2	43.30	Section 11
15A.13	43.127, Subd. 6	Section 18, Subd. 3
16A.752, Subd. 1	43.18	Section 13
21.51, Subd. 6	43.01	Section 1
79.095	43.067	Section 17, Subd. 1
121.21, Subd. 11	43.45	Section 23
136.25	43.45	Section 23
136.62, Subd. 6	43.45	Section 23
179.66, Subd. 1	43.127	Section 18, Subd. 3
179.74, Subd. 1	43.01, Subd. 11	Section 2, Subd. 5
179.74, Subd. 4	43.126	Section 17, Subd. 4
179.74, Subd. 4	43.326	Section 18, Subd. 3
179.741, Subd. 2	43.064	Section 18, Subd. 4

EXAMPLES - APPROPRIATION PROVISIONS

1. Regular Biennial (odd-numbered year session)

```
1       Sec. 10.  [APPROPRIATION.]

2       $50,000 is appropriated from the general fund to the
        ----------------------------------------------------
3  commissioner of administration to administer sections 1 to 9 to
   ---------------------------------------------------------------
4  be available until June 30, 1987.
   ---------------------------------
```

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

Same as for an odd-numbered year. The appropriation will lapse June 30 of the next odd-numbered year unless explicitly provided otherwise.

3. Permanent Improvement

```
1       Section 1.  [APPROPRIATION.]

2       $100,000 is appropriated from the general fund to the
        -----------------------------------------------------
3  commissioner of natural resources to pay the state's share of
   -------------------------------------------------------------
4  the costs of repair and reconstruction of King's Mill Dam on the
   ----------------------------------------------------------------
5  Cannon River in Rice county.  The sum is available until
   --------------------------------------------------------
6  expended.
   ---------
```

4. Annual Standing

```
1       Sec. 6.  [APPROPRIATION.]

2       $20,000 is appropriated annually from the general fund to
        ---------------------------------------------------------
3  the commissioner of agriculture to pay travel expenses of
   ---------------------------------------------------------
4  employees of the department.
   ----------------------------
```

EXAMPLES - APPROPRIATION PROVISIONS, Cont.

5. Standing Appropriation of Receipts

```
1       Sec. 16.  [123.45] [APPROPRIATION; RECEIPTS.]

2       All fees and penalties collected by the board pursuant to
        ---------------------------------------------------------
3  sections 1 to 15 are annually appropriated to the board to
   ----------------------------------------------------------
4  administer sections 1 to 15.
   ----------------------------
```

6. Open Appropriation of Dedicated Receipts

```
1       Sec. 16.  [123.45] [APPROPRIATION; SPECIAL ACCOUNT.]

2       All fees and penalties collected by the board under
        ---------------------------------------------------
3  sections 1 to 15 shall be deposited in the state treasury and
   -------------------------------------------------------------
4  credited to a special account.  Money in the account is
   -------------------------------------------------------
5  appropriated to the board to administer sections 1 to 15.
   ---------------------------------------------------------
```

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

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

EXAMPLE - MULTIPLE APPROPRIATIONS

Sec. 76. [APPROPRIATIONS.]

Subdivision 1. $1,085,000 is appropriated from the general fund to the agencies and for the purposes indicated, to be available for the fiscal year ending June 30 in the years indicated. The unencumbered balance remaining in the first year does not cancel but is available for the second year.

The subdivisions of an appropriations section do not have headnotes. The agency name is in all capitals to serve as a signpost, but it is a part of the law, so it is underlined and is not enclosed in brackets and is not followed by a period.

The captions describing the purpose of each appropriation are not sentences. They are tied to the appropriation and do not end with a period. Additional restrictions and complement limitations should be complete sentences.

EXAMPLE - MULTIPLE APPROPRIATIONS, Cont.

	1984	1985	
	Subd. 2. WASTE MANAGEMENT BOARD		
	(a) For technical and research assistance to generators of hazardous waste	$30,000	$120,000
	(b) For waste reduction grants to generators of hazardous waste		150,000
	(c) For development of collection and transportation services for hazardous wastes as follows:		
	(1) Grants related to collection services	10,000	190,000
	(2) Grants related to processing development	50,000	150,000
	(d) For feasibility study of insurance for liability of mixed municipal solid waste disposal facilities	10,000	20,000
	(e) For administration and rules	20,000	80,000
	The approved complement of the waste management board is increased by four positions.		
	Subd. 3. POLLUTION CONTROL AGENCY		
	(a) For adoption and enforcement of rules	30,000	60,000
	(b) For payment to the metropolitan council, to be spent for the organized collection of mixed municipal solid waste	20,000	30,000
	The approved complement of the pollution control agency is increased by two positions.		
	Subd. 4. COMMISSIONER OF REVENUE		
	For administering the metropolitan landfill fee collection and rules	5,000	35,000
	The approved complement of the department of revenue is increased by one position.		
	Subd. 5. COMMISSIONER OF HEALTH		
	For public water supply monitoring		75,000

Each column has only one dollar sign.

When similar material appears in an omnibus appropriations bill, the text is not underlined.

EXAMPLES - EFFECTIVE DATE PROVISIONS

1. General

```
1       Sec. 10.  [EFFECTIVE DATE.]
2       Sections 1 to 9 are effective the day following final
        ----------------------------------------------------
3  enactment.
   ----------
4       Sec. 10.  [EFFECTIVE DATE.]
5       Sections 1 to 9 are effective September 1, 1985.
        ------------------------------------------------
6       Sec. 10.  [EFFECTIVE DATE.]
7       Sections 1 to 9 apply to proceedings instituted after June
        ----------------------------------------------------------
8  30, 1985.
   ---------
```

2. Multiple Effective Dates

```
1       Sec. 10.  [EFFECTIVE DATES.]
2       Sections 1, 3, 4, 5, and 9 are effective the day following
        ----------------------------------------------------------
3  final enactment.  Section 2 is effective January 1, 1986.
   ---------------------------------------------------------
```

Sections 6, 7, and 8 would be effective August 1 (or July 1 if there were an appropriation in the bill) since no effective date is stated for those sections.

3. Income Tax Act

```
1       Sec. 10.  [EFFECTIVE DATE.]
2       This act is effective for taxable years beginning after
        -------------------------------------------------------
3  December 31, 1985.
   ------------------
```

4. Property Tax Act

```
1       Sec. 10.  [EFFECTIVE DATE.]
2       This act is effective for taxes levied in 1985 and
        --------------------------------------------------
3  thereafter and payable in 1986 and thereafter.
   ----------------------------------------------
```

5. Special Laws

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

6. Retroactive Effective Date

```
1       Sec. 10.  [EFFECTIVE DATE.]
2       Sections 1 to 8 are effective retroactively to July 1, 1978.
        ------------------------------------------------------------
```

EXAMPLE - HOUSE ADVISORY BILL

A proposal to study motor vehicle driving safety.

The committee on general legislation shall study problems of motor vehicle driving safety, consulting appropriate experts and authorities on both health and criminal law.

5

Particular Subjects

5.1 Omnibus Appropriation Bills

(a) Appropriation Required for Spending

An appropriation is the formal act of setting state money apart for a specific purpose by the legislature in clear terms in a law. 63 Am. Jur. 2d, "Public Funds", S 45. The act of appropriating is important because the Minnesota Constitution, like most, provides that: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Article XI, section 1.

For more requirements on appropriations see especially Minnesota Statutes, sections

(1) 3.23 (standing annual appropriation defined);

(2) 3.24 (certain standing appropriations repealed);

(3) 10.17 (officials may not exceed appropriations);

(4) 16A.10 and 16A.11 (the budget system);

(5) 16A.14 and 16A.15 (allotment and encumbrance system);

(6) 16A.28 (fiscal year end lapse of appropriations);

(7) 16A.281 (appropriations for the legislative branch);

(8) 16A.57 (appropriation, allotment, warrant needed); and

(9) 645.02 (acts with appropriations are effective July 1).

(b) Omnibus Bills Described

This section covers the omnibus appropriation bills. For appropriations in other bills see section 4.7(f). Each omnibus bill has many appropriation items (some with conditions, called riders, added), often to several agencies, for many purposes. The omnibus bills usually contain much new and amendatory law apart from, but related to, the appropriation items. The omnibus bills are among the lengthiest bills considered each session. Joint Rule 2.02 sets out legislative procedures for the omnibus bills.

In recent practice, there have been six omnibus appropriation bills in an odd-numbered year, and two in an even-numbered year.

(1) The odd-year bills named for their principal subjects and a citation to a recent example of each are:

(a) *State departments,* including legislative and judicial branch appropriations; Laws 1983, chapter 301;

(b) *Health and human services;* Laws 1983, chapter 312;

(c) *Higher education,* and general operations and management of the education department; Laws 1983, chapter 258;

(d) *Transportation, agriculture, and semi-state* (partly state-funded) *activities;* Laws 1983, chapter 293;

(e) *Claims against the state;* Laws 1983, chapter 81; and

(f) *Building,* which may include bonding authority to pay for certain building activities; Laws 1983, chapter 344.

(2) The even-year bills with a recent citation are:

(a) *The supplemental appropriations bill,* supplementing the appropriations made in the omnibus bills of the odd year; Laws 1984, chapter 654; and

(b) *The building bill,* including bonding authority to pay for big building projects; Laws 1984, chapter 597.

Since each house develops its own bills, no companions to the omnibus bills are introduced in the other body.

Except for the claims bill, omnibus appropriation bills always end up in a conference committee because the bills of each house are invariably rejected by the other body.

Omnibus appropriation bills often contain vestiges of bills considered at an earlier stage in the legislative process. An elaborate bill proposing a new program may end up as a one-line item in an omnibus appropriation bill.

Omnibus appropriation bills have the essential elements of other bills: each has a title, an enacting clause, and is divided into sections and subdivisions. The printing format of the appropriating language portion of the omnibus bills, however, is different from other bills. A glance at one of the cited bills will show the differences.

Any of the longer omnibus bills has many examples of riders attached to appropriation items for a drafter to use as models.

(c) Omnibus Bills are Committee Bills

The omnibus bills are called committee bills because of the way they are put together. They are put together by units of the house appropriations and senate finance committees in meetings extending over several weeks. After they are finalized by the full committee, they are introduced by the chair on behalf of the committee and given priority for floor consideration. Omnibus bills are subject to much change as the bills are being put together. As committee bills, the changes may be made without regard to the formal amending process necessary for introduced bills.

(d) Drafting for Omnibus Bills: Six Essentials

The best way to discover the drafting style and form of omnibus bills is to review the cited bills or other recent omnibus bills.

The appropriating language in an omnibus bill has the same six elements (listed below) of any appropriation:

(1) *Amount.* The amount should be stated in figures, rounded to the nearest hundred, or more frequently, thousand dollars.

(2) *Fiscal year of appropriation.* The year should be stated in figures. State accounts are kept by fiscal year so appropriations should never be made for a biennium. To have the effect of appropriating for the biennium either an appropriation should be made for each year of a biennium or for the first year of a biennium but expressly available through the second year of the biennium. Appropriations in sessions in odd-numbered years may be made for the current year and for either or both years of the next biennium, but not beyond. Appropriations in even-numbered year sessions may be made for either or both years of the current biennium, but not beyond.

(3) *Words of appropriation.* The fact that money is appropriated should be expressly stated. Use of any words to accomplish an appropriation other than the phrase "is appropriated" may invite a lawsuit as to whether an appropriation was intended.

(4) *Source.* A source for the appropriated funds must be stated if a source other than the state's general fund is intended. If the general fund is the intended source, it is suggested but not required that "general fund" be expressly stated for clarity.

(5) *Recipient.* A recipient, ordinarily other than a private entity or a subdivision of government, should be named. In recent practice, the recipient has more frequently been an official, rather than an agency, in keeping with the practice of assigning individual official responsibility for duties imposed by law. Sometimes, it may still be best to appropriate to an agency. For example, the commissioner of education and the State Board of Education have mixed responsibility for the Department of Education; so usually, the appropriations to be administered by the department are made to the Department of Education.

(6) *Purpose.* A purpose for the appropriation should be clearly and precisely stated. A drafter should try to avoid bill section references in stating a purpose because the sections may be renumbered as the bill is being put

together, without a corresponding change in the purpose clause. Thus "for the purposes of sections 5 to 10" becomes incorrect when sections 5 to 10 are renumbered 8 to 13. As an alternative, a drafter should consider reference to a common name for the funded program, or to the statutory sections (if coded) that describe the program.

Consult section 4.1 and the examples related to it for drafting appropriation language for special situations.

**** SHOW AMOUNT, SOURCE, RECIPIENT, PURPOSE, AND TIME FOR EACH APPROPRIATION.**

(e) The Education Aids Bill

The bill appropriating money for educational aids for school districts and containing new and amendatory law on school district programs is a hybrid bill. Like an omnibus bill, it is lengthy, has many appropriation items, and is assembled in pieces by special units of committees. Its format is similar to other bills except that it is subdivided by subjects into articles due to its length. Also, unlike the omnibus bills, the education aids bill is not strictly a committee bill: its bulk is amended onto an introduced bill. To extend the contrast, it is put together by units of the education committees, not the money committees, though the appropriations and finance committees review the aids bills. Finally, the aids bill ordinarily does not contain the strings of riders or conditions that often accompany appropriations in an omnibus bill. Despite its formal differences from the omnibus bills, the education aids bill is in substance and in the way it is processed more similar to than different from the omnibus bills. The major education aids bill is considered in the odd-numbered year, and a supplemental bill is considered in the even-numbered year. See, for example, Laws 1983, chapter 314, and Laws 1984, chapter 463. Like the omnibus bills, the education aids bills' differences are inevitably resolved by conference committee.

(f) Item Veto of an Omnibus Bill

The Minnesota Constitution provides that "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." Article IV, section 23. What is an "item" and susceptible to item veto has not been required to be resolved by the Minnesota Supreme Court. Bill format has important practical effects on what can be identified as an item. See 35 ALR 600 (1924) supplemented at 99 ALR 1277 (1935), for cases from other jurisdictions on the subject of item veto.

(g) Broader Title than Other Bills

The title of an omnibus appropriations bill is broader than the title of most bills to allow for the omnibus nature of the bills; still, the omnibus bills are subject to the state constitutional requirement that "no law shall embrace more than one subject which shall be expressed in its title." Minnesota Constitution, article IV, section 17. A drafter may wish to review the titles of the cited bills above, or those of other recent omnibus bills for examples.

(h) Minnesota Cases on Appropriations Issues

A drafter of appropriations should be aware of some Minnesota cases that have touched on issues involving appropriations:

(1) *A state obligation to a political subdivision is of no force without an appropriation. State ex rel. Chase v. Preus,* 147 Minn. 125 at 127, 179 N.W. 725 (1920). A county auditor made payments to certain dependent mothers. The statute required "the state ... [to pay] one-third of the amount ... paid out by the county...." The opinion of the court stated, "[t]here has been no express appropriation, and ... none can be implied from the creation of the liability [even] though coupled with the express direction that it be paid out in the manner pointed out by the statute." 147 Minn. at 127. To the same effect is *County of Beltrami v. Marshall,* 271 Minn. 115, 135 N.W.2d 749 (1965) (The county could not deduct cost of traffic cases from fines collected for the state because no legislative appropriation was made to the county for the costs).

(2) *An official may obligate the state contingent upon an appropriation, but the legislature can avoid the obligation by not making the appropriation;* more surely, by specifically excluding the obligation from appropriations. *Butler v. Hatfield,* 277 Minn. 314, 152 N.W.2d 484 (1967); *United States Fire Insurance Co. v. Minnesota State Zoological Board,* 307 N.W.2d 490 (1981). In *Butler* the court held that the state was not allowed to avoid payment on an architect's contract for drawings used to get an appropriation to finish a building when the contract was contingent upon getting the appropriation and the appropriation was made. Minnesota is among the minority of jurisdictions that enforce a state obligation contingent on a future appropriation, according to a law review note. 52 Minn. L. Rev. 892 (1968)

In the *Zoo Board* case, the Zoo Board contracted to have built and to buy a monorail ride at the zoo. By the purchase agreement the board agreed to seek the money for the ride payments from the legislature. The legislature by Laws 1979, chapter 333, section 27, stated "All receipts from the zoo ride are appropriated and available until June 30, 1981 for the purposes of the zoo ride. *These receipts are the only money appropriated for zoo ride operating expenses or debt service.*" (emphasis added)

The ride did not produce sufficient revenue to pay for itself. The Minnesota Supreme Court quoted at length the following extraordinary language from the legislative response to requests for additional appropriations for the zoo ride.

> The appropriation made in Laws 1979, chapter 333, section 27, shall stand. During consideration of the zoological garden's transportation system legislation, the legislature was consistently and unequivocally assured that the only post enactment responsibility of the legislature would be to appropriate the receipts of the transportation system for the purpose of effecting the installment payments of the system. Accordingly, authorization for the acquisition by installment purchase agreement of the transportation system at the Minnesota zoological garden pursuant to Minnesota Statutes, section 85A.02, subdivision 16 was made on the understanding that the system would produce revenues sufficient to meet all operating costs and installment payments. This authorization did not constitute a direct or indirect

> obligation of the state for the acquisition of the system beyond net revenues generated by the system.
>
> This section is intended to make clear to all potential investors in state and local bonds and to financial institutions that the state is not and never has been responsible otherwise for the financing of the zoo ride. The legislature's action regarding appropriations for installment purchase payments for the zoo ride is intended to have no effect on the security of bonds for which the state's full faith credit, and taxing power are pledged, or bonds of the Minnesota housing finance agency secured in the manner provided by Minnesota Statutes, section 462A.22, subdivision 8. This section is further intended to forestall any attempt by any person to cause damage to the credit rating of the state in order to force the state to assume an obligation for which it is neither legally nor morally responsible. [Laws 1980, chapter 614, section 14.]

The court concluded that "the state cannot be required to pay money for the zoo ride unless and until the legislature appropriates funds for that purpose." 307 N.W.2d at 496.

(3) *A provision of an omnibus appropriation bill even though uncoded can be as permanent as coded statutes, and in the circumstances of the case can impliedly repeal a coded statute. State v. City of Duluth*, 238 Minn. 128, 56 N.W.2d 416 (1952). Duluth refused to pay more than $10 per day for a state audit of its books because Minnesota Statutes, section 215.21 of statutes then set $10 as a limit.

An omnibus appropriation bill set up a revolving fund to pay for state audits, and stated that "notwithstanding any law to the contrary, ... [state audit] charges shall be sufficient to cover all costs of such examinations," which in the Duluth case was between $13 and $19 per day. Laws 1947, chapter 634, section 24. The omnibus provision was not coded and did not appear in the statute book. In affirming the decision requiring Duluth to pay the higher daily fee for the state audit, the Minnesota Supreme Court stated:

> It is the position of plaintiff that L. 1947, c. 634, s. 24, did not impliedly amend or repeal s. 215.21, but rather that it merely suspended it for two years. Plaintiff's position is based on the theory that c. 634, s. 24, was only an appropriations act establishing a revolving fund for a two-year interim period. With this we cannot agree. *It is generally believed that all things in an appropriations act last for only two years. This erroneous belief* is probably fostered by M.S.A. 3.23 and 3.24. The former section defines a standing appropriation, within the meaning of the act, as one which sets apart a specified or unspecified and open amount of public money or funds of the state revenue 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. Section 3.24 provides: "Each and every provision of the laws of Minnesota constituting a standing appropriation of money from the revenue fund, or derived from any revenue of the state, or in any way justifying the continuous repayment of any money from the treasury of the state, is hereby repealed, * * *."

> However, it excepts cases "where there is a provision for a tax levy or fees or receipts for any purpose and set apart in a special fund." A further reference to these exceptions may be found in s. 16.17, which also refers to "fees" and "revolving appropriations." ... *It is ... our opinion that the revolving fund* established under L. 1947, c. 634, s. 24, because of the exceptions above referred to, *became as permanent a law as s. 215.21.* It was clearly inconsistent with s. 215.21, inasmuch as it provided for reimbursement of larger fees; therefore, it impliedly repealed s. 215.21. [231 Minn. at 132, 133. (emphasis added)]

Based on the *Duluth* case, a drafter must be careful to indicate that a substantive provision is only temporary or it may be construed as permanent. A common way to indicate the temporary nature of a provision is to make it effective "for the biennium" or "during the biennium."

(4) *Must the state spend more than the legislature appropriated to upgrade a program to meet a constitutional standard?* The Court of Appeals for the Eighth Circuit discussed but deferred resolution of this explosive issue to allow the legislature another chance to finance a program for the retarded at a state hospital that had been found to be constitutionally deficient. *Welsch v. Likins,* 550 F. 2d 1122 (1977). The program has been monitored since by a special master appointed by the federal district court, but further proceedings have not forced the appropriation issue.

(5) *A state agency was justified under the circumstances of the case in freezing payment levels to medical assistance vendors when the appropriation for them was reduced by 12 percent from one year to the next. In La Crescent Constant Care Center Inc. v. State Department of Public Welfare,* 301 Minn. 229, 222 N.W.2d 87 (1974), the opinion of the court recites the constitutional and statutory prohibitions on state spending without an appropriation.

5.2 Bonding

(a) General Considerations

Acts to provide 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 article XI, section 5. Debt for the state highway system is separately treated in article XIV.

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 to state debt financing 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 involve-

ment 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).

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 an activity that 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):
>
> > The notion of what is public use changes from time to time. Public use expands with the new needs created by the advance of civilization and the modern tendency of the people to crowd into large cities. Such a taking as here proposed could not posssibly have been thought a taking for public use at the time of the adoption of our Constitution when the state was practically a wilderness without a single city worthy of the name. "The term 'public use' is flexible, and cannot be limited to the public use known at the time of the forming of the Constitution." *Stewart v. Great Northern Ry. Co.,* 65 Minn. 515, 68 N.W. 208, 33 L.R.A. 427. What constitutes a public use at the time it is sought to exercise the power of eminent domain is the test. The Constitution is as it was when adopted, but, when it employs terms which change in definition as conditions change, it refers to them in the sense in which they are meant when the protection of the Constitution is sought. [*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.

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

Second, the drafter should 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 and families 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. sec. 462A.02.]

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 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, therefore, they should be written without resort merely to catchall phrasing, such as "for the public welfare." If a 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.

Innovations to state and local government debt financing are made to accomplish an untried purpose for an issue, to vary the nature or priority of the issuer's obligation to pay, or to meet changes in economic conditions or federal law. Innovations should be minimized and requesters advised of the likely problems. Unless specifically instructed to the contrary by a requester, the drafter's goal is to ensure the salability of the bonds, and to do that, it is best to follow the pattern of existing Minnesota laws.

Bond issues by subdivisions of the state are governed by various general laws. Minnesota Statutes, chapter 475 is basic. Chapters 472, 472A, and 474 have important purposes. 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 usual practice of the revisor of statutes to refer drafts of bond legislation to a bond lawyer for advice prior to delivery of the bill to the requesting legislator.

When examining a bonding bill, bond lawyers look primarily at four areas which are chief considerations in selling bonds.

First, the authority to issue bonds must be constitutionally and legally clear. Even a possibility that someone will attack a bond issue in court makes potential bond investors reluctant to invest.

Second, the procedure required to issue the bonds must be clear. This includes clarity as to any requirement for public hearings and a vote by local electors. If a necessary step is omitted the issuance could be invalid. Bond legislation should make clear all the necessary steps to issue the bonds. This often includes stated cross-references to other laws with which there must be compliance. Often the entire process is identified by reference to other laws. For example:

```
1       Sec. 9.  [BOND SALE; DEBT SERVICE.]
2       To provide the money appropriated in this act from the
3  state building fund the commissioner of finance upon request of
4  the governor shall sell and issue bonds of the state in an
5  amount up to $14,615,000 in the manner, upon the terms, and with
6  the effect prescribed by Minnesota Statutes, sections 16A.631 to
7  16A.671 and by the Minnesota Constitution, article XI, sections
8  4 to 7.
```

This is a familiar and sufficient pattern for state building bonds.

Third, the bond issue must be free of other legal prohibitions or restraints. Specifically, it must be clear that the amount of bonds to be issued is within any constitutional or legal bonding limits or is an exception to the bonding limits. It must also be clear that the purpose for which the proceeds of bonds will be used is otherwise legal and constitutional. The drafter must be sure that the bond issue does not run afoul of article XI, section 3, of the Constitution or other prohibitions.

Fourth, the method by which the bonds will be paid must be clear. Preferably, it should be clear that the governmental unit issuing the bonds is obliged to pay the debt service on the bonds before any of its 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 do so.

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. 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 drafter should try to follow the pattern of a successful existing subdivision.

New political subdivisions are sometimes created 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 particular bonds of particular local government bodies. Waivers of debt limits or popular vote requirements are frequent.

The evaluation of public bond law is conditioned by federal tax exemption provisions. A bond issue to build a state capitol will probably always have federal tax exemption, but at the frontier of the subject there is constant tension between the federal revenue loss and the ingenuity of the borrowers. In 1983 and 1984 publicly assisted housing development drew attention. The drafter needs to know that a bond issue will be exempt from federal income tax, but it is not always possible to be certain.

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 125 years ago. The state needed 110 years to recover the best credit rating and lost it again after about five more. Although institutional obstacles now exist to make unlikely a default like that after the railroad boom of the 1850's, careful drafting remains fundamental to avoid long and short term ill effects.

(d) Terminology in Conversation

Classes of bonds are identified in conversation by a great variety of adjectives. The most basic is "general obligation" or "G.O." This term means that the full faith and credit and taxing power of the issuer is pledged to their payment. General obligation bonds sell at the best interest rates if there is taxing power to back them. "Revenue" bonds are secured only by revenue from some publicly operated or financed project, for example, a municipal liquor store or rents from public housing. Revenue bonds usually pay a higher interest rate. "Moral obligation" bonds have nothing pledged to their payment, but the issuer inspires confidence, like the State of New York. With the moral obligation bond we take a long step into the paradoxical higher terminology of bonds, "the limited general obligation bond," "the revenue bond with a G.O. pledge," the "moral obligation revenue bond," etc. The drafter, the lawyer, and the investor should ignore this puffery and find out what is actually going on from the laws themselves.

5.3 Crimes and the Courts

In order to draft legislation in the criminal justice area, the drafter should develop an overview of Minnesota criminal, correctional, and related bodies of law and become familiar with the interrelated agencies of the criminal justice system. 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 Human Services 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. Most legislation in the area of crimes involves amendment to the criminal code.

There are no common law crimes in Minnesota. Minnesota Statutes, section 609.015, subdivision 1 provides: "Common law crimes are abolished and no act or omission is a crime unless made so by this chapter or by other applicable statute...."

In addition to the main body of substantive crimes found in the criminal code, enactments creating crimes are scattered throughout the statutes. These crimes range from prohibition of greased pig contests, section 346.34, to the law of obscenity, sections 617.23 to 617.297. In recent years consumer legislation, much of it found in chapter 325, has often included regulatory penalty provisions.

The fate of the drunken driver is governed by a maze of civil and criminal provisions found in sections 169.121 (DWI—driving while intoxicated) and 169.123 (implied consent law).

A juvenile under the age of 18 who is alleged to have committed a crime can either be tried in juvenile court or be referred to adult court. Juvenile court procedures and dispositions are governed by chapter 260 (Juvenile Court Act) and the rules of procedure for juvenile court.

When a juvenile is alleged to have violated a criminal law, the juvenile court may refer the juvenile to criminal court under the reference law found in section 260.125. Reference to a regular criminal court may be made if the court finds that: (a) there is probable cause to believe the child committed the offense alleged by the delinquency petition; and (b) the prosecuting authority has demonstrated by clear and convincing evidence that the juvenile is not suitable to treatment or that public safety is not served under the provisions of law relating to juvenile courts. A prima facie case that the public safety is not served or that the juvenile is not suitable to treatment can be established through use of the juvenile's age at the time of the offense, presently charged offense, and prior record.

(b) Law of Criminal Procedure

McCarr, *Minnesota Practice, Criminal Law and Procedure,* volume 7, section 1, states: "Criminal practice and procedure in Minnesota is governed by the United States Constitution and the Minnesota Constitution, enactments of the Minnesota Legislature, decisions of the United States and

Minnesota Supreme Courts, and (effective July 1, 1975) the Rules of Criminal Procedure." (footnote deleted)

The enabling legislation for the Rules of Criminal Procedure is Laws 1971, chapter 250 codified as Minnesota Statutes, section 480.059. An advisory committee appointed by the Supreme Court and composed of attorneys and judges drafted the rules. After 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 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 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, volume 9.

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, the obsolete statute may be repealed and a bill for a new statute drafted 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, the statute may be amended but care should be taken to preserve the unsuperseded part of the statute to the extent that to do so is consistent with the 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 executive branch criminal justice agencies and their programs. The 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 collecting criminal statistics, peace officer training, scientific analysis of evidence, and maintaining a criminal justice information system. The bureau also annually publishes a crime report which describes changes in the volume and rate of reported crimes for Minnesota in the year of issuance. See Minnesota Statutes, chapter 299C, especially section 299C.03.

(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. Patrol officers may make arrests for public offenses committed in their presence anywhere in the state. See Minnesota Statutes, chapter 299D.

(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 Minnesota Constitution, article V and Minnesota Statutes, chapter 8.

(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 Minnesota Statutes, sections 388.19 and 388.20.

(4) *Department of Corrections.* A sentence of a person to imprisonment for more than one year results in commitment to the commissioner of corrections. See Minnesota Statutes, section 609.105. In addition, the juvenile court in its discretion may commit children adjudicated delinquent under Minnesota Statutes, chapter 260, the Juvenile Courts Act, to the commissioner. See Minnesota Statutes, section 260.185. 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.

Laws 1981, chapter 360, article I, section 4 abolished the Minnesota Corrections Board effective June 30, 1982. The office of adult release in the Department of Corrections is currently responsible for granting parole and work release and for revoking parole, work release, and supervised release. The drafter should consult Minnesota Rules, chapter 2940 for the duties of the office of adult release. The drafter should also be aware of the different treatment of persons sentenced before May 1, 1980, and those sentenced on or after that date. See Minnesota Statutes, chapter 244.

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.

Laws 1983, chapter 262 codified matters relating to victim services, programs, and rights in Minnesota Statutes, chapter 611A.

Organizational and other law related to the Department of Corrections appears in Minnesota Statutes, chapter 241 (organizational provisions); chapter 242 (juvenile corrections); chapter 243 (adult corrections); chapter 244 (criminal sentences); and chapter 401 (community corrections).

(5) *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 Minnesota Statutes, sections 241.41 to 241.45.

(6) *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 Minnesota Constitution, article V, section 7 and Minnesota Statutes, chapter 638.

(7) *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 Minnesota Statutes, chapter 298B.

(8) *Minnesota public defender.* The public defender provides representation to indigents in criminal appeals to the court of appeals and Supreme Court. The defender also represents inmates in correctional disciplinary hearings. See Minnesota Statutes, sections 611.22 to 611.25.

(9) *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 Minnesota Statutes, chapters 214 and 367 and sections 626.84 to 626.855.

(10) *Minnesota Sentencing Guidelines Commission.* Laws 1978, chapter 723 codified as Minnesota Statutes, sections 244.01 to 244.11 established a sentencing guidelines commission composed of members of the judiciary, other members of the criminal justice system, and the public. See Minnesota Statutes, section 244.09, subdivision 1. The commission was assigned the task

of promulgating sentencing guidelines for offenders which would be advisory to the district court and subject to review by the Supreme Court. See Minnesota Statutes, section 244.09, subdivision 5.

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. See Minnesota Statutes, section 244.09, subdivision 12.

The legislative intent of the guidelines' legislation was to establish fixed presumptive sentences for felons which would reduce disparity in sentences.

Persons convicted of felonies on or after May 1, 1980, are 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.

Judges may depart from the presumptive sentences only if they find "substantial and compelling" reasons to do so in individual cases. See Minnesota Sentencing Guidelines and Commentary, article II, D. Defendants and prosecutors may appeal sentences to the court of appeals. See Minnesota Statutes, section 244.11.

Laws 1984, chapter 589, section 3 requires the sentencing guidelines commission to establish procedures under the Administrative Procedure Act for the promulgation of sentencing guideline changes. Chapter 589, section 4 provides that major modifications of the guidelines must be submitted to the legislature by January 1 of any year in which the commission wants to make the change. Unless the legislature provides by law otherwise, the change to the guidelines would become effective August 1 of that year.

(d) Local Components of the Criminal Justice System

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.

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 statutes relevant to their activities.

(1) *Police Services.* Agencies that 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 the county and generally to enforce criminal laws outside the municipalities that 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 limited. See Minnesota Statutes, chapter 387 and section 436.05.

(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 chapter. See Minnesota Constitution, article XII, section 4 and Minnesota Statutes, chapter 410.

(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 the 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 Minnesota Statutes, sections 412.016, 412.101, and 412.221, subdivision 32.

(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 Minnesota Statutes, sections 367.03, subdivision 3 and 367.42, subdivision 1.

(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 University Charter, section 9; Minnesota Constitution, article XIII, section 3; and Minnesota Statutes, section 137.12.

(2) *Prosecution and Defense Services.* Prosecution services have exhibited the most organizational 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. Public defender 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, and if there is no municipal prosecuting attorney, gross misdemeanors and misdemeanors. Municipal prosecuting attorneys prosecute violations of state law which are gross misdemeanors, misdemeanors, and violations of municipal charter provisions, ordinances, and rules. In the case of DWI prosecutions, the attorney in the jurisdiction in which the violation occurred who is responsible for misdemeanor prosecutions is also responsible for gross misdemeanor prosecutions. See Minnesota Statutes, section 169.121, subdivision 3.

Statutory provisions governing who will be authorized to prosecute offenses in a given court are:

Minnesota Statutes, section 487.25, subdivision 10—county court prosecutions.

Minnesota Statutes, sections 488A.10, subdivision 11 and 488A.101—Hennepin County municipal court prosecutions.

Minnesota Statutes, section 488A.27, subdivision 11—Ramsey County municipal court prosecutions.

Minnesota Statutes, section 388.051—district court prosecutions.

(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. See Laws 1973, chapter 317. The second judicial district, Ramsey County, also has a special trial court public defender system. See Laws 1975, chapter 258, section 6. Two judicial districts, the eighth and the third, use the method of providing counsel to indigents by judicial assignment. See Minnesota Statutes, section 611.07. The remaining six judicial districts have trial court public defenders under statewide public defender legislation. See Minnesota Statutes, sections 611.14 to 611.27. The public defenders provide representation from time of arrest through trial.

(e) Courts' Role in the Criminal Justice System

The judicial branch of government plays a central role in law enforcement. Judicial involvement in the criminal justice system is comprehensive and complex; it begins with the issuance of arrest and search warrants and proceeds through preliminary criminal proceedings, trial, sentencing, and appeal, including postconviction 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 jurisdiction of criminal appeals in cases in which the defendant has been convicted of murder in the first degree. The court of appeals has jurisdiction of all other criminal appeals, but the Supreme Court may grant further review of any decision of the court of appeals. In deciding to grant review, the Supreme Court will take into consideration whether:

(a) the question presented is an important one upon which the court has not, but should rule;

(b) the court of appeals has held a statute to be unconstitutional;

(c) the court of appeals has decided a question in direct conflict with an applicable precedent of the Supreme Court; or

(d) the lower courts have so far departed from the accepted and usual course of justice as to call for an exercise of the court's supervisory powers.

See Minnesota Constitution, article VI, section 2 and Minnesota Statutes, sections 480A.06, subdivision 1 and 480A.10, subdivision 1. Rule 29 of the Rules of Criminal Procedure governs criminal appeals to the Supreme Court.

The Supreme Court has adopted rules of evidence regulating all evidentiary matters in civil and criminal actions in all courts of the state pursuant to Minnesota Statutes, section 480.0591.

(2) *Court of Appeals.* The Minnesota Constitution was amended in the November 1982 general election to allow the creation of a court of appeals. The court of appeals has criminal jurisdiction in all criminal appeals except when the defendant has been convicted of murder in the first degree. See Minnesota Statutes 480A.06, subdivision 1. The Supreme Court may grant further review of any decision of the court of appeals under certain circumstances. See Minnesota Statutes, section 480A.10, subdivision 1 and Supreme Court, *supra.* Rule 28 of the Rules of Criminal Procedure governs criminal appeals to the court of appeals.

(3) *District court.* The district court has original criminal jurisdiction in all criminal matters but usually hears only felony cases since concurrent jurisdiction exists with the county and county municipal courts over gross misdemeanors and misdemeanors. See Minnesota Constitution, article VI, section 3 and Minnesota Statutes, section 484.01. District courts generally tried gross misdemeanor cases until Laws 1982, chapter 398, sections 6, 7, 11, 16, and 18 granted county and county municipal courts concurrent gross misdemeanor jurisdictions.

(4) *County court and county municipal court.* Minnesota Statutes, chapter 487 governs county courts which are found in all counties except Hennepin and Ramsey. Minnesota Statutes, sections 487.16 and 487.18 specify the court's criminal jurisdiction.

Minnesota Statutes, sections 488A.01 to 488A.119 govern the 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 govern the Ramsey County municipal court. Minnesota Statutes, section 488A.18, subdivision 7 specifies the court's criminal jurisdiction.

The county courts and county municipal courts have criminal jurisdiction over violations of law which are petty misdemeanors, misdemeanors, gross misdemeanors, and certain criminal proceedings. See the Rules of Criminal Procedure for the extent of the court's jurisdiction in such proceedings.

(5) *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. See Minnesota Statutes, section 260.019.

In all other counties juvenile cases arising under chapter 260 are tried in the family court division of the county court. See Minnesota Statutes, section 487.27.

Children who commit criminal offenses are subject to reference to adult court for prosecution. See Minnesota Statutes, section 260.125.

(f) Summary of Statutes and Rules

A summary of statutes and court and administrative rules governing criminal and juvenile justice matters is listed below to assist drafters to locate a relevant statute or rule. After locating the appropriate set of statutes or rules, the drafter can skim the table of headnotes to locate a specific statute or rule number. All of the material cited in this summary can be found in Minnesota Statutes or Minnesota Rules. Minnesota court rules can be found in Minnesota Statutes, volume 9.

Substantive Law of Crimes

Chapter 609	Criminal Code of 1963
Chapter 617	Abortion; Obscenity; Houses of Ill-Fame
Chapter 624	Crimes; Other Provisions
Chapter 152	Prohibited Drugs
Chapter 169	Highway Traffic Regulation

Statutes Governing Criminal Procedures

Chapter 589	Habeas Corpus
Chapter 590	Postconviction Remedy
Chapter 611	Rights of Accused
Chapter 611A	Rights of Victims of Crimes
Chapter 626	Training; Investigation, Apprehension; Reports
Chapter 626A	Privacy of Communications
Chapter 627	Jurisdiction
Chapter 628	Accusation
Chapter 629	Extradition, Detainers, Arrest, Bail
Chapter 630	Pretrial Procedure
Chapter 631	Trial, Judgment, Sentence
Chapter 632	Appeals, Writs of Error

Court Rules Governing Criminal Procedure

Rules of Criminal Procedure
Minnesota Sentencing Guidelines
Rules of Civil Appellate Procedure

Statutes and Court Rules Governing Evidentiary Matters

	Rules of Evidence
Chapter 595	Witnesses
Chapter 599	Judicial Notice, Proof; Judicial Records, Decisions
Chapter 601	Lost Instruments
Chapter 602	Competent Evidence
Chapter 634	Special Rules; Evidence; Privileges, Witnesses

Statutes and Court Rules Governing Juvenile Justice Matters

Rules of Procedure for Juvenile Court

Chapter 260	Juvenile Court Act
Chapter 636	Juvenile Offenders

Statutes and Administrative Rules Governing Corrections

Statutes

Chapter 241	Department of Corrections
Chapter 242	Corrections, Youth
Chapter 243	Corrections, Adult
Chapter 244	Criminal Sentences, Conditions, Duration, Appeals
Chapter 401	Community Corrections
Chapter 641	County Jails
Chapter 642	Lockups
Chapter 643	Work Farms

Administrative Rules

Chapter 2900	Rules Governing the Construction of New Corrections Facilities
Chapter 2905	Rules Governing the Community Corrections Act
Chapter 2910	Rules Governing Adult Detention Facilities
Chapter 2915	Rules Governing Programs and Services for Battered Women
Chapter 2920	Rules Governing Adult Halfway Houses
Chapter 2925	Rules Governing Group Foster Homes
Chapter 2930	Rules Governing Secure Juvenile Detention Facilities
Chapter 2935	Rules Governing Juvenile Residential Facilities
Chapter 2940	Rules Governing the Office of Adult Release

Criminal Justice Agencies

Chapter 299A	Department of Public Safety
Chapter 299B	Crime Victims Reparations
Chapter 299C	Bureau of Criminal Apprehension
Chapter 299D	State Patrol
Chapter 387	Sheriff
Chapter 388	County Attorney
Chapter 638	Board of Pardons

Miscellaneous Administrative Rules Pertinent to Criminal Justice

Board of Pardons

Chapter 6600	Procedural Rules

Board of Peace Officer Standards and Training

Chapter 6700	Training and Licensing Rules

Minnesota Board of Pharmacy

Chapter 6800	Rules of the Minnesota Board of Pharmacy

Bureau of Criminal Apprehension
Chapter 7500 Explosives and Blasting Agents
Chapter 7501 Preliminary Screening Breath Test Devices
Chapter 7502 Training for Intoxication Testing

Crime Victim Reparation Board
Chapter 7505 Hearing Procedures

5.4 Special Laws

(a) Prohibition

The Minnesota Constitution contains a variety of prohibitions and restrictions on local or special laws.

Article XII, section 1, states:

> 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.

The public policy against unfair discrimination also appears in the prohibition of bills of attainder, article I, section 11, the requirement that taxes be uniform on the same class of objects, article X, section 1, and implicitly or explicitly throughout the Constitution.

Article XII, section 1, draws a distinction between general legislation and special legislation and, except when one of its provisions allows, it prohibits all special legislation. It is important, therefore, for a drafter to know how the courts have defined "special laws" and "general laws."

Almost all legislation sets up classes and affects people and other entities differently depending on their class (e.g. taxpayers with different incomes, handicapped persons, cities of the third class, psychiatrists). These kinds of classifications usually mean the laws are not "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:

(1) 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);

(2) 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

(3) 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:

(1) 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);

(2) 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);

(3) Counties with population over 200,000 (juror selection). *State v. Wasgatt,* 114 Minn. 78, 130 N.W. 76 (1911);

(4) 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

(5) 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).

Although the problems these cases dealt with are now largely controlled by article XII, section 2, the opinions show the kind of reasoning that can be expected from the courts.

Drafters should note from the above examples that neither classes with population limits nor classes with limits based on two factors are automatically approved or disapproved. The classification scheme must merely be related to the purpose of the statute. Then the law is general even if the class it applies to is a class with only one member.

Article XII, section 1, permits a special law if a general law cannot be made applicable. Thus, appropriations are constitutional, even appropriations to pay the claims of named individuals. Perhaps because the classification device is used so successfully to avoid the limitations of section 1, this other kind of exception has had less attention.

(b) Local Laws

The prohibition against special legislation admits an exception for special laws relating to local units of government. Such "local laws" are quite common.

Article XII, section 2, of 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.

Minnesota Statutes, sections 645.023 and 645.024, were enacted pursuant to 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 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 is clearer if either local approval is explicitly required or explicitly not required. In the latter case, a reference to the part of section 645.023 that allows the law to take effect without local approval is appropriate.

Also, the legislature 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.

**** PUT A LOCAL APPROVAL PROVISION IN EACH LOCAL ACT.**

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 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 variety of local approval methods. Samples of the correct drafting forms to accomplish each are set out at the end of this chapter.

Minnesota Statutes, section 645.02 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. 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.

***** DO NOT MOVE A COUNTY BOUNDARY OR COUNTY SEAT WITHOUT A LOCAL VOTE.**

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 Minnesota Constitution. Prior to the time of the adoption of section 2, local government units could not be named by reason of the prohibition against special legislation, and local laws were enacted in the form of a general act (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 an amendment, the quoted language should be stricken and the name of the city inserted. For an example, see Laws 1982, chapter 506. 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.

***** NAME THE AFFECTED LOCAL GOVERNMENT UNIT IN EACH LOCAL ACT.**

(d) Laws Relating to Specific Courts

A law relating to a specific court, like the county municipal court of Ramsey 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 by that court as the "local government unit."

Furthermore, no bill prepared pursuant to the authority of the judicial article of the Minnesota Constitution can depend on 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.

***** DO NOT PUT A LOCAL APPROVAL PROVISION IN A COURT BILL.**

5.5 Taxes

The tax laws are one of the most interrelated and technical subjects in Minnesota law. Drafting bills dealing with tax matters requires a thorough understanding of the entire tax system. This manual does not attempt such a broad-based education, but it does discuss some general principles.

(a) Constitutional Considerations

The inherent power of the legislature to tax is very broad and is 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); *Rio Vista Non-Profit Housing Corp. v. Ramsey County,* 335 N.W.2d 242 (1983). 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); *Matter of McCannel,* 301 N.W.2 910 (1980). A classification which has a reasonable basis does not violate the equal protection clause merely because its administration results in some inequality. *Guillioms v. Commissioner of Revenue,* 299 N.W.2 138 (1980). 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: *Container Corporation of America v. California Franchise Tax Board,* 103 S.Ct. 2933 (1983); *ASARCO v. Idaho,* 102 S.Ct. 3103 (1982); *F.W. Woolworth & Co. v. New Mexico,* 102 S.Ct. 3128 (1982); *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).

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. 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) References to Federal Laws

A drafter will often be asked to make reference to or tie Minnesota laws into the federal Internal Revenue Code. Where possible, avoid tying Minnesota laws into an open-ended reference to an Internal Revenue Code section. The link may be a 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 may then be updated periodically to incorporate later amendments made to the federal provision.

A draft may incorporate future federal amendments if the state provisions are auxiliary and seek to achieve uniformity with federal programs. *Wallace v. Commissioner; Minnesota Recipients Alliance v. Noot,* 313 N.W.2d 584 (1981). See also Minnesota Statutes, section 645.31, subdivision 2.

(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. Most 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. Most property tax laws should be effective for taxes levied in one specific year, payable the next year, and afterward. Most sales tax laws should be effective for sales made after a specific date. Most estate tax laws should be effective for estates of decedents dying after a specific date.

5.6 Organization of State Government

(a) General Considerations

A bill that creates 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 provide for all necessary features of a well-functioning agency. An agency that lacks a necessary feature may require additional legislation to correct the defect. Consult the listing of basic provisions in paragraph (b) of this section.

Second, the drafter must determine if identical or similar programs functions already exist in other agencies. Similar or identical programs functions might be split up among and concealed in the statutory authority for other agencies. The drafter must provide the necessary repeals, amendments, or distinctions to coordinate the old and new agencies. Minnesota Statutes, section 15.039, deals with the transfer of powers among agencies.

Third, the drafter must be familiar with the statutory elements common to all agencies. Among the common 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 to them are stated.

Fourth, the drafter should set an effective date that leaves enough time for the new agency to be set up without excessive haste. Effective dates are important for transfers of duties between agencies as well.

(b) Basic Provisions for a New Agency

A drafter should consider providing the following in any bill that creates a new agency:

(1) Indicate whether the agency is a state agency and whether it is within the executive, legislative, or judicial branch, or independent. Indicate whether the agency is part of an existing agency. Name the agency according to the nomenclature established by Minnesota Statutes, section 15.012.

(2) Specify who controls the agency, whether a single person, a multiple-person board or commission, or some combination.

(3) Specify the qualifications of either the person or the members of the board or commission that controls the agency.

(4) Specify the manner of election, selection, and termination of the person or the members of the board or commission that controls the agency. Consult Minnesota Statutes, sections 15.0575 to 15.06 and 15.066 for statutory restrictions. If the drafter intends chapter 15 to apply to the new agency, the applicable sections should be specified. If these statutory sections are not going to apply to the new agency, the drafter should include the following phrase: "Notwithstanding section 15.0575 (or whichever section)... ." General provisions relating to advisory task forces are in Minnesota Statutes, section 15.014.

(5) Consider whether all aspects of Minnesota Statutes, chapters 15, 16A, 16B, 43A, 179, and 179A apply. If a state agency is created, these chapters apply unless a statement is made to the contrary.

(6) Specify any compensation or restriction on compensation of the person or board or commission members who control the agency.

(7) State 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.

(8) State 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 is to have any special authority, such as the power to levy taxes, to issue bonds, or to contract debt, these provisions must be considered separately because they have drafting difficulties in and of themselves. See other sections of this manual on taxes, bonds, and indebtedness.

(9) State the powers of the person, board, or commission that controls the agency. The relationship of the agency head to any assistants or employees should be specifically set out. The drafter should state whether any of the powers may be delegated to subordinates.

(10) 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.

(11) If the agency will produce revenue in some fashion by charging fees or by selling a product, the drafter should specify the manner in which the fees or prices are determined and the receipts are distributed. The alternatives available include a standing appropriation of money received for the agency's use, or, more usually, a requirement that all money received by the agency be deposited in the state's general fund.

(12) If the agency is permitted to employ staff, specify the status of agency employees. Are they subject to civil service laws, are they exempt, or do they have a special status?

(13) Provide for administrative rulemaking. See section 5.10 of this manual for further analysis of the considerations involved when drafting a bill that grants rulemaking authority to an agency.

(14) 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 Minnesota Statutes, chapter 214.

(15) If the agency deals in an area that grants a new right or regulates or prohibits an activity of individuals, the drafter should specify those substantive rights or prohibitions.

(16) Provide for the location of offices, particularly if multiple local offices are contemplated.

(17) State the relationship, as appropriate, to the governor, the legislature, or the Supreme Court, as the ultimate supervisor.

(18) State any sanctions or penalties either for persons dealing with the agency or for agency officers or employees.

(19) Indicate any temporary provisions, such as initial terms of office or temporary powers.

(20) If it is necessary to implement different provisions of the act at different times, provide a schedule of the implementation dates.

(21) Set out any necessary appropriations of state funds to set up or operate the agency.

(c) Alteration of Existing Agencies

When a bill draft requires modifications to existing agencies, a drafter should use special care. Some of the more important problem areas are indicated in the following paragraphs.

First, as discussed in paragraph (b), there may be a surprising amount of interrelationship between the sections establishing an agency. When making a single 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. The drafter may have to 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. As stated in paragraph (a), Minnesota Statutes, section 15.039, addresses the transfer of powers among agencies.

Second, a drafter should ensure that proper references are made to the agency's statutory name and to its statutory head. Guessing 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.

Third, a frequent 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 statutes, 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 taken 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 know which type is intended by the requester and not use them interchangeably. Minnesota Statutes, section 15.066, should be consulted.

(d) Incumbents

If a bill merges two or more existing agencies or transfers a function of one agency into another, care must be taken to protect the rights of incumbents. Examples of issues which should be determined follow.

(1) If positions are transferred, not incumbents, determine what happens to incumbents.

(2) If incumbents are transferred, specify which benefits are maintained; whether a classification remains the same; whether salary, seniority, and sick and vacation leave balances are retained.

(3) If the transfer or merger results in fewer total positions, state whether the excess positions are abolished before or after the merger.

(4) If a function of one agency is transferred to another, specify which, if any, employee-related costs also transfer. Examples of these costs traceable to the involved "function" are unemployment insurance and workers' compensation.

(5) Specify whether incumbents are "grandfathered" into the same or a different class with or without a selection process or probation.

5.7 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 now rare, although Minnesota Statutes, chapter 370 provides for transfers of territory and establishment of new counties. A change in a boundary or the location of a county seat may be made only with approval of the affected voters. Minn. Const., art. XII, sec. 3.

The general powers of a county are set out in Minnesota Statutes, chapters 373 and 375. The governing body of a county is its board of commissioners, usually five but sometimes seven members.

Counties are a catchall of local government powers and duties. Many officers are required by statute and many of them are elected. The county auditor, treasurer, recorder, sheriff, attorney, and surveyor each are the subject of a chapter in Minnesota Statutes in the series, chapters 370 to 402.

The general law in chapters 370 to 402 is comprehensive and changes 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. Several optional forms of organization for each city's government are permitted under chapter 412.

The effect of Minnesota Statutes, section 410.015, should be noted:

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

If it is intended that every city entity be included in a reference, then the reference should be to "a statutory or home rule charter city." This cumbersome phrase usually needs to appear only once in a section or in a series of closely related sections that make up a law. If a drafter thinks that in a particular context "a city" or "the city" might not be read to refer back to "a statutory or home rule charter city," the problem can be solved by repeating the phrase or by a definition of the term "city" in the bill.

Home rule charters are permitted by the Minnesota Constitution, article XII, section 4, and provision is made in chapter 410 for their adoption and amendment by cities. Minneapolis, St. Paul, and Duluth and many other cities have charters. Home rule charters can grant cities very large powers. For city elections their provisions can supersede state law, Minnesota Statutes, section 410.21.

Many cities were organized under special laws. Some of the special laws were repealed by section 412.018 which expressed an intention 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" 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 many laws relating to individual cities.

Most cities have city councils for 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 their former 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 substantial 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. They are also 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" or "the town meeting" since either may be "the governing body" referred to in article XII, section 2 of the Constitution. Usually the town board is given the responsibility of approving a local law.

The general town laws, like those of counties and cities, evolve slowly. The most urgent responsibility of towns is maintenance of town roads but they possess numerous 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 can be found operating in the full range of demographic possibilities from wilderness to city.

(d) Metropolitan Government

The unique situation in Minnesota of the Twin Cities has produced a unique set of laws for their metropolitan government. The metropolitan government laws are collected in chapter 473. Several commissions have authority over parks, transit, sewer and waste control, airports, and other subjects. The commissions are subject to supervision by the metropolitan council. The establishment of this system was made easier by the adoption of Minnesota Statutes, section 645.023, which made approval by the hundreds of preexisting local governments unnecessary. See section 5.4 (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 customarily names 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. 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.

Since very few sections of chapter 473 contain a list of the affected counties, bills that amend sections in chapter 473 are usually bills in which a section identifying the local application of the bill is appropriate.

(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. Special units may become more common in Minnesota as they already have in more urbanized states. This may put a drafter into an uncharted area of Minnesota law where the experience of other states may be of benefit.

5.8 Retirement and Pension Laws

(a) Existing Major Plans

Minnesota has several major retirement and pension 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. These are as follows:

(1) The Minnesota State Retirement System (MSRS), found in Minnesota Statutes, chapter 352, 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, includes all employees of municipalities or political subdivisions.

(3) The Teachers Retirement Association (TRA), found in Minnesota Statutes, chapter 354, includes teachers and administrators in the public schools and state universities.

(4) Teachers Retirement Associations in cities of the first class are found in Minnesota Statutes, chapter 354, and include teachers in Minneapolis, St. Paul, and Duluth.

(5) The Minneapolis Municipal Employees Retirement Fund (MERF), found in Minnesota Statutes, chapter 422A, includes employees and officials of the city of Minneapolis.

(6) The State Patrol Retirement Fund, found in Minnesota Statutes, chapter 352B, includes state highway patrol, conservation, and crime bureau officers.

(7) Elective State Officers Retirement, found in Minnesota Statutes, chapter 352C, includes elected state officers in the executive branch.

(8) Legislator's Retirement Plan, found in Minnesota Statutes, chapter 3A, includes legislators.

(9) State Unclassified Employees Retirement Program, found in Minnesota Statutes, chapter 352D, includes designated state employees in the unclassified service unless they elect to participate in the regular MSRS plan.

(10) The Public Employees Police and Fire Fund (PEPFF), found in Minnesota Statutes, sections 353.63 to 353.68, includes county sheriffs and municipal police and salaried firefighters who are not members of a local association.

(11) A local police or salaried firefighter's relief fund operating under Minnesota Statutes, chapters 69, 423 or 424, and 423A, which govern those local police and firefighter's relief associations to the extent not covered by a special law.

(12) A volunteer firefighter's relief association governed by Minnesota Statutes, chapter 424A.

(13) The Judges' Retirement Plan, governing retirement and pensions of judges is found in Minnesota Statutes, chapter 490.

Another chapter of Minnesota Statutes, chapter 356, contains a variety of largely administrative provisions which relate to all or most of the retirement and pension plans provided elsewhere. If one of the specific pension plans is modified, 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 salaried firefighter's 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 in which the association is located.

(2) Those plans organized and operating under either Minnesota Statutes, chapters 69, 423 or 424, and 423A, 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 these chapters 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 reasonably assured 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.

A buy-back law generally involves one or a limited group of individuals. The law must be general in form and must not include the names of any persons affected. The legislature has, from time to time, 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) Identity of the employee(s);

(2) Present fund membership, if any, and past fund membership, if different;

(3) Present employer and whether there was a different employer during the period for which buy-back is sought; and

(4) The statutory reference to the repealed or expired law under which authority for the buy-back formerly existed. (If the reference is to Minnesota Statutes, it will be necessary to include the year of a particular edition in the citation—contrary to general drafting rules.)

The first three items should be obtained from the legislator requesting the bill draft. More complete information on all items can probably be best obtained by contacting 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 occasionally does occur. This information can be given to the legislator 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, unless this result is actually intended.

For examples of various buy-back legislation, see the examples at the end of this chapter.

5.9 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 states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." U.S. Const. amend. I. This amendment is applicable to the states through the Fourteenth Amendment.

The state constitution provides the following:

> The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. 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 the establishment of religion if it could lead to that result. The United States Supreme Court has said that the clause prohibits acts by the government which prefer one religion over another, 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 may be valid. 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. *Larkin v. Grendel's Den, Inc.,* 103 S. Ct. 505 (1982).

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 is to advance or inhibit religion. For example, it might matter whether a law provided that the aid be given to a parochial school directly or to the student or the student's parents.

The excessive entanglement standard may have both a qualitative and a 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, particularly those which require annual appropriations. A Massachusetts law which empowered churches to prevent nearby liquor sales was held to "enmesh" churches in "the processes of government." *Larkin v. Grendel's Den, Inc., supra.*

The First Amendment's prohibition of laws 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.

Concerning tax laws and other government revenue systems, the Supreme Court has said: "Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *U.S. v. Lee,* 455 U.S. 252, 260 (1982) (Amish resistance to Social Security taxes).

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 that 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.

Under the free exercise clause the government may go further in regulating the practices of children than of adults. *Prince v. Massachusetts*, 321 U.S. 158 (1944) (children selling religious publications).

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. *Reynolds v. U.S.*, 98 U.S. 145 (1879).

(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 use of state money for transportation of nonpublic school students to and from school, as part of a general state law providing transportation for all students, is permissible as a health and safety measure. The money 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).

(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 are a means by which religion may be taught. However, a state may reimburse nonpublic schools for the cost of administering state-prepared tests. Compare *Levitt v. Committee for Public Education,* 413 U.S. 472 (1973) with *Committee for Public Education v. Regan,* 444 U.S. 646 (1980).

(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 1979 decision, 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).

In a 1983 case testing Minnesota's tax deduction for expenses of parents in providing tuition, textbooks, and transportation for children attending public or nonpublic elementary or secondary schools, the Supreme Court distinguished *Committee for Public Education v. Nyquist, supra,* and upheld the statute because it was available to all parents. The court was not impressed with a statistical analysis which showed that 96 percent of the benefits of the statute went to parents of parochial school students. The court found that the

statute passed the time-honored three-part test. *Mueller v. Allen,* 103 S. Ct. 3062 (1983).

(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 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 the 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 those 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 the aid does not necessarily involve excessive entanglement, and that there are great differences in the level of academic freedom and indoctrination between the college level, on the one hand, and the elementary and secondary level on the other. *Tilton v. Richardson,* 403 U.S. 672 (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) *Ten Commandments.* Required posting of the Ten Commandments in Kentucky schoolrooms was held unconstitutional even though the copies were paid for by private funds and were labeled "secular" and "the fundamental legal code of Western Civilization and the Common Law of the United States." *Stone v. Graham,* 449 U.S. 39 (1980), reh. den., 449 U.S. 1104.

(5) *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).

(6) *Compulsory Attendance.* The court 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).

(7) *Religious Use of School Facilities.* The Supreme Court struck down the policy of a state university which prohibited the use by student groups "for purposes of religious worship or religious teaching" of facilities generally available for use by student groups. The court ruled that the policy violated the fundamental principle that state regulation of speech should be content-neutral. *Widmar v. Vincent,* 454 U.S. 263, 275-276 (1981).

(e) Other First Amendment Issues

A statute which prefers certain denominations over others is suspect in the eyes of the Supreme Court. The court strictly scrutinized a Minnesota statute which required religious organizations which receive less than half their total contributions from members or affiliated organizations to register with the state and to report on their solicitation efforts. The court found no valid reason for the 50 percent rule and declared the statute unconstitutional because it imposed a burden on some religions, such as the plaintiff Unification Church, and not on others, especially the "mainline" religions. *Larson v. Valente,* 456 U.S. 228 (1982), reh. den., 457 U.S. 1111.

Unemployment compensation may not be denied to persons whose unemployment is caused by religious beliefs. *Sherbert v. Verner,* 374 U.S. 398 (1963) (work on the Sabbath); *Thomas v. Review Board of Indiana,* 450 U.S. 707 (1981) (work on military weapons).

(f) 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.

5.10 Administrative Procedures

(a) Statutory Law

Minnesota Statutes, chapter 14 includes the Administrative Procedure Act as well as statutory provisions relating to the Legislative Commission to Review Administrative Rules; the Office of Administrative Hearings; and the revisor of statutes. Minnesota Statutes, chapter 214, and section 16A.128 relate to the power of agencies to set fees. Minnesota Statutes, chapter 645 applies to the interpretation of rules.

Legislative drafters should be familiar with these provisions when drafting bills concerning administrative procedure, including grants of rulemaking authority; exemptions from the APA; and provisions that repeal, amend, or otherwise affect existing administrative rules.

(b) Grants of Rulemaking Authority

If an agency being given rulemaking authority meets the definition of "agency" in section 14.02, subdivision 2, and the authority being granted is authority to adopt a "rule," as that term is defined in section 14.02, subdivision 4, then a drafter need not specify that the rule must be adopted pursuant to chapter 14.

If there is a doubt about whether the agency meets the definition in section 14.02, subdivision 2, or whether the rule meets the definition in section 14.02, subdivision 4, then it may be wise to specifically require the rule to be "adopted under the rulemaking provisions of chapter 14."

(c) Exemptions

Legislative drafters are sometimes asked to draft exemptions from the Administrative Procedure Act. These exemptions are frequently drafted as exemptions "from chapter 14" or "from sections 14.01 to 14.69." While in some cases it may be appropriate to draft an exemption as broadly as this, a narrower exemption may avoid an unintended result. For example, an exemption from "chapter 14" arguably prohibits review of the rule by the Legislative Commission to Review Administrative Rules.

The following checklist may aid drafters in setting the limits of an exemption:

(1) Is it an exemption from only the rulemaking provisions of chapter 14?

(2) Should the revisor's form approval provisions or the provisions of section 14.38, subdivision 7 apply?

(3) Should the Legislative Commission to Review Administrative Rules have authority to review the exempt rules?

(4) Should the judicial review provisions for rules apply?

(5) If the exemption relates to the contested case procedures of chapter 14, should it include the judicial review provisions?

(d) Repeals

It may be necessary to legislatively overrule decisions made by administrative agencies and embodied in rules. Two of the more common methods used by drafters are the explicit repeal of the particular rule and the implicit repeal by enactment of preemptive or irreconcilable statutory language. Explicit repeal of the rule is the preferred alternative because the scope of the repeal is clear on its face, and it ensures that the rule is removed from Minnesota Rules.

Repeal of a rule does not preclude an agency from adopting a subsequent rule, identical or otherwise, on the same subject. To prevent the agency from adopting a subsequent rule, the drafter must specifically limit the agency's rulemaking power.

(e) Amendments

If a drafter is asked to change a policy embodied in an administrative rule, he or she may use several methods to accomplish this task. The preferred method is to specify in the statute the change to be made and require the agency to adopt it under the APA. An alternative would be to require the agency to adopt the change but exempt it from the rulemaking provisions of chapter 14. In this case, it would be wise to require the agency to comply with the requirements of section 14.38, subdivision 7. Examples of these methods are included at the end of the chapter.

The drafter could also draft statutory language that preempts the rule. This alternative is undesirable because the text of the rule remains unchanged and that text may mislead persons unfamiliar with the statutory action. Some additional procedures must then be included in the statute to ensure that the text of the rule is changed. If the change is to be done editorially and its exact wording does not appear in the law, the law may give too much discretion in how the rule text should be amended. Preemption is cumbersome and confusing at best and may easily be ineffective.

Preferred alternatives for ordering changes to rules are as follows:

(1) Subject to the APA

```
1       Sec. ... [RULE CHANGE.]
2       The commissioner shall amend Minnesota Rules, part
3  5432.0050, subpart 1, so that provisional licenses issued under
4  that part are valid for five years and are issued only to
5  qualified applicants.  The amendment must be adopted under
6  sections 14.21 to 14.28.
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(The sections of the APA referred to are the sections establishing the procedure applicable to noncontroversial rules.)

(2) Exempt from the APA

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Sec. ... [RULE CHANGE.]
The commissioner shall amend Minnesota Rules, part
5432.0050, subpart 1, so that provisional licenses under that
part are valid for five years and are issued only to qualified
applicants. The amendment is not subject to the rulemaking
provisions of chapter 14, but the commissioner must comply with
section 14.38, subdivision 7, in adopting the amendment.
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5.11 Examples

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Title and introductory language)

A bill for an act

relating to the organization and operation of state government; appropriating money for the general administrative and judicial expenses of state government with certain conditions; providing for the transfer of certain money in the state treasury; authorizing land acquisition in certain cases; fixing and limiting the amount of fees to be collected in certain cases; amending Minnesota Statutes 1984, sections 5.08, subdivision 2; 5.09; 10.30; 16.025, subdivision 1; Laws 1971, chapter 121, section 2, as amended; repealing Minnesota Statutes 1984, sections 4.19; and 299D.03, subdivision 4.

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

Section 1. [STATE DEPARTMENTS; APPROPRIATIONS.]

The amounts set forth in the columns designated "APPROPRIATIONS" are appropriated from the general fund, or another designated fund, to the agency and for the purpose specified opposite. The sums are available for the fiscal years indicated for each purpose. The figures "1985," "1986," and "1987" refer to fiscal years and mean that the appropriation or appropriations listed under that fiscal year are available for the year ending June 30, 1985, June 30, 1986, or June 30, 1987.

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 - OMNIBUS APPROPRIATIONS BILL (Bill subdivisions)

AGENCY AND PURPOSE	APPROPRIATIONS 1986	1987
Sec. 2. THE LEGISLATURE		
Subdivision 1. House of Representatives	7,100,000	8,000,000
Subd. 2. Senate	5,155,350	5,539.910
Subd. 3. Legislative Coordinating Commission		
(a) Legislative Reference Library	258,910	244,460
(b) Revisor of Statutes	1,098,401	1,442,317
(c) Office of Legislative Research Science and Technology Project	47,250	47,250

Note that section 2 is divided into subdivisions and the subdivisions are divided into paragraphs just as in a bill for permanent law.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Appropriations from sources other than general fund; deficiencies; extension of special authority; procedural rider)

Sec. 2. [COMMISSIONS.]

Subd. 6. Mississippi River

Parkway Commission	10,000	10,000
For 1984 - $3,000		

This appropriation is from the trunk highway fund.

Sec. 3. SUPREME COURT

Subdivision 1. General Operations

and Management	1,821,426	1,897,857

Subd. 2. Supreme Court

Contingent	28,750	3,750

If the appropriation for either year is insufficient, the appropriation for the other year is available.

Subd. 3. Judges' Retirement	690,000	710,000

To be disbursed by the executive director of the Minnesota state retirement system, subject to the provisions of Laws 1975, chapter 418.

In section 2, subdivision 6, note the provision that the appropriation is from the trunk highway fund. This is an exception to the general rule that appropriations are from the general fund.

In section 2, subdivision 6, note the deficiency or supplementary appropriation for 1984.

In section 3, subdivision 2, note the special authority to use either appropriation in either year.

In section 3, subdivision 3, note the special restriction, called a "rider," on the appropriation. It is procedural, as opposed to substantive, because it relates to the procedure for expenditure of the funds.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Substantive rider)

```
1       Sec. 6.  BOARD ON JUDICIAL STANDARDS
2                                          105,000      104,000
3  Approved Complement - 2

4  The board on judicial standards shall
5  annually review the compliance of each
6  district, county, municipal, or probate
7  judge with Minnesota Statutes, section
8  546.27.  The board shall notify the
9  commissioner of finance of each judge
10 not in compliance. If the board finds
11 that a judge has compelling reasons for
12 noncompliance, it may decide not to
13 issue the notice.

14 When the commissioner is notified that
15 a judge is not in compliance, the
16 commissioner shall not pay the judge's
17 salary.

18 The board may cancel a notice of
19 noncompliance if it finds that a judge
20 has returned his status to compliance,
21 but in no event shall a judge be paid a
22 salary for the period in which the
23 notification of noncompliance is in
24 effect.

25      Sec. 7.  CONTINGENT ACCOUNTS

26       Subdivision 1.  The appropriations in
27 this section may be spent 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 section 6, note the substantive law. This type of provision should be avoided. It is apparently a permanent law but it is attached to an appropriation which is temporary. If the provision is not compiled into Minnesota Statutes, it will be difficult to locate in the future. To avoid any implication that the rider is permanent law, on line 5 of the form, before *the,* should be added "For the fiscal biennium ending June 30, 1987,".

In section 7, subdivision 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 - OMNIBUS APPROPRIATIONS BILL
(Approved complement; procedural rider)

Sec. 16. ATTORNEY GENERAL

Approved Complement

1986 - 191 1987 - 187

General - 186 184

Federal - 5 3

Subdivision 1. General Operations and Management	4,945,782	4,875,792
Subd. 2. Special Contingent	25,000	25,000

This appropriation is not available for paying the costs of special, legal, accounting, and investigative personnel retained in cases arising under Minnesota Statutes, section 501.12, filed after (specific date) unless the attorney general decides in a case that all the beneficiaries are not adequately represented, or that it is likely that the purpose of the trust may be frustrated without state intervention and that the state has a substantial interest in carrying out the purpose of the trust.

In section 16, note the provision for "Approved Complement" which controls by law the number of personnel positions on the department's payroll. The provision is common in departmental budgets.

In subdivision 2 is a procedural rider which restricts the expenditure of funds.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Program budgeting)

Sec. 26. NATURAL RESOURCES

General Operations and		
Management	51,194,500	51,174,100
Of this appropriation, $33,775,200 for the first year and $33,741,000 for the second year are from the general fund; $1,330,000 each year is from the special revenue fund; and $16,089,300 for the first year and $16,103,100 for the second year are from the game and fish fund, including $526,600 the first year and $533,400 the second year pursuant to Minnesota Statutes, section 296.421, subdivision 4.		
The amounts that may be spent from this appropriation for each program are as follows:		
Administrative Management		
Services	4,272,100	4,272,100
$252,900 each year is for the environmental education board.		
Of this appropriation, $171,400 each year is appropriated from the game and fish fund for the purchase of legal services from or through the attorney general on behalf of game and fish activities.		
Youth Conservation Corps	325,000	325,000
The department shall ensure that youths in all parts of the state have an equal opportunity for employment. The youth conservation corps shall provide service for the various department disciplines including parks, forestry, and stream improvement. $100,000 in fiscal 1986 and $100,000 in fiscal 1987 shall be used for planting, timber stand improvement, and forest development on state-owned lands, other than trust-fund lands, for forestry purposes.		

In section 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 - OMNIBUS APPROPRIATIONS BILL (Project budgeting)

Sec. 33. NATURAL RESOURCES ACCELERATION

Subdivision 1. Legislative

Commission on Minnesota Resources	180,000	180,000

Together with any sums received as grants-in-aid from federal sources and any sums granted by private sources to carry out the purposes of the commission. Federal and private funds do not cancel but remain available until spent.

Subd. 2. Department of

Agriculture	50,255	50,000

Framework water plan - phase II. For the department role in phase II of the framework water and related land resources planning effort. The water resources council, or board if created, shall coordinate the work programs and reports of all agencies involved.

Subd. 3. Department of

Economic Development	21,786	20,000

Framework water plan - phase II. For the department role in phase II of the framework water and related land resources planning effort. The water resources council, or board if created, shall coordinate the work programs and reports of all agencies involved.

Subd. 4. Energy Agency	106,927	105,000

Framework water plan - phase II. For the agency role in phase II of the framework water and related land resources planning effort. The water resources council, or board if created, shall coordinate the work programs and reports of all agencies involved. The water management information system must be developed consistent and compatible with the Minnesota land management information system.

In section 33, subdivisions 2, 3, and 4, note the provisions in each of the paragraphs. These are examples of projects which were specially budgeted.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (New permanent law)

Sec. 66. [4.191] [PLANNING PROGRAMS.]

Before beginning a study, research, or planning program, a state agency or department shall file with the state planning agency on a form prescribed by the agency, a description of the proposed project, including title, purpose, staff assigned, consultants to be used, cost, completion date, and other information prescribed by the agency as appropriate. The agency shall develop rules to exclude from the filing requirement projects that the agency determines are of minor significance.

When the study is completed, a copy shall be filed with the state planning agency. The state planning agency shall review the planning programs of state departments and agencies and submit to the legislature by November 15 of each year a report of findings and recommendations.

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 provision.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Temporary substantive law)

Sec. 61. [DETAILS.]

During fiscal years 1985 and 1986, the staffs of the senate finance committee and the house appropriations committee shall provide detailed information wherever available to requesting agencies or to the commissioner of finance on the activities and objects of expenditures that go into the appropriation totals. This section is repealed July 1, 1987.

In section 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.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Amendment to existing law)

Sec. 69. Minnesota Statutes 1984, section 10.30, is amended to read:

10.30 [EMPLOYEES' COMPENSATION REVOLVING FUND, REIMBURSEMENT.]

In all cases where any state department owes the employees' compensation revolving fund, created by sections 176.591, 176.601, and 176.611, for claims paid its employees, and no direct appropriation is made therefor, such department shall reimburse the revolving fund from the ~~funds available to it for supplies and expense~~ money appropriated for operation of the department.

In section 69, note the ordinary language in the introductory sentence stating that the provision amends existing law. This is the preferred method of drafting an amendment to permanent law in an appropriations bill.

EXAMPLE - BONDING AUTHORIZATION

A bill for an act

relating to Jefferson county; authorizing the acquisition and betterment of apartments for senior citizens of low and moderate income and the issuance of bonds to finance their cost.

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

Section 1. [POLICY.]

The legislature finds that there is a shortage of safe, convenient, and reasonably priced housing available to persons of low and moderate income residing in Jefferson county; that the private building industry has not and is not likely to make the needed housing available; that elderly citizens of low and moderate income, generally of a fixed nature, are least able to provide adequate housing for themselves; and that, to provide the needed housing for the elderly citizens, and to accomplish the purposes specified in Minnesota Statutes, section 462A.02, it is necessary to authorize Jefferson county to take the actions and exercise the powers authorized in section 2.

Sec. 2. [COUNTY POWERS.]

Subdivision 1. [ACQUISITION OF PROPERTY.] Jefferson county may provide for the acquisition and betterment of apartment buildings, in accordance with laws applicable to the construction of county buildings and rent the apartments in them to elderly persons of low and moderate income, upon the terms and conditions the county deems advisable. The apartment

In section 1 and subdivisions 1 and 2 of section 2, note that the authorization of bonding is part of a general public program. While the purpose is the key to the bill, it also establishes the purpose as not an "internal improvement" prohibited by the Constitution.

EXAMPLE - BONDING AUTHORIZATION, Cont.

buildings must be constructed near the county nursing home, and administered together with the nursing home as part of an overall program for the care of aged and infirm persons.

Subd. 2. [ELIGIBILITY REQUIREMENTS.] The county may by ordinance adopt regulations establishing age, health, and income eligibility requirements for the rental of the apartments. The regulations may provide different rental terms and conditions for persons of different ages, health conditions, and incomes, but the rentals charged for all the apartments shall be fixed so that the total amount of the rentals is sufficient to pay the principal of and interest on all bonds issued by the county to finance the acquisition and betterment of the apartment buildings, and, together with any money appropriated by the county in its budget for the purpose, sufficient to pay all costs of operation and maintenance of the apartments.

Subd. 3. [ISSUANCE OF BONDS.] The county board of commissioners may by resolution authorize the issuance of revenue bonds to finance the acquisition and betterment of the apartment buildings, and shall pledge and appropriate the revenues to be derived from their operation to pay the principal of and interest on the bonds when due and to create and maintain reserves for that purpose, as a first and prior lien on all the revenues, or as a lien on the revenues subordinate to the current payment of a fixed amount or percentage or all costs of

In subdivision 2, note the provision that rentals must be sufficient to pay the debt service. Subdivisions 4 and 5 provide additional assurances of the payment of the bonds. Subdivision 6 provides the assurance of how operating costs will be paid which keeps the rentals free to pay the debt service.

EXAMPLE - BONDING AUTHORIZATION, Cont.

the operation and maintenance of the facilities. Except as provided in sections 1 to 3, the bonds shall be issued in accordance with Minnesota Statutes, chapter 475, and the interest on them shall be exempt from taxation by the state and all political subdivisions.

Subd. 4. [REVENUES PLEDGED.] The revenues may be pledged and appropriated for the use and benefit of bondholders generally, or may be pledged by the execution of an indenture or other appropriate instrument to a trustee for the bondholders, and the site and facilities, or any part of them, may be mortgaged to the trustee to secure the payment of the principal of and interest on the bonds when due. The county board of commissioners may make and enter into any and all covenants with the bondholders or trustees which are determined by it to be necessary and proper to assure the marketability of the bonds, the completion of the facilities, the segregation of the revenues and any other funds pledged, and the sufficiency of funds for the prompt and full payment of all bonds and interest. The bonds shall be deemed to be payable wholly from the income of a revenue producing convenience within the meaning of section 475.58.

Subd. 5. [PLEDGE OF FULL FAITH.] The county board of commissioners may also pledge the full faith and credit and taxing powers of the county to the payment of not more than

In subdivision 3, note the general authorization of the issuance of bonds and the authorization in subdivision 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 references to the general bonding law.

EXAMPLE - BONDING AUTHORIZATION, Cont.

$1,500,000 principal amount of the bonds and the interest on them when due. In that event the board shall adopt an initial resolution stating the amount, purpose, and, in general, the security to be provided for the bonds, and publish it once each week for two consecutive weeks in the official newspaper. The bonds may be issued without the submission of the question of their issuance to the electors unless within ten days after the second publication of the resolution a petition requesting an election signed by more than ten percent of the qualified electors voting in the county at the last general election is filed with the county auditor. If a petition is filed, no bonds shall be issued under this subdivision unless authorized by a majority of the electors voting on the question.

Subd. 6. [TAX LEVY.] The county board of commissioners may levy ad valorem taxes on all taxable property in the county to pay the costs of operation and maintenance of the apartments, and covenant and agree to levy ad valorem taxes, if needed, over the period during which any bonds issued pursuant to subdivision 3 are outstanding. The amount and rate of the taxes shall be subject to statutory limits on county tax levies for general fund purposes.

Sec. 3. [EFFECTIVE DATE.]

Sections 1 and 2 are effective on the day following final enactment pursuant to Minnesota Statutes, section 645.023, subdivision 1, clause (a).

EXAMPLE - SPECIAL LAW (Drafting form)

A bill for an act

relating to the city of Edina; establishing terms for certain municipal offices.

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

Section 1. [EDINA CITY COUNCILMEN.]

At the city elections in 1982 for the city of Edina, three council members shall be elected. The two candidates receiving the highest number of votes shall....

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day after compliance with Minnesota Statutes, section 645.021, subdivision 3, by the city council of the city of Edina.

Special laws, even though permanent are, by definition, not general in application. They are very seldom codified and proposed coding is not placed in a bill for a special law.

EXAMPLE - SPECIAL LAW (Typical bill)

A bill for an act

relating to taxation; providing for the imposition of an occupation tax upon persons, partnerships, companies, corporations, and other associations engaged in the business of removing gravel from gravel pits in Kittson county and Marshall county; prescribing penalties.

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

Section 1. [KITTSON AND MARSHALL COUNTIES; GRAVEL PITS; OCCUPATION TAX.]

Any person engaged in the business of removing gravel from gravel pits in either Kittson county or Marshall county and subsequently selling the gravel to other persons, shall pay to the county an occupation tax. The board of county commissioners may determine the amount of the tax necessary for the purposes set forth in section 6, but it shall not exceed ten cents on each cubic yard of gravel removed from a gravel pit. The tax shall be computed and be due and payable as provided in sections 2 to 8.

Sec. 2. [DEFINITIONS.]

Subdivision 1. [OPERATOR.] For the purposes of sections 1 to 8, "an operator" or "the operator" means a person engaging in the business of removing gravel and selling it to others.

Subd. 2. [PERSON.] For the purposes of sections 1 to 8, "person" includes individuals, partnerships, companies, corporations, and other associations.

Sec. 3. [COLLECTION OF TAX.]

Subdivision 1. [REPORT.] Each quarter of each year an operator shall file with the county auditor, under oath, a report in the form and containing the information that the auditor may require. The first report shall be filed on July 1, 1979, covering the period between the effective date for the county of sections 1 to 8 and June 30, 1979, and thereafter on October 1, January 1, April 1, and July 1 of each year covering the preceding quarter. In each report the operator shall state the number of cubic yards of gravel removed during the quarter and compute the amount of the tax due.

Subd. 2. [COMPUTATION.] The tax computed in the report

EXAMPLE - SPECIAL LAW (Typical bill, Cont.)

shall be paid to the county treasurer on the first day of the quarter next following the quarter for which the report is filed.

Sec. 4. [FAILURE TO REPORT AND PAY TAX.]

If an operator fails to file the report required by section 3, subdivision 1, or files an erroneous report, the county auditor shall determine the amount of the tax due and notify the person by certified mail of the amount of the tax. The operator may, within 30 days from the date of mailing of the notice, file a written statement of the objections to the amount of the taxes due. The statement of objections is a petition under Minnesota Statutes, chapter 278, and sections 278.02 to 278.13 apply to it.

Sec. 5. [PROHIBITION.]

No person shall remove any gravel from any gravel pit unless taxes due under this act have been paid or objections have been filed as provided in section 4. A violation of this section is a misdemeanor.

Sec. 6. [USE OF REVENUE.]

Subdivision 1. [DEPOSIT.] All occupation taxes collected under this act shall be deposited in the county treasury and credited as follows:

(a) 90 percent to the county road and bridge fund; and,

(b) ten percent to a reserve fund for the restoration of abandoned gravel pits which shall be created in the county treasury.

Subd. 2. [EXPENDITURE.] All occupation taxes deposited and credited to the county road and bridge fund or the reserve fund shall be spent by the county only to maintain, construct, or reconstruct roads traveled by trucks hauling gravel or to restore abandoned gravel pits. Occupation taxes shall only be expended for the restoration of abandoned gravel pits upon lands to which the county holds title or upon lands forfeited to the state, as trustee, for nonpayment of taxes.

Sec. 7. [APPLICABILITY TO STATE.]

No report shall be filed by or occupation tax paid by the state or its contractors when the gravel removed is used to maintain, construct, or reconstruct trunk highways.

EXAMPLE - SPECIAL LAW (Typical bill, Cont.)

Sec. 8. [EFFECTIVE DATE.]

The provisions of sections 1 to 7 that relate to Kittson county are effective after approval by a majority of the members of the board of county commissioners of Kittson county the day after compliance with Minnesota Statutes, section 645.021, subdivision 3. The provisions of sections 1 to 7 that relate to Marshall county are effective after approval by a majority of the members of the board of county commissioners of Marshall county the day after compliance with Minnesota Statutes, section 645.021, subdivision 3.

EXAMPLE - LOCAL LAWS (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 requires the naming to be in any particular form. On occasions the naming occurs in the text of the law. However, the preferred standard form to name the unit or units is:

```
1       Sec. ... .  [APPLICABILITY.]
2       On its effective date, section 1 applies to the city of
3  Boston.
```

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.

With limited exceptions, it is also not necessary to put in a provision specifically providing a procedure for local approval. Examples of the exceptions are shown in the following examples of local approval sections. A lengthy local approval section is not normally necessary since the mechanics for local approval are provided by Minnesota Statutes, section 645.021, subdivision 2. A local approval section that does more than refer to section 645.021 is 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 law 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:

```
1       Sec. ... .  [APPLICABILITY.]
2       On its effective date, section ... applies to those cities
3  [towns, counties, school districts] among the cities [towns,
4  counties, school districts] of ..... which approve it.
5       Sec. ... .  [LOCAL APPROVAL.]
6       Section ... is effective in any of the cities (towns,
7  counties, school districts) named in section ... upon the
8  approval by the city council [town board, county board, school
9  board] of the city, [town, county, school district] but only for
10 a city [town, county, school district] whose city council [town
11 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:

```
1       Sec. ... .  [LOCAL APPROVAL.]
2       Notwithstanding Minnesota Statutes, section 645.021,
3  subdivision 2, section ... is effective only upon its approval
4  by a majority of the voters of the city [town, county, school
5  district] of ..... voting on the question at an election
6  on the question of approval of section ....
```

or, if appropriate, it may read:

```
1       Sec. ... .  [LOCAL APPROVAL.]
2       Notwithstanding Minnesota Statutes, section 645.021,
3  subdivision 2, section ... is effective only upon its approval
4  by a majority of the electors of the town of ..... voting
5  on the question at the annual town meeting or any special town
6  meeting called for that purpose.
```

EXAMPLES - LOCAL LAWS (Approval provisions, Cont.)

(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:

```
1       Sec. ... .  [LOCAL APPROVAL.]
2       Section ... is effective upon approval by the governing
3  body [town board] of the city [town, county, school district] of
4  ..... .  If the governing body [town board] does not approve
5  this act within ...  days after the day of approval of sections
6  1 to ... by the governor, and notwithstanding Minnesota
7  Statutes, section 645.021, subdivision 2, the governing body
8  [town board] shall submit the question of approval to the voters
9  of the city [town, county, school district] at the next general
10 election [town meeting] in the city [town, county, school
11 district].  If approved by a majority of the voters voting on
12 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.

EXAMPLES - LOCAL LAWS (Approval provisions, Cont.)

(4) If the requester asks that the bill contain the question to be submitted to the voters, the question should be drafted to give a brief description of the subject of the bill. For example:

```
1       Sec. ... .  [BALLOT QUESTION.]
2       At the election on the question of approval of section ...,
3  the question submitted to the voters shall be:
4       "Shall the 1985 legislative act authorizing the city of
5  Gotham to provide ambulance service be approved?
6                                       Yes .......
7                                       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.

(5) Another variant on local approval is the reverse referendum. Under this provision, a local law is effective without local approval (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:

```
1       Sec. ... .  [LOCAL APPROVAL.]
2       Pursuant to Minnesota Statutes, section 645.023,
3  subdivision 1, clause (a)[or (b) or (c)], sections 1 to ...
4  shall be effective without local approval unless the voters of
5  the city (town, county, school district) of ..... request
6  a referendum on approval of sections 1 to ... .
7       The voters may request a referendum by filing a petition
8  with the governing body [town board] of the city [town, county,
9  school district] of ..... .  The petition must state the
10 text of sections 1 to ... and indicate that those who signed the
11 petition are residents of the city [town, county, school
12 district] of ..... and are 18 years of age.  The petition
13 must be signed by a number of persons not less than ten percent
14 of the number of persons who cast votes for governor within the
15 city [town, county, school district] of ..... at the last
16 general election.
```

Although this form has been used, its validity has also been questioned.

EXAMPLES - LOCAL LAWS (Approval provisions, Cont.)

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 [town board] 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 published notice shall be in a form determined by the governing body [town board]. 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.

EXAMPLES - LOCAL LAWS (Effective dates)

In addition to an applicability, 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 parallels 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. It also names the unit to which the law applies and requires local approval by reference to the filing requirement.

```
1       Sec. ... .  [EFFECTIVE DATE.]
2       Section ... is effective the day after compliance with
3  Minnesota Statutes, section 645.021, subdivision 3, by the
4  governing body of the city of Gotham.
```

If a local law is to be effective without local approval, the following effective date provision should be used:

```
1       Sec. ... .  [EFFECTIVE DATE.]
2       Pursuant to Minnesota Statutes, section 645.023,
3  subdivision 1, clause (a)[or (b) or (c)], section ...  is
4  effective without local approval on ..... [date or "the day
5  after final enactment"].
```

The recitation of the provision authorizing dispensation with local approval is included to ensure that it is evident that a conscious choice has been made against local approval rather than a mere accidental omission.

EXAMPLES - PENSION BUY-BACK PROVISIONS (Authorizing an individual to "buy back")

A bill for an act

relating to retirement; authorizing purchase of service credit by certain members of the Minnesota state retirement system.

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

Section 1. [INDIVIDUAL PENSION BUY-BACK AUTHORIZED.]

An employee covered by the Minnesota state retirement system who was employed in the maintenance and improvement of Camp Ripley during the period from 1936 to 1940 may obtain allowable service credit for not more than 13 months of that service by paying to the Minnesota state retirement system an amount equal to four percent of the member's current annual salary rate. Payment must be made either in a lump sum or by payroll deductions prior to the termination of state service.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment.

Note that this provision has very narrow application and will not be codified. Interest is usually included at the rate of six percent per year 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")

Sec. ... [359.019] [RETIREMENT; PUBLIC EMPLOYEES RETIREMENT ASSOCIATION; MINNESOTA MUNICIPAL UTILITIES ASSOCIATION EMPLOYEES.]

Subdivision 1. After June 30, 1976, employees of the Minnesota Municipal Utilities Association, referred to as the association, shall become coordinated members of the public employees retirement association unless specifically exempt under section 353.01, subdivision 2b, and the association shall be deemed to be a governmental subdivision for purposes of this chapter.

Subd. 2. A person who becomes a member of the public employees retirement association pursuant to subdivision 1 may purchase prior service credit with respect to full time employment with the association subsequent to October 19, 1975 by (a) paying to the public employees retirement association prior to August 1, 1976 an employee contribution in an amount equal to four percent of his or her salary at the time the prior service was rendered, as certified by the association, plus interest at the rate of six percent per year; (b) the member at the same time shall pay additionally an amount equal to five and one-half percent of salary at the time the prior service was rendered, plus interest at the rate of six percent per year. The association may, in its sole discretion, for all employees included under this section, pay the public employees retirement association the obligation under (b).

Note that this provision does affect existing permanent law and so the drafting format follows the form for permanent not special laws.

6

Resolutions and Motions

6.1 Uses of Resolutions

Resolutions are vehicles by which the legislature can express policy or conduct internal legislative business. Unlike the expression of policy in a bill, resolutions do not result in law, but express policy in a nonbinding way.

6.2 Title

The title of a resolution usually consists only of the first two of the six title elements for bill titles. These are the opening phrase and the subject. Occasionally the title also contains the objects of the resolution. It does not contain a list of sections amended or repealed. The opening phrase is:

"A senate resolution;"

"A house resolution;"

"A senate concurrent resolution;"

"A house concurrent resolution;" or

"A resolution."

The subject is a succinct statement of the resolving portion of the resolution.

6.3 Preamble

A preamble states the reason, purpose, or policy of a resolution. It is the one area of resolutions where the drafting is more elaborate and extensive than for bills. Bills formerly contained preambles but their use there has disappeared. The preamble of a resolution may often be longer and more elaborate than the resolving portion of the resolution.

Typically, a preamble consists of several clauses indented as 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, "... throughout the union; and...." The last clause of a preamble must end with a semicolon and the words "NOW, THEREFORE" in full capitals and followed by a comma. For example: "... that citizens not so disadvantaged possess; NOW, THEREFORE,...." The first period in the text is after the first resolving clause.

The substance of the preamble clauses varies with the substance of the resolution but resolutions treat certain recurring 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 should not 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.

*** WRITE LANGUAGE TO CONGRATULATE OR CONDOLE THAT FITS THE SITUATION.**

The most difficult work in drafting effective resolutions is usually finding sufficient information to allow the drafting of preamble clauses. For example, if a drafter is asked to draft a congratulatory resolution for Bill Jones and is only told that "Bill Jones has been a teacher for 50 years," it is impossible to draft a suitable resolution to commend someone with that little information. The drafter should get answers to such questions as where did he teach? what subjects did he teach? did he receive any special honors? did he have any now distinguished students? did he regularly assist the students in extracurricular programs? was he known for any special or unusual teaching methods? and similar information. With that information a congratulatory resolution "says" that the legislature is serious because it took the time to find out the facts. Without it, the resolution "says" that "we have to congratulate this guy but we don't know much about him and don't really care to find out."

Capitalization is used more freely in resolutions for emphasis and visual effect.

The preamble should be omitted for resolutions relating solely to the internal business of either or both houses of the legislature. It is surplusage for business purposes. Most resolutions, however, relate to congratulatory or other matters for which the formality of a preamble is appropriate.

6.4 Resolving Clauses

The constitutional enacting clause must not be used for resolutions. Rather, a resolving clause must be 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 [or House of Representatives] of the State of Minnesota:...." For concurrent resolutions, it is: "BE IT RESOLVED, by the House of Representatives [or Senate] of the State of Minnesota, the Senate [or House of Representatives] concurring:...."

For memorial resolutions in both the Senate and House of Representatives, it reads: "BE IT RESOLVED, by the Legislature of the State of Minnesota:...."

Senate resolutions omit the comma after "BE IT RESOLVED."

Second or subsequent resolving clauses each begin "BE IT FURTHER RESOLVED...."

***** USE THE PROPER FORM OF RESOLVING CLAUSE.**

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 examples at the conclusion of this chapter.

Each "thought" or logical grouping of ideas for the resolution must usually be stated in a separate paragraph of one or more sentences beginning with the initial, or, when appropriate, secondary resolving clause. The decision on whether to divide the resolving portion of the resolution into two or several resolving paragraphs is made in the same way as the decision to begin a new paragraph in ordinary writing. The only difference is that each paragraph begins with a primary or secondary resolving clause. An exception to this rule is that if the resolution deals with the internal business of either or both houses, then each subject provision is a separate numbered paragraph after the initial resolving clause. Secondary resolving clauses should not be used.

**** IF APPROPRIATE, PROVIDE THAT A COPY GOES OUT TO THOSE WHO SHOULD READ IT.**

Congratulatory resolutions should contain a provision requiring an officer, (the secretary of the Senate or chief clerk of the House) to transmit an enrolled copy of the resolution to the person or institution that is the subject of the resolution. The enrollment is authenticated by the chief legislative and administrative officer in each body. Under House Rules 7.1 and 7.4 they are the speaker and chief clerk. Under Senate Rules 55 and 65 they are the president and the secretary. For examples of transmittal clauses see the end of this chapter.

6.5 Types of Resolutions

There are three distinct types of resolutions: simple resolutions, concurrent resolutions, and memorial resolutions. The boundaries between the various types are somewhat blurred. However, there are several indicia of which kind should be used.

***** USE THE APPROPRIATE KIND OF RESOLUTION FOR THE TASK AT HAND.**

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.

Memorial resolutions are used for matters that do not "relate to the business or adjournment of the legislature" and so 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. A memorial resolution must be passed by both houses and presented to the governor. Occasionally the governor prefers not to sign a memorial resolution and leaves his or her signature line blank or even has it removed. The most momentous use for a memorial resolution is to ratify a federal constitutional amendment or propose a federal constitutional convention. Federal law does not require the governor to concur in those actions.

Senate Rule 53, in 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, joint resolutions, and resolutions requiring the signature of the governor shall follow the same procedure as bills before being adopted.

House Rule 5.2, in 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 moneys from any source other than the legislative expense fund."

Concurrent resolutions should be reserved for matters that "relate to the business or adjournment of the legislature" and so do not require the governor's assent.

The Minnesota Supreme Court has acknowledged that the legislature's 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.

Some resolutions that need not have been presented to the governor have, in fact, been presented, and the governor has indicated approval of them. The presentation has been by special arrangement and has given the governor an opportunity, for example, to join in ratifying an amendment to the United States Constitution or in congratulations. Approval, or disapproval, of the resolution has no legal affect.

A simple resolution, passed by one house only, neither requires nor receives the approval of the other house. It is never sent to the governor for approval or veto.

6.6 Simple Resolutions

A simple resolution is proposed by a senator or representative and considered only by his or her house. The rules of procedure are relaxed. For instance, in the Senate there is usually no referral to a committee and a vote on the resolution is held without debate unless a member requests debate (Senate Rule 53). Record votes are not constitutionally required for passage and there usually are none.

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 that 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.

6.7 Concurrent Resolutions

A concurrent resolution is proposed by a senator or representative and is considered by both the Senate and House of Representatives. Like a simple resolution, the procedure it follows in the Senate and House is less elaborate than the procedure for a bill.

The following are the usual occasions for the use of a concurrent resolution:

(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 that the bodies desire to affect.

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

(4) Offering congratulations to or commending an individual, school, or other institution that has won a national or international honor or won a national or international competitive event.

(5) Proclaiming a special observance day.

Concurrent resolutions must not be used for the purposes for which the memorial resolution is used. Because of the easier process for concurrent resolutions, legislators have sometimes requested that memorial resolution matter be put in concurrent resolution form. At least in the Senate, these attempts have been rejected.

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

6.8 Memorial Resolutions

A memorial resolution is introduced by a senator or representative and considered 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 usual 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 United States Constitution, that a constitutional convention be held to propose amendments to the United States Constitution.

(3) The ratification of an amendment to the United States Constitution that 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.

6.9 Motions

A motion is a proposal by a member of a deliberative body that the body take certain action. For example, a member may move that a report be adopted, an amendment be adopted, a bill be given its third reading, and myriad other possibilities. Motions to amend a bill or resolution are covered in the chapter on amendments. Most other motions are oral. Since it is the intent of this manual to detail drafting method and not parliamentary procedure, the many oral motions are not 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 the House of Representatives are adopted by use of a motion from the floor. Because of their length, they must be written out. It is customary that the motion be to adopt the rules of the last legislature with certain exceptions. The exceptions are then shown by striking and underlining. The effect is that the motion takes on the appearance of an amendatory bill. Each paragraph showing a change is sequentially numbered.

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

6.10 Examples

EXAMPLE - SIMPLE RESOLUTION (Internal operation of the Senate)

A Senate resolution

relating to the adoption of temporary rules.

BE IT RESOLVED, by the Senate:

The permanent rules of the Senate for the .... session of the Legislature are adopted as the temporary rules of the .... session, to be effective until the adoption of permanent rules by a majority vote of the Senate, subject to the following conditions:

Any resolution or other question before the Senate may be brought to a vote at any time by a majority vote of the members present. A bill may not be introduced on the first day.

The rules referred to above are amended as follows:

HOUR OF CONVENING

2. The Senate shall convene on days of meeting at 9 10 a.m. unless the Senate directs otherwise.

.....

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)

A house resolution

providing payment of salary to the spouse of a deceased member of the Legislature.

WHEREAS, Representative ..... died while a member of the House of Representatives of the state of Minnesota and it is necessary that his business with the House and constituents be concluded; and

WHEREAS, his spouse desires to direct the conclusion of his business; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the state of Minnesota that compensation in an amount equal to the compensation that would have been paid to former Representative ..... be paid to his spouse for the services of concluding his business with the House and for his constituents.

BE IT FURTHER RESOLVED that the Chief Clerk of the House shall furnish clerical assistance to Mrs. ..... as necessary to properly conclude Representative .....'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)

A house resolution

relating to the payment of living expenses and mileage for members of the House of Representatives.

WHEREAS, Minnesota Statutes 1984, section 3.099, authorizes the payment of mileage and living expenses of members of the House of Representatives in the amount and for the purposes approved by the House of Representatives; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota:

(1) The chief clerk of the House of Representatives shall issue warrants in payment of living expenses and mileage to each member of the House for each calendar day of the 75th legislature after January 6, 1985. Payments must be made from the legislative expense fund.

(2) The per diem living expenses for each member of the House who has moved from his or her usual place of lodging during a substantial part of the 75th legislature must be calculated at the rate of $.. per day.

(3) The per diem living expenses for each member of the House who has not moved from his or her usual place of lodging during a substantial part of the 75th legislature must be calculated at the rate of $.. per day.

(4) Members of the House who are eligible to be paid the per diem of $.. must, in addition, be reimbursed for travel to the state capitol from their homes at the rate of .. cents per mile, or a greater rate authorized by the commissioner of employee relations for state employees. The reimbursement must not exceed two round trips per session week of the 75th Legislature.

(5) Each member of the House shall certify in writing to the chief clerk, prior to the issuance of the first of the warrants for living expenses, whether the member has moved from his or her 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)

A house resolution

relating to compensating members of the House of Representatives and members-elect who attended freshman orientation.

BE IT RESOLVED by the House of Representatives of the State of Minnesota that those members of the House of Representatives and members-elect who attended the freshman orientation programs held in preparation for the 75th legislature be reimbursed in the same manner and amount as reimbursement is made to members who attend interim meetings of legislative committees.

EXAMPLE - SIMPLE RESOLUTION (Internal operation of the House)

A house resolution

relating to the election of ..... to the House of Representatives.

BE IT RESOLVED by the House of Representatives of the State of Minnesota:

(1) ..... was not legally elected and is not entitled to retain his seat as a Representative of the ..... Legislative District, ... County, in the state House of Representatives, because he violated Minnesota Statutes, section 210A.04, and this violation was deliberate, serious, and material.

(2) House seat .... is vacant and that vacancy is certified to his excellency, the Governor of the State of Minnesota, so that he may issue a writ of election, as provided by law, to fill the vacancy.

EXAMPLE - SIMPLE RESOLUTION (Congratulations to an athletic team)

A Senate resolution

relating to extending congratulations to the ..... Basketball Team from ..... High School for winning the 1985 Class AA Boys State High School Basketball Championship.

WHEREAS, competitive sports in our high schools are helpful in teaching the principles of sportsmanship and fair play to our high school students, thereby contributing to better citizenship; and

WHEREAS, high school sports promote vigorous good health of the participants; and

WHEREAS, the ..... participated in the Class AA Boys Basketball State Tournament as one of ..... teams from among the ..... teams that originally participated in the tournament; and

WHEREAS, the ..... won victories in ... consecutive games over previously unbeaten teams during the 1985 Tournament; and

WHEREAS, the ..... as a team and as individuals together contributed to an outstanding and determined effort to win the final game of the tournament over previously undefeated ..... High School; and

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

WHEREAS, the ..... from ..... won the 1985 Class AA Boys Basketball State Championship; and

WHEREAS, ... High School won the ..... Conference Championship; and

WHEREAS, the ..... finished the year with an outstanding .... and .... won-lost record; and

WHEREAS, ... High School's players and fans have exhibited outstanding sportsmanship and skill throughout the season; NOW, THEREFORE,

BE IT RESOLVED by the Senate of the State of Minnesota that congratulations are extended to the ..... of ..... High School on the accomplishments, skill, and efforts of their basketball team and to ....., the team's coach, and to the team's fans.

BE IT FURTHER RESOLVED that the Secretary of the Senate shall transmit an enrolled copy of this resolution to the principal of ..... High School.

Note that resolutions, especially congratulatory resolutions or resolutions of condolence, use capitalization more freely than bills.

EXAMPLE - SIMPLE RESOLUTION (Athletic honor naming team members)

A house resolution

congratulating ..... High School on winning the 1985 State High School Ice Hockey Championship.

WHEREAS, ...

.....; and

WHEREAS, ...

.....; and

WHEREAS, ...

.....; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota that the ..... High School ..... Team is congratulated for not only winning the ..... championship but also for exemplary sportsmanship, skill, and desire exemplified by the team, its coaches and its fans. In particular, congratulations are extended to the team members: .....; the coach: .....; the assistant coach: .....; and the student managers: ..... and ..... .

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives shall transmit an enrolled copy of this resolution to the principal of ..... High School.

EXAMPLE - SIMPLE RESOLUTION (Nonathletic team congratulations)

A Senate resolution

congratulating ..... High School on winning the Minnesota State High School Debate Tournament Championship.

WHEREAS, on February .... and ...., 1985, ... High School participated in the State High School Debate Tournament against ..... other schools and teams from throughout the state; and

WHEREAS, ... High School won the tournament and the State High School Debate Championship; and

WHEREAS, debate is a highly competitive event requiring long hours of research, practice, and preparation; and

WHEREAS, high intellectual ability, forensic skill, and maturity are required to win debate competition; NOW, THEREFORE,

BE IT RESOLVED by the Senate of the State of Minnesota that ..... High School, and ..... and ....., the team that won the championship, and ....., their coach, are congratulated upon their victory.

BE IT FURTHER RESOLVED that the Secretary of the Senate shall transmit an enrolled copy of this resolution to the principal of ..... High School.

EXAMPLE - SIMPLE RESOLUTION (Congratulations for a personal honor)

A Senate resolution

congratulating ..... for receiving the award of being designated one of America's Ten Outstanding Young Men for 1985.

WHEREAS, ... of ....., Minnesota, has invented and developed numerous products for persons afflicted with cardiac and renal problems; and

WHEREAS, his inventions have led to longer, safer, and more productive lives for persons with cardiac and renal problems and simplified the job of physicians, nurses, and technicians; and

WHEREAS, the manufacture and distribution of the products invented by ..... as well as the development of new products have provided employment for many Minnesotans; and

WHEREAS, ... has also given unselfishly of his time to the programs and youth activities of the Young Men's Christian Association, the Parent Teacher Association, the Tri-Comm Homeowners Association and the United States Power Squadron; and

WHEREAS, despite the heavy demands of work and community activities, he maintains a strong family life including frequent boating and fishing trips with his children; and

WHEREAS, in recognition of his life and work, ... has been selected as one of America's Ten Outstanding Young Men for 1985 by the United States Jaycees; NOW, THEREFORE,

BE IT RESOLVED by the Senate of the State of Minnesota that ..... is congratulated for not only his award as one of America's Ten Outstanding Young Men for 1985 from the United States Jaycees, but also for his work and achievements. It is hoped that he may indefinitely continue his productive work to help humanity.

BE IT FURTHER RESOLVED that the Secretary of the Senate shall transmit an enrolled copy of this resolution to ..... .

EXAMPLE - SIMPLE RESOLUTION (Congratulations for a state honor)

A Senate resolution

congratulating ..... for being named Minnesota Teacher of the Year.

WHEREAS, ... of the city of ..... has been selected by the Minnesota Education Association as Minnesota Teacher of the Year; and

WHEREAS, ... is one of four teachers in final consideration to be chosen National Teacher of the Year; and

WHEREAS, ...'s contribution to her students and her profession have earned the respect and gratitude of the people of Minnesota; NOW, THEREFORE,

BE IT RESOLVED by the Senate of the State of Minnesota that its congratulations are extended to ..... for ..... .

BE IT FURTHER RESOLVED that the Secretary of the Senate shall transmit an enrolled copy of this resolution to ..... .

EXAMPLE - SIMPLE RESOLUTION (Proclaiming a special observance day)

A house resolution

proclaiming Sunday, ... as ..... Day in the State of Minnesota.

WHEREAS, the Congress of the United States, in an effort to raise awareness of the present and future potential of ...., has proclaimed Sunday, ... as ..... Day; and

WHEREAS, the policy of the State of Minnesota is consistent with the goal of the Congress of the United States; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota that Sunday, ... is proclaimed to be ..... Day. All citizens and residents of Minnesota are encouraged to participate and support all state and private agencies in ..... Day activities.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives shall transmit an enrolled copy of this resolution to ..... .

EXAMPLE - SIMPLE RESOLUTION (Expression of condolence)

A house resolution

expressing condolences to the family of the late Senator ..... .

WHEREAS, the House of Representatives has been informed of the death of the Honorable ....., Senator, District .., State of Minnesota; NOW, THEREFORE,

BE IT RESOLVED that the House of Representatives in session assembled this .... day of ....., 1985, does hereby express to the family of ..... its appreciation for her leadership and dedication to the welfare of Minnesotans and extends its heartfelt sympathy in their bereavement.

BE IT FURTHER RESOLVED that a committee of ten members of the House shall be appointed to represent the House of Representatives at the funeral of ..... .

EXAMPLE - SIMPLE RESOLUTION (Eulogizing a person's life)

A house resolution

eulogizing ..... and commemorating the exemplary nature of his life and work.

WHEREAS, ... was born on his father's farm in Havana Township, Steele County, Minnesota, on August 6, 1891; and

WHEREAS, ... attended the country schools in Steele County, graduated from Owatonna High School in 1908, and with his father and brother operated the family farm for many years; and

WHEREAS, ... was elected to the House of Representatives of the State of Minnesota and served there continuously from 1935 until he chose not to stand for reelection in 1968; and

WHEREAS, during his seventeen terms in the House of Representatives he served eight terms on the tax committee including one as its chair; five terms on the education committee including two as its chair; nine terms as a member of the civil administration committee including four as its chair; three terms on the markets and marketing committee including one as its chair; twelve terms on the insurance committee; seven terms as a member of the highways committee; six terms as a member of the rules committee; three terms as a member of the employee's compensation committee; five terms as a member of the appropriations committee; and for a single term at various times of his career as a member of fourteen other committees; and

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

WHEREAS, from 1949 through 1953, ... was elected to and served as Speaker of the House of Representatives; and

WHEREAS, ... was principally responsible for the 1967 tax reform bill which provided for the state sales tax; and

WHEREAS, he was the principal author of many other laws that benefited the people of the State of Minnesota and of Steele County; and

WHEREAS, after retirement from the Legislature, he continued to work for the betterment of the people of the State of Minnesota; and

WHEREAS, ... died on April 5, 1984; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota that it commends to the people of the State of Minnesota the record of ..... as a life, work, and spirit worth emulation. It extends its condolences to his wife, ..., to his son and daughter, to his godson, to his sister and two brothers, and to all the people of Steele County who knew him.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives shall transmit an enrolled copy of this resolution to ..... .

EXAMPLE - CONCURRENT RESOLUTION (Establishing a study commission)

A Senate concurrent resolution

establishing a commission on ..... .

WHEREAS, the Legislature is concerned about .....

.....; NOW, THEREFORE,

BE IT RESOLVED by the Senate of the State of Minnesota, the House of Representatives concurring therein:

(1) A commission on ..... is established. The commission shall be composed of ..... .

.....

The members shall be appointed by..... .

(2) The commission report to the Legislature on its first day in session in 1985 recommendations on:

(a) .....

(b) .....

(c) .....

(d) .....

(3) The expenses of the commission shall be divided equally between the Senate and the House of Representatives and paid from the Legislative expense funds of the Senate and House of Representatives following approval of a budget for that purpose by the committee on Rules and Administration of the Senate and the committee on Rules and Legislative Administration of the House of Representatives.

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 could have been 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 (Joint operation of House and Senate)

A Senate concurrent resolution

relating to the adoption of temporary joint rules.

BE IT RESOLVED, by the Senate of the State of Minnesota, the House of Representatives concurring therein:

The Joint Rules of the Senate and the House of Representatives for the .... session are adopted as the temporary joint rules of the .... session, to be effective until the adoption of permanent joint rules by the Senate and the House of Representatives.

The rules referred to above are amended as follows:

..... .

EXAMPLE - CONCURRENT RESOLUTION (Joint convention of both houses)

A house concurrent resolution

providing for a joint convention of the Senate and the House of Representatives to elect members of the Board of Regents of the University of Minnesota.

BE IT RESOLVED by the House of Representatives, the Senate concurring:

(1) The House of Representatives and the Senate shall meet in joint convention on ....., ... at ..... in the chamber of the House of Representatives to elect members to the Board of Regents of the University of Minnesota.

(2) The Education Committee of the Senate and the Higher Education Committee of the House of Representatives in a joint meeting shall prepare nominations and report them at the meeting of the joint convention.

EXAMPLE - CONCURRENT RESOLUTION (Adjournment of legislature)

A house concurrent resolution

relating to adjournment until 1986.

BE IT RESOLVED by the House of Representatives, the Senate concurring:

(1) Upon its adjournment ...., 1985, the House of Representatives may set its next day of meeting for ...., 1986 at 12:00 noon, and the Senate may set its next day of meeting for ...., 1986, at 12:00 noon.

(2) By the adoption of this resolution, each house consents to adjournment of the other house for more than three days.

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

A resolution

memorializing the President and Congress to

....

WHEREAS, the United States .....

.....

.....; and

WHEREAS, the several states have .....

.....

.....; and

WHEREAS, these requirements impede .....

.....; and

WHEREAS, it would be of great value to .....

.....; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that Congress should speedily enact legislation to .....

.....

..... .

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota shall transmit enrolled copies of this memorial to the President of the United States, the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives and to Minnesota's Senators and Representatives in Congress.

EXAMPLE - MEMORIAL RESOLUTION (Applying for a constitutional convention)

A resolution

memorializing Congress; applying for a constitutional convention to propose an amendment to the Constitution to provide that ..... .

WHEREAS, the people of Minnesota as represented by their Legislature find that .....; and

WHEREAS, the United States ..... .

.....; and

WHEREAS, under Article V of the Constitution of the United States, upon the application of the legislatures of two-thirds of the several states, the Congress shall call a constitutional convention for the purpose of proposing amendments to the Constitution; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that it applies to the Congress of the United States for a constitutional convention for the purpose of proposing an amendment to the Constitution of the United States that provides that ..... .

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota shall transmit enrolled copies of this memorial to the Speaker and the Chief Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, the United States Secretary of State, the presiding officers of both houses of the legislatures of each of the other states of the Union, and to Minnesota's Senators and Representatives in Congress.

EXAMPLE - MEMORIAL RESOLUTION (Requesting Congress to propose an amendment to the Constitution)

A resolution

memoralizing Congress to propose an amendment to the United States Constitution to
..... .
..... .

WHEREAS, ...

.....; and

WHEREAS, ...

.....; and

WHEREAS, under Article V of the Constitution of the United States, amendments to the United States Constitution may be proposed by the Congress whenever two-thirds of both houses deem it necessary; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that it proposes to the Congress of the United States that procedures be instituted in the Congress to add a new Article to the Constitution of the United States, and that the Legislature of the State of Minnesota requests the Congress to prepare and submit to the several states an amendment to the Constitution of the United States requiring .....

..... .

BE IT FURTHER RESOLVED that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the United States Constitution.

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota shall transmit enrolled copies of this memorial to the Speaker and the Chief Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, the presiding officers of both houses of the legislature of each of the other States in the Union, and to Minnesota's Senators and Representatives in Congress.

EXAMPLE - MEMORIAL RESOLUTION (Ratifying an amendment to the United States Constitution)

A resolution

memoralizing Congress of ratification of a proposed amendment to the Constitution of the United States of America relating to .....
.....

WHEREAS, both houses of the Congress of the United States proposed an amendment to the Constitution of the United States that reads as follows:

"ARTICLE ....

"Section 1. .....
.....
.....

"Sec. 2. .....
.....

"Sec. 3. Congress may enforce, by appropriate legislation, the provisions of this article"; and

WHEREAS, Article V of the Constitution of the United States provides that amendments to the Constitution proposed by Congress become effective "when ratified by the legislatures of three-fourths of the several states"; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that the proposed amendment to the Constitution of the United States is ratified by the Legislature of the State of Minnesota.

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota shall transmit enrolled copies of this memorial to the Administrator of the General Services Administration.

EXAMPLE - JOINT RESOLUTION (Eulogizing a person's life)

A joint resolution

eulogizing ..... for the exemplary nature of his life and work.

WHEREAS, on the .... of ..... the Honorable ..... of ..... will achieve the venerable age of ..; and

WHEREAS, his long and vigorous life stands as a memorable symbol of devoted and broad-visioned public service; and

WHEREAS, over a half century ago in ...., he was elected a member of the House of Representatives of the State of Minnesota, and ... years later was elected a member of the Senate of the State of Minnesota, in both of which he served with eminence and distinction; and

WHEREAS, in .... he was named ...., and has through the years that followed devoted himself unceasingly to .....; and

WHEREAS, failing health, though no weariness of spirit, now prompts him to submit his resignation and step aside so that the burdens of ..... responsibility may be carried on younger shoulders; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives and the Senate of the State of Minnesota in joint convention that they record their admiration, their sense of gratitude, and their respect for the manifold contributions made to the welfare and the progress of the State of Minnesota and to ..... by the Honorable ..... .

BE IT FURTHER RESOLVED that there is extended to the Honorable ..... the warmest of greetings and the kindest of wishes as he approaches another milestone in the notable career that has in truth made him, for the state and for the ....., "a builder of the name."

BE IT FURTHER RESOLVED that the secretary of the joint convention is directed to enroll a copy of this resolution and that it be authenticated by his signature and that of the President of the joint convention and that it be presented to 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. Resolutions in joint convention are not common.

EXAMPLE - MOTION (House form)

..... moves that the Rules of the House of Representatives for the 75th Legislature be the Rules of the 74th Legislature, but amended as follows:

(1) Rule 4.10 is amended to read:

4.10 [PRESENTATION OF PETITIONS.] Any petition, memorial or other paper formally presented to the House for its consideration shall include the name of the member introducing it and a brief description of its contents and shall be presented by the Speaker, who shall state briefly its contents.

(2) Rule 5.1 is amended to read:

5.1 [BILL FORM.] No bill or resolution shall be ~~introduced~~ voted upon 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 of a bill as to form shall be endorsed on the ~~bill~~ bill's cover by the Revisor of Statutes.

The Senate rules are adopted by resolution.

7

Amendments

7.1 Introduction

There are only a few rules to remember when drafting amendments. Senate Rule 38 expresses the basic requirements:

"In drawing an amendment to a bill or resolution reference shall be made therein, first to the number of the bill, then to the page, and then to the line or lines from which matter is to be stricken or in which new matter is to be inserted."

The House of Representatives has no formal rule similar to Senate Rule 38 but follows the same rule in practice.

In drawing an amendment, a person must know what bill is being amended, what version of the bill is the most current, and where in the bill the amendment is being inserted.

***** DRAW THE AMENDMENT TO THE RIGHT DOCUMENT.**

Once these facts are determined the drafter has two basic jobs to perform. First, the drafter must determine whether there is anything *in the bill* being amended that affects the amendment. For example, if the amendment is a new section of law, does the bill being amended contain an inappropriate effective date for that new section? If so, this would require further amendment of the bill. Second, the drafter must determine whether there is anything *in the amendment* that requires other changes in the bill. For example, does some change in terminology in the amendment require changes in the bill to make terminology consistent?

The drafter must also ensure that the amendment does what the drafter intends. Close reading of the bill being amended will ensure that this happens.

In the Minnesota legislature it is extremely rare for an amendment to fail for technical reasons. Both in committee and on the floor of each house, staff and other legislators will assist a legislator to ensure that an amendment fits into a bill and makes sense so that the substance of the amendment can be voted on. The House and Senate desks may add information to the amendment paper to assist their procedures or ask the drafter to do so.

After the amendment is drafted, the drafter should review it to ensure that it fits into the bill being amended and that persons unfamiliar with the amendment could fit it into the bill.

7.2 The Amending Document

Amendments can be proposed by a motion in committee, by a committee report, by a motion from the floor, or by a conference committee report. The stage of the legislative process determines the formal language of 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.

**** DRAW THE AMENDMENT IN A FAMILIAR FORM.**

(a) Motion in Committee

This is the most common document by which amendments are proposed. When a bill is proposed to be amended in committee, 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: "M..... moves to amend S.F. No. .... as follows:" In the House, the title "Mr.," "Mrs.," "Miss," or "Ms.," is omitted from the language. The blank space is to be filled with the member's signature when the amendment is offered. For both the Senate and House, the text of the amendment then follows.

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The text may be in the form of a "page and line" or a "delete everything" amendment. Information is sometimes placed in the upper right hand corner on amendments in committee if a legislator is offering more than one amendment to a bill at a 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 to locate 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 of the amendment.

(b) Committee Reports

After a bill is heard by a committee, the committee will report its recommendation to the full house. The report will include the committee's recommended amendments.

The committee report is in a standard form that is usually completed by the committee's secretary.

For examples of committee reports containing amendments, see the examples at the end of this chapter.

(c) Floor Amendments

A motion to amend a bill on the floor is in the same format as a motion to amend in a committee.

For example:

```
1       ..............  moves to amend H.F. No. .... as follows:
```

For examples of floor amendments see the end of this chapter.

(d) Conference Committee Reports

A conference committee report need not recommend any further amendments to the bill. Instead, it may recommend that the house of origin concur in the amendments adopted by the other house, or that the house that adopted amendments recede from its amendments. Amendments previously adopted should normally be concurred in or receded from in their entirety because to concur in some amendments and recede from others may cause confusion. If neither house will yield completely to the other's position, then the amendments previously adopted must either be concurred in or receded from, and further amendments agreed upon. For examples of conference committee reports, see the end of this chapter.

***** THE CONFERENCE COMMITTEE REPORT MUST ACCOUNT FOR THE MATTERS IN DISPUTE.**

7.3 The Document Being Amended

(a) Identifying the Document Being Amended

The drafter must carefully identify, and get a copy of, the document being amended. Specifically, is the original bill being amended or the first or a subsequent engrossment of the bill? If an engrossment, is it an official or unofficial engrossment? Is the amendment to the bill itself, or to a pending amendment to the bill? The drafter looks for the most current version of the bill, since the amendments when adopted will be engrossed into it.

In most cases, only the original bill or its latest official engrossment is subject to amendment. Only the house where the bill originates can order amendments to be officially engrossed into a bill. Amendments recommended by a committee are not officially engrossed into the bill until after the amendments have been adopted by that house.

Special problems occur when amendments have been adopted but not officially engrossed into the bill.

(b) Bills Amended in Subcommittee

(1) *Subcommittee Reports.* If a bill has been amended in a subcommittee, the drafter of an amendment for the full committee must determine whether the amendment will affect any parts of the bill that have been affected by the subcommittee amendments. If not, the amendment can be drafted to the original bill without reference to the subcommittee amendments.

If the amendment will affect the subcommittee amendments, the drafter should refer to them and not just to the original bill.

For example:

```
1           M..... moves to amend the amendments to S.F.
2       No. ..... recommended by the Subcommittee on ..... as
3       follows:
```

If the amendment will affect both the original bill and the subcommittee amendments, the new amendment should be drafted to the subcommittee amendments or to the bill as amended by the subcommittee. The new amendment will both make the proposed changes in the subcommittee amendments and also add to them the proposed changes in the remainder of the bill. Frequently a "delete everything" amendment to the bill in full committee is the most efficient drafting method.

(2) *Unofficial Engrossments.* If the amendments proposed by a subcommittee are so numerous or complex that the bill as amended cannot be readily comprehended without engrossing the amendments into the bill, the subcommittee report should probably be in the form of a "delete everything" amendment. This is even more true when additional amendments are likely to be offered in the full committee. Those amendments, if adopted, can simply be engrossed into the "delete everything" amendment for the committee report.

If the subcommittee report is not in the form of a "delete everything" amendment and an unofficial engrossment has been prepared, the drafter should first inquire whether the committee chair has directed that all amendments refer to the unofficial engrossment. If so, the drafter has no

choice. If not, before referring to the unofficial engrossment, the drafter should first consider referring either to the bill or to the amendments recommended by the subcommittee. If either of these methods can be used without causing confusion, they should be preferred to referring to the unofficial engrossment.

The disadvantage of drawing amendments to an unofficial engrossment becomes apparent once the amendments have been adopted. The committee report must be in the form of one series of amendments to the original bill or engrossment that was referred to the committee. If the committee has adopted one series of amendments to that bill as recommended by a subcommittee, and another series of amendments to the bill as amended by the subcommittee (the unofficial engrossment), either the first or the second series of amendments must be redrawn to prepare the committee report depending on whether the committee report will be a "delete everything" or a "page and line" amendment. This consumes valuable time and creates an additional risk of error.

(c) Bills from the Other House

(1) *Engrossing of Amendments.* Only the house of origin can officially engross amendments into its bill. The other house can adopt an amendment, but the amendment must be concurred in by the house of origin before it is officially engrossed into the bill. Some complexities are created when, at different stages of the amending house's process, the amending house adopts a series of amendments to a bill from the other house. Serial amendments may be created when a bill originating in the other house is, in the amending house, first amended by a committee report and then amended one or more times on the floor. The procedure for amendments to bills from the other house varies somewhat between the Senate and House.

(2) *Committee Reports.* In the Senate, when a House bill 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 sent to the Senate by the House, and the Senate committee's amendment as shown in the committee report. The drafter of a proposed Senate floor amendment to a House bill must consider how the proposed floor amendment will amend the bill, the previously adopted committee amendment, or both.

If a proposed floor amendment affects an area of the bill not affected by a previously adopted committee amendment, the drafter may use the usual opening language to propose a new amendment.

If 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 amend a proposed Senate committee amendment to a House bill would be:

```
1           M.............. moves to amend the amendment placed
2       on H.F. No. .... by the Committee on ....., adopted by
3       the Senate ....., 1985, as follows:
```

If the drafter determines that a requested amendment will affect both

the bill and also a previously adopted committee amendment, the new amendment should only be drafted to the previously adopted amendment. The new amendment will both propose changes in the committee amendment and also add to the committee amendment the proposed changes in the remainder of the bill. A "delete everything" amendment may be a more efficient drafting method if the changes are very numerous or confusing.

(3) *Unofficial Engrossments.* If the amendments proposed by a Senate committee to a House bill are complex, the chair, the committee, or the Senate may exercise their right under Senate Rule 41 to require the committee amendments to be unofficially engrossed. If the Senate has prepared an unofficial engrossment of a House bill, floor amendments are usually drafted to that unofficial engrossment.

The drafting of a floor amendment to an unofficial engrossment follows the usual format except that reference must be made to the fact that the document being amended is the unofficial engrossment. For example:

```
1           M.............. moves to amend H.F. No. ..., the
2       unofficial engrossment, as follows:
```

In the House, committee amendments to Senate bills are usually unofficially engrossed. When the Senate bill 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 must be drafted to the House unofficial engrossment.

(4) *Rule 49 Amendments.* The Senate operating under its substitution rule, rule 49, often amends a House bill to make it identical to the Senate bill and then proceeds with the House bill in substitution for the Senate bill. This is called a rule 49 amendment. Although amendments are then made to the House file, the "page and line" citations remain those of the Senate file. To visualize what happens, imagine that the bill remains the same but that it has been given a House file number.

The rule 49 amendment is not in "page and line" form, but rather is a one-sentence "delete everything" amendment to substitute all the Senate language and title. A copy of the form of the rule 49 amendment is included in the examples at the end of this chapter.

An example of the proper opening language to amend a House bill that has been amended by the Senate under rule 49 is:

```
1           M.............. moves to amend H.F. No. ...., as
2       amended pursuant to Rule 49, adopted by the Senate
3       ....., 1985, as follows:

4           (The text of the amended House File is identical to
5       S.F. No. ....)
```

If the author or another senator wants a "page and line" amendment prepared to show the exact differences in text between the Senate and House versions, the senator will ask the revisor of statutes to prepare it. The senator should tell the revisor whether the amendment should be drawn to the House File's language, as was the practice with rule 49 amendments in the past, or to

the companion Senate File's language. If the senator wants only a summary of the differences, the senator may request that from Senate Counsel and Research.

When the House File is considered on General Orders, if the Senate author wants to yield to the House position and strike the rule 49 amendment, the author will want to be prepared to explain to the Senate the differences between the Senate and House versions. This may involve only a summary of the differences, or both a summary and a "page and line" amendment.

The motion to strike the rule 49 amendment is as follows:

```
1          M.............. moved that the amendment made to H.F.
2       No. ... by the Committee on Rules and Administration in the
3       report adopted ....., 1985, pursuant to Rule 49, be
4       stricken.
```

7.4 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 repair and improve the bill item by item by means of individual amendments. The second is to scrap the entire bill and propose a wholesale substitute for it (a "delete everything" amendment). 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) "Page and Line" Amendments

Amendments that change a bill by making a number of item-by-item changes are 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 ensure that these amendments are correct, a drafter should utilize only the forms set out below.

If many changes are being proposed, "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.

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:

(a) deleting (removing) text from a bill;

(b) striking (adding cancel marks to the words, for example: "[redacted]") text in a bill;

(c) reinstating (removing the cancel marks) text in a bill;

(d) inserting new text into a bill;

(e) renumbering sections, subdivisions, paragraphs, clauses, or proposed coding; and

(f) 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 proceed by page and line number with amendments on page 1 coming before those on page 2 and so on. The only exception is an operation that amends the title. An operation that amends the title is always the last operation.

Second, the amendment should contain one of the six operational command words. Two or more may be used in one instruction if the instruction will be clear. The operations are:

"delete"
"strike"
"reinstate"
"insert"
"renumber" (or "reletter," if appropriate)
"amend the title as follows:" (or "delete the title and insert:")

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, 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, to line 17."

(3) *Amendments that delete.* Amendments that delete operate to have specified text removed from the bill amended. Proper occasions to use these amendments are as follows:

(a) Delete a page ("Delete page 2");

(b) Delete multiple pages in numerical order ("Delete pages 2 to 4");

(c) Delete a line ("Page 2, delete line 1");

(d) Delete multiple lines in numerical order ("Page 2, delete lines 1 to 4");

(e) Delete all the words, that are not current law, following an indicated word, figure, or punctuation mark in a stated line ("Page 2, in line 2, delete everything after "university" ");

(f) Delete all the words, that are not current law, 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" ");

(g) Delete specified words, figures, or punctuation marks, that are not current law, in a line ("Page 2, line 2, delete "center or other" ");

(h) Delete specific words, figures, or punctuation marks, that are not current law, extending over not more than two lines ("Page 2, lines 4 and 5, delete "shall not undertake the activities when the operator knows" ");

(i) 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");

(j) Delete a section ("Delete section 4"); and

(k) Delete multiple sections in 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.

When a punctuation mark, unaccompanied by text, is being amended, the drafter should express the mark in words rather than by showing the mark itself ("Page 1, line 17, after "occurred" delete the comma").

The deletion operation must never be used to change text in an existing law. In these cases, the "striking" operation must be utilized.

(4) *Amendments that strike.* Amendments that strike add cancellation marks to specified text. The effect is to show that words that currently are part of the law are to be removed from the law.

Drafters can decide when and how to use amendments that strike by applying the rules that are set out in section 6.4(b)(3) for amendments that delete. However, the drafter must be sure that all words affected are existing law.

(5) *Amendments that insert.* Amendments that insert operate to add additional words to a bill. Care must be exercised so that the amendment shows whether or not the words to be inserted are underlined. If the words to be added to a bill are new law, the words are underlined. If, however, the words to be added are already law or change the title, the words are not underlined.

Valid types of amendments that insert are as follows:

(a) Insert one or more numbered subdivisions, paragraphs, or clauses after or before a line (Page 2, after line 2, insert:);

(b) 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 ", college");

(c) Insert one or more sections after or before a section in a committee report printed in the journal (After section 2 insert:);

(d) 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 "university" and insert "college");

(e) 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 "Ahigh school principal may"); and

(f) 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 ", college and high school").

When the amending operation shows the words or figures affected by the operation, they must be enclosed in quotation marks.

When the language to be inserted is brief, the language to be inserted is contained within the amendment operation as shown above in example (b) without a colon. When, however, the material to be inserted is a paragraph, series of paragraphs, or a larger element, the quoted material begins on a new line. A colon ends the introductory portion of the amendment instruction. This can occur in the above examples (a) and (d) to (g).

Amendments that delete and insert 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 language to be inserted is incorrectly stated or improperly underlined, the amendment is defective and inadequate to amend the text.

Amendments that strike and insert 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. 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.

(6) *Amendments that reinstate.* Amendments that reinstate 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.

Proper occasions to use these amendments are as follows:

(a) Reinstate specified stricken text in a line (Page 1, line 8, reinstate the stricken "college");

(b) Reinstate specified stricken text in two lines (Page 1, lines 8 and 9, reinstate the stricken "university, college and high school");

(c) Reinstate all stricken text following an indicated word, figure, or punctuation mark in a stated line and any number of additional lines in numerical order (Page 4, lines 12 to 16, reinstate everything after "indication");

(d) Reinstate all stricken text in a line and any number of additional lines (Page 2, lines 17 to 21, reinstate the stricken language);

(e) Reinstate an entirely stricken line (Page 1, reinstate line 4); and

(f) Reinstate multiple entirely stricken lines in 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. (Example: Reinstate the stricken "commissioner").

(7) *Amendments that renumber.* An amendment that renumbers is common and follows amendments to the text of the paragraph, subdivision, section, or bill to be renumbered. The standard wording is "Renumber the clauses in sequence", "Reletter the paragraphs in sequence", "Renumber the subdivisions in sequence", "Renumber the sections in sequence", or "Renumber the proposed coding in sequence."

(8) *Amendments to the title.* Amendments to the title of the bill are necessary when operations in the amendment change either the subject or an object of the bill or the list of statutory provisions amended or repealed, or both. Amendments to the title are amendments that delete, insert, or both. Amendments that strike or reinstate do not 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 conform to any other changes made that affect those citations.

(b) "Delete Everything" Amendments

Amendments that are wholesale substitutes for the bills they amend are virtually 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 supplies all the parts of a bill, all rules and procedures set out in this manual for the drafting of bills apply. For examples of "delete everything" amendments, see the examples at the end of this chapter.

"Delete everything" amendments are commonly used 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.

When drafting "delete everything" amendments, the drafter must be careful to always say that a bill is being amended by deleting everything after the enacting clause and not just that the bill is deleted and something else substituted. 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" amendments. The courts, however, have not sustained these claims when a bill has retained the identity of a single file number throughout the legislative process during which it was amended, even if by a wholesale change in the text.

(c) "Partial Delete" Amendments

A "partial delete" amendment represents a middle ground between a "delete everything" and a "page and line" amendment. It is used when a portion of the bill is substantially rewritten but the basic bill still remains. It avoids either the necessity of long and complex "page and line" amendments when only a portion of a bill is changed, or using a "delete everything" amendment when "everything" is not changed.

An example of a "partial delete" amendment would be the deletion of pages 8 and 9 of a 20 page bill and substituting revised text. If a "page and line" amendment is used, its effect may be incomprehensible without the benefit of an engrossment. If a "delete everything" amendment is used, it may give the impression that the whole bill is changed. In addition, "delete everything" amendments waste money in the printing of amendments, engrossed bills, and journals.

The form of a "partial delete" amendment is that of a "page and line" amendment except that nothing smaller than a bill section or bill page is amended. It combines both the "delete" and "insert" operations as otherwise permitted by a "page and line" amendment. Unlike the "delete everything" and "page and line" amendments, the text of existing law may be affected. However, on the insertion side of the "partial delete" amendment, all of the existing law must be accounted for that is shown in the original text.

The proper occasions to use a "partial delete" amendment are as follows:

(a) delete a page and insert a new page (Example: "Delete page 9 and insert");

(b) delete multiple pages in increasing numerical order and insert new pages (Example: "Delete pages 9 to 14 and insert");

(c) delete a section and insert a new section (Example: "Delete section 4 and insert");

(d) delete multiple sections in increasing numerical order and insert new sections (Example: "Delete sections 4 to 9 and insert"); and

(e) delete a page or more of text between designated page and line numbers and insert new text (Example: "Delete page 4, line 9, to page 7, line 34, and insert").

When using inclusive references, the deletion includes both the page and line or section which starts the reference and the page or section and line which ends the reference. When using a "partial delete" amendment affecting multiple sections, it is best to use page and line references rather than section references. If section references are used, whether the beginning and ending references are included can be misunderstood by persons not familiar with these rules. Little chance of confusion exists when the page and line numbers are used.

EXAMPLE - MOTION IN COMMITTEE (Senate form)

Jones No. 1

M..... moves to amend H.F. No. 1000 as follows:

Page 1, line 19, after the period insert "A member of the legislature shall not serve on the subcommittee."

EXAMPLE - MOTION IN COMMITTEE (House form)

Jones No. 1

..... moves to amend H.F. No. 1000 as follows:

Page 1, line 19, after the period insert "A member of the legislature shall not serve on the subcommittee."

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

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

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

S.F. No. 170, A bill for an act relating to political subdivisions; regulating certain interests in contracts by public officials; amending Minnesota Statutes 1984, section 471.88, subdivisions 2, 5, and 8.

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

Page 2, line 11, delete "$3,000" and insert "$5,000"

Page 2, line 16, delete "$3,000" and insert "$2,000"

Page 2, after line 18, insert:

"Sec. 4. [EFFECTIVE DATE.]

This act is effective the day following final enactment."

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

.....
(Committee Chairman)

January 19, 1985.....
(Date of Committee recommendation)

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

EXAMPLE - SENATE COMMITTEE REPORT (Delete everything amendment with page and line title amendment)

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

S.F. No. 267, A bill for an act relating to taxation; defining "common carrier" for certain purposes in connection with the sales and use tax; amending Minnesota Statutes 1984, section 297A.01, by adding a subdivision.

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

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 1984, section 297A.211, subdivision 1, is amended to read:

Subdivision 1. Every person, as defined in this chapter, who is engaged in ~~the transportation of property as a common carrier in interstate commerce~~ interstate for-hire transportation of tangible personal property by motor vehicle may at their option, under rules and regulations prescribed by the commissioner, register as retailers and pay the taxes imposed by this chapter in accordance with this section. Persons referred to by this subdivision are:

(1) persons possessing a certificate or permit authorizing for-hire transportation of property from the Interstate Commerce Commission or the public utilities commission; or

(2) persons transporting commodities defined as "exempt" in for-hire transportation in interstate commerce; or

(3) persons who, under contracts with persons described in clause (1) or (2), transport tangible personal property in interstate commerce.

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

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

Sec. 2. [EFFECTIVE DATE.]

This act is effective the day following final enactment."

Amend the title as follows:

Page 1, line 5, delete "297A.01, by adding a subdivision" and insert "297A.211, subdivision 1"

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

.....
(Committee Chairman)

January 19, 1985.....
(Date of Committee recommendation)

EXAMPLE - SENATE COMMITTEE REPORT (Rule 49 amendment)

Mr. Moe, R.D. from the Committee on Rules and Administration, to which was referred

H.F. No. 1561 for comparison with companion Senate File, reports the following House File was found not identical with companion Senate File as follows:

GENERAL ORDERS		CONSENT CALENDAR		CALENDAR	
H.F. No.	S.F. No.	H.F. No.	S.F. No.	H.F. No.	S.F. No.
1561	1417				

Pursuant to Rule 49, the Committee on Rules and Administration recommends that H.F. No. 1561 be amended as follows:

Delete all the language after the enacting clause of H.F. No. 1561 and insert the language after the enacting clause of S.F. No. 1417, the first engrossment; further, delete the title of H.F. No. 1561 and insert the title of S.F. No. 1417, the first engrossment.

And when so amended H.F. No. 1561 will be identical to S.F. No. 1417, and further recommends that H.F. No. 1561 be given its second reading and substituted for S.F. No. 1417, and that the Senate File be indefinitely postponed.

Pursuant to Rule 49, this report was prepared and submitted by the Secretary of the Senate on behalf of the Committee on Rules and Administration. Amendments adopted. Report adopted.

Although Senate Rule 49 requires this report to be prepared and submitted by the secretary of the senate, it is drafted by the revisor of statutes.

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

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

H.F. No. 2224, A bill for an act relating to the city of Nashwauk; increasing police relief pensions and widows' benefits; amending Laws 1943, chapter 196, sections 4, as amended; and 8.

Reported the same back with the following amendments:

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

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

With the recommendation that when so amended the bill pass.

This Committee action taken ....., 19..

....., Chairman

EXAMPLE - HOUSE COMMITTEE REPORT (Delete everything amendment with a delete everything title amendment)

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

H.F. No. 2451, A bill for an act relating to elections; amending Minnesota Statutes 1984, section 202A.15, by adding a subdivision.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

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

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

Sec. 2. Minnesota Statutes 1984, section 202A.65, subdivision 3, is amended to read:

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

Sec. 3. [EFFECTIVE DATE.]

This act is effective the day following final enactment."

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

Delete the title and insert:

"A bill for an act

relating to elections; making public facilities available for precinct caucuses; fixing the charge for their use; providing for the filing of certain nominating petitions; amending Minnesota Statutes 1984, section 202A.65, subdivision 3; proposing new law coded in Minnesota Statutes, chapter 202A."

With the recommendation that when so amended the bill pass.

This Committee action taken ....., 19..

....., Chairman

EXAMPLE - SENATE FLOOR AMENDMENT (Page and line amendment; page and line title amendment)

M..... moves to amend S.F. No. 1234, as follows:

Page 1, line 10, after the period insert "These licenses do not expire until January 1, 1987."

Amend the title as follows:

Page 1, line 3, after "valid" insert "; extending the expiration date of certain licenses"

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

M..... moves to amend S.F. No. 1286, as follows:

Delete everything after the enacting clause and insert:

"Section 1. [GENERAL OBLIGATION NURSING HOME BONDS.]

Subdivision 1. [AUTHORIZATION.] The board of commissioners of Chisago county may by resolution sell and issue general obligation bonds of the county in an amount up to $1,500,000 to finance the acquistion and betterment of additional facilities for the county nursing home, comprising apartment units.

Subd. 2. [ADMINISTRATION AND RENTAL OF APARTMENT UNITS.] The apartment units must be constructed in close proximity to existing county nursing home facilities and administered together with the existing facilities as part of an overall program for the care of aged and infirm persons. The board of commissioners may rent the apartment units to persons applying for entrance to the county nursing home, or to other elderly persons of low and moderate income who may require use of nursing home facilities, upon terms and conditions the board deems advisable.

Subd. 3. [ELIGIBILITY.] The county may by ordinance adopt regulations establishing age, health, and income eligibility requirements for the rental of the apartment units. The regulations may provide different rental terms and conditions for persons of different ages, health conditions, and incomes.

Subd. 4. [BOND SECURITY; REFERENDUM PETITION.] The bonds must be issued and secured in accordance with Minnesota Statutes, sections 445.45 to 445.50 and chapter 475, except that in authorizing the bonds the board of commissioners shall

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

(a) adopt an initial resolution stating the amount, purpose and, in general, the security to be provided for the bonds; and

(b) publish the resolution once each week for two consecutive weeks in the official newspaper.

The bonds may be issued without the submission of the question of their issuance to the electors unless within 30 days after the second publication of the resolution a petition requesting the election signed by more than ten percent of the qualified electors voting in the county at the last general election is filed with the county auditor. If a petition is filed, bonds must not be issued under this subdivision unless authorized by a majority of the electors voting on the question."

Delete the title and insert:

"A bill for an act

relating to Chisago county; authorizing the issuance of general obligation bonds to finance the cost of facilities for the county nursing home; providing for the administration and rental of the facilities."

Entire amendment prepared by the drafter.

EXAMPLE - SENATE FLOOR AMENDMENT (House file amended by Rule 49 amendment)

```
1       M..... moves to amend H.F. No. 1991, as amended
2  pursuant to Rule 49, adopted by the Senate March 29, 1985, as
3  follows:

4       (The text of the amended House File is identical to S.F. No.
5  2084.)

6       Page 4, lines 12 to 20, delete the new language and

7  reinstate the stricken language
```

EXAMPLE - SENATE FLOOR MOTION (Striking Rule 49 amendment)

```
1       M..... moves that the amendment made to H.F. No.
2  1561 by the Committee on Rules and Administration in the report
3  adopted March 29, 1985, pursuant to Rule 49, be stricken.
```

EXAMPLE - SENATE FLOOR AMENDMENT (House file as amended by Senate committee)

M..... moves to amend the amendment placed on H.F. No: 1761 by the Committee on Taxes and Tax Laws, adopted by the Senate April 14, 1984, as follows:

Delete the amendment to page 2, line 12

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 ensure coordination of the new amendment with the old one.

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 - SENATE FLOOR AMENDMENT (Unofficial engrossment)

M..... moves to amend H.F. No. 1616, the unofficial engrossment, as follows:

Page 1, line 17, strike "four" and insert "six"

Amend the title as follows:

Page 1, line 4, after the semicolon insert "increasing the number of citizen board members;"

In the opening language, note the reference to the unofficial engrossment when that is being amended.

Note the numbering of lines to make subsequent amendments easier.

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
5       Amend the title as follows:
6       Page 1, line 36, delete "60A.13,"
7       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 commerce, 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.  A bank desiring to establish a detached facility shall
10 follow the approval procedure prescribed in Minnesota Statutes,
11 section 47.54.  The establishment of a detached facility in the
12 town of Leota is subject to Minnesota Statutes, sections 47.51
13 to 47.57."
14
15      Amend the title as follows:
16      Page 1, line 2, after "to" insert "banking;"
17      Page 1, line 7, after the semicolon insert "authorizing the
18 establishment of a detached banking facility in the town of
19 Leota in Nobles county;"
```

EXAMPLE - HOUSE FLOOR AMENDMENT (Unofficial engrossment)

```
1       ..... moves to amend S.F. No. 1616, the unofficial
2  engrossment, as follows:
3       Page 1, line 17, strike "four" and insert "six"
4
5       Amend the title as follows:
6       Page 1, line 4, after the semicolon insert "increasing the
7  number of citizen board members;"
```

EXAMPLE - AMENDMENT TO AMENDMENT (Simple)

M..... moves to amend the Jones amendment to H.F. No. 182, proposed to the Senate on January 15, 1985, as follows:

Page 1, line 11, delete "quality of life" and insert "the amount of energy essential to residential customers"

Page 1, line 13, after "encouraged" insert "and the quality of life protected"

Page 2, delete line 1

Page 2, line 3, reinstate the stricken "revenue"

Page 2, line 7, strike "and any lost revenues"

In the opening language, note the precise identification of the amendment by sponsor, bill number, and date of proposal.

Note that all lines are numbered.

EXAMPLE - HOUSE CONFERENCE COMMITTEE REPORT (House concurring in the Senate amendment)

CONFERENCE COMMITTEE REPORT ON H.F. NO. 317

A bill for an act

relating to highway traffic regulations; prescribing penalties and providing remedies for passing a stopped school bus displaying stop arm signals; amending Minnesota Statutes 1984, section 169.44, by adding a subdivision.

May 19, 1985

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

The Honorable .....
President of the Senate

We, the undersigned conferees for H.F. No. 317, report that we have agreed upon the items in dispute and recommend as follows:

That the House concur in the Senate amendment.

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

House Conferees: (Signed)

....

....

.....

Senate Conferees: (Signed)

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....

.....

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

CONFERENCE COMMITTEE REPORT ON H.F. NO. 624

A bill for an act

relating to counties; fixing the amounts that may be spent for Memorial Day observances; amending Minnesota Statutes 1984, sections 375.34 and 375.35.

May 18, 1985

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

The Honorable .....
President of the Senate

We, the undersigned conferees for H.F. No. 624, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate recede from its amendment.

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

House Conferees: (Signed)

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Senate Conferees: (Signed)

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.....

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

CONFERENCE COMMITTEE REPORT ON H.F. NO. 2466

A bill for an act

relating to privacy of data on individuals; definitions, determination and emergency classification; amending Minnesota Statutes 1980, sections 15.162, subdivision 2a; and 15.1642, subdivisions 3 and 5; repealing Minnesota Statutes 1984, section 15.1642, subdivision 4.

May 22, 1985

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

The Honorable .....
President of the Senate

We, the undersigned conferees for H.F. No. 2466, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate recede from its amendment and that H.F. No. 2466 be further amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 1984, section 15.162, subdivision 2a, is amended to read:

Subd. 2a. [CONFIDENTIAL DATA ON INDIVIDUALS.] "Confidential data on individuals" means data which is (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of

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

proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant an emergency classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, ~~1978~~ 1986, whichever occurs first.

Sec. 2. Minnesota Statutes 1984, section 15.1642, subdivision 5, is amended to read:

Subd. 5. [EXPIRATION OF EMERGENCY CLASSIFICATION.] All emergency classifications granted under this section and still in effect shall expire on July 31, ~~1978~~ 1986. No emergency classifications shall be granted after July 31, ~~1978~~ 1986.

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

A state agency or political subdivision shall not transfer or disseminate private or confidential data on individuals to the private international organization known as Interpol.

Sec. 4. [REPEALER.]

Minnesota Statutes 1984, sections 144.151, subdivisions 8 and 9; and 144.175, subdivision 2, are repealed.

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

Sec. 5. [EFFECTIVE DATE.]

Sections 1, 2, and 4 are effective the day following final enactment. Section 3 is effective July 1, 1985."

Delete the title and insert:

"A bill for an act

relating to privacy of data on individuals; continuing confidentiality of certain investigative data; continuing certain emergency classifications of data; prohibiting the release of certain data to the international organization known as Interpol; amending Minnesota Statutes 1984, sections 15.162, subdivision 2a; and 15.1642, subdivision 5; proposing new law coded in Minnesota Statutes, chapter 15; repealing Minnesota Statutes 1984, sections 144.151, subdivisions 8 and 9; and 144.175, subdivision 2."

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

House Conferees: (Signed)

....

....

.....

Senate Conferees: (Signed)

....

....

.....

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

CONFERENCE COMMITTEE REPORT ON H.F. NO. 921

A bill for an act

relating to public employees; designating the number of arbitrators to resolve labor dispute; amending Minnesota Statutes 1984, section 179.72, subdivision 6.

May 16, 1985

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

The Honorable .....
President of the Senate

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

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

Page 2, lines 8 to 12, reinstate the stricken language

Page 2, line 11, strike "$100" and insert "$180"

Page 2, line 14, after the period insert "When a single arbitrator is hearing a dispute, the costs of the arbitrator must also be shared by the parties to the dispute."

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

House Conferees: (Signed)

....

....

.....

Senate Conferees: (Signed)

....

....

.....

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

CONFERENCE COMMITTEE REPORT ON S.F. NO. 274

A bill for an act

relating to natural resources; authorizing additions to and deletions from certain state parks; authorizing land acquistion in relation thereto; amending Laws 1945, chapter 484, section 1, as amended.

May 18, 1985

The Honorable .....
President of the Senate

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

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

That the Senate concur in the House committee amendment adopted May 6, 1985, and the House recede from the amendments it adopted May 12, 1985, and that S.F. No. 274 be further amended as follows:

Page 6, after line 14, insert:

"Subd. 7. [BIG STONE STATE PARK; DELETION.] The following area is deleted from Big Stone State Park: The Northeast Quarter of the Northwest Quarter of Section 20 in Township 123 North, Range 48 West and that part of Government Lot 2, Section 10, Township 122, Range 47 lying south of Highway No. 7 and west of the following described line: Commencing at a point on the westerly boundary line of Government Lot 2, Section 10, Township 122, Range 47 that is 189.75 feet due South of the intersection of the Westerly boundary line of Government Lot 2 and the Southerly right of way line of Trunk Highway No. 7; thence due East 853.3 feet to an iron stake; thence deflect to the left at a delta angle of 71 degrees 41 minutes 371.9 feet to the

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

intersection of the line with the Southerly right of way line of Trunk Highway No. 7, which is the starting point of the line above referred to; thence in a Southwesterly direction back along the line just described for a distance of 1081.4 feet to the shores of Big Stone Lake."

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

Senate Conferees: (Signed)

....

....

.....

House Conferees: (Signed)

....

....

.....

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

.... moves to amend H.F. No. 1702, as follows:

Page 1, after line 13, insert:

"Sec. 2. Minnesota Statutes 1984, section 330.02, is amended to read:

330.02 [BOND.]

Every auctioneer, before making sales, shall give a corporate surety bond to the ~~county~~ state in a the penal sum of ~~not less than $1,000 nor more than $3,000 to be fixed by the treasurer and with sureties approved by the treasurer~~ $5,000, conditioned that he will pay all sums required by law and in all things conform to the laws relating to auctioneers. ~~The treasurer shall endorse his approval upon such bond, and file it in his office~~ The bond must be approved and filed as provided in chapter 574."

Renumber the remaining section

Amend the title as follows:

Page 1, after line 2, insert "modifying bond requirements;"

Page 1, line 3, delete "Section" and insert "sections"

Page 1, line 4, before the period insert "; and 330.02"

Note the directive to renumber the section. In the course of engrossing, this directive will be carried out.

8

Engrossing and Enrolling

8.1 The Engrossing Process

Engrossing is the process of incorporating into a bill amendments adopted by the House or Senate. Each drafter should understand the process of engrossing in order to understand the practical possibilities and limitations of amendments.

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. Personnel engaged in engrossing are bound by the bill amendments adopted, and anything more than minor adjustments by them may lead a court to invalidate a bill because the purported text was not agreed to by the legislature.

8.2 Origin and Action upon Documents by the Engrossing Process

(a) Motions in Committee

Committees adopt proposed amendments to bills and report their recommendations to the House or Senate floor on report forms furnished by their legislative body. Committee amendments are made to the original bill or to its most recent official engrossment, if there is one.

A motion in committee to amend a bill originating in the other house 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 an unofficial engrossment in a committee is just a working paper that cannot be used for any formal purpose. A motion in a committee to amend an unofficial engrossment is not in order. The rules of the House explicitly so provide. (House Rule 1.17). Similarly, the committee report must show amendments drawn to the original bill or its last official engrossment.

(b) Floor Amendments

The Committee of the Whole, which is the full membership of either the House of Representatives or the Senate sitting as a committee, considers and adopts amendments proposed by individual legislators. Floor amendments are to the original or most recent engrossment of the bill, if there is one. Most bills have been amended and engrossed by the time they are debated on the floor of the House or Senate. 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 adopted, the secretary or chief clerk marks the fact on the amendment. These amendments are kept at the secretary's or chief clerk's desk until the report of the Committee of the Whole is adopted. 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 integrated into the bill in the order they were adopted on the floor. A bill originating in either house which is amended on the floor of that house is not given a 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 of amendments adopted by the other 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. A conference committee works on a bill which has attached to it amendments that are in controversy. The conference committee report is engrossed in the bill as an amendment.

8.3 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 is correctly done, the revisor's staff uses an extensive procedure of checking and rechecking by the supervisors, drafting assistants, and attorneys.

8.4 Unengrossable Amendments

In engrossing floor amendments to a bill, the adopted amendments are applied in the order they were 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 occurs:

(1) the page number, line number, or locator words are wrong;

(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 lines of text that have been already stricken or amended is engrossable);

(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.

Individual amendments may be engrossable but the combined effect of two or more of them 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 nonfunctional sentences or paragraphs are created.

8.5 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.

8.6 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.

8.7 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).

8.8 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.

The words "A bill for an act" are removed from the master. The House or Senate file number is typed on special paper above a blank line for the chapter number and slightly down and to the right on the second and subsequent pages of the master. As a security measure, the bill is carefully checked on a light table to see that it matches exactly with the last engrossment, or if the bill is unengrossed, with the original bill.

A preprinted signature page for the House or Senate is prepared, with "H.F. No." or "S.F. No." and dates of passage inserted.

The bill is duplicated on special enrollment paper, the first page of which is headed by the words "AN ACT." 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 are called 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 or she notifies the house in which it originated of that fact. If the governor vetoes a bill, it is returned to the house in which it originated with a note of the governor's objections.

8.9 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.

8.10 Examples

EXAMPLE - HOUSE COMMITTEE REPORT ON A SENATE FILE

Mr. ..... from the Committee on Commerce to which was referred

S.F. No. 971: A bill for an act relating to insurance; providing financial requirements for nonprofit health service plan corporations; amending Minnesota Statutes 1984, section 62C.09, subdivision 3.

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

Page 1, line 17, strike "calendar" and insert "fiscal"

Page 1, line 18, delete "dental" and insert "medical"

Page 1, line 20, after "specified" insert "benefits"

Page 1, line 20, after "and" insert "limits for average"

Page 1, line 21, after "benefits" insert "of not greater than $1,000 per year per insured"

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

.....

(Committee Chairman)

February 10, 1985.....

(Date of Committee recommendation)

Note: House and Senate stamps would indicate that both houses have passed this bill. This amendment is ready to be engrossed into the bill.

EXAMPLE - SENATE COMMITTEE REPORT ON A SENATE FILE

Mr. ..... from the Committee on Agriculture and Natural Resources to which was referred

S.F. No. 344: A bill for an act appropriating money to the Department of Natural Resources for the installation of a box culvert under a highway in Stearns county, providing a waterway connection between certain lakes to enable watercraft to cross from one lake to the other.

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

Page 1, line 11, delete "the department of natural resources" and insert "Stearns county"

Page 1, line 17, delete everything after "lakes."

Amend the title as follows:

Page 1, lines 2 and 3, delete "the department of natural resources" and insert "Stearns county"

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

.....

(Committee Chairman)

.....

(Date of Committee recommendation)

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 COMMITTEE REPORT ATTACHED

A bill for an act

appropriating money to the department of natural resources for the installation of a box culvert under a highway in Stearns county; providing a waterway connection between certain lakes to enable watercraft to cross from one lake to the other.

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

Section 1. [APPROPRIATION.]

$47,000 is appropriated from the general fund to the department of natural resources to install a 12-foot by ten-foot concrete box culvert, approximately 90 feet in length, under Stearns county state-aid highway No. 71, providing a waterway connection between Big Cedar Lake and Little Cedar Lake in Stearns county that enables boats, pontoons, and recreational watercraft up to ten feet in width, to cross back and forth between the lakes. The sum is available until expended.

BILL BEFORE ENGROSSING. Note page and line number and also title amendment in report on the preceding page.

EXAMPLE - COMMITTEE REPORT AMENDMENTS ENGROSSED

A bill for an act

appropriating money to Stearns county for the installation of a box culvert under a highway in Stearns county, providing a waterway connection between certain lakes to enable watercraft to cross from one lake to the other.

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

Section 1. [APPROPRIATION.]

$47,000 is appropriated from the general fund to Stearns county to install a 12-foot by ten-foot concrete box culvert, approximately 90 feet in length, under Stearns county state-aid highway No. 71, providing a waterway connection between Big Cedar Lake and Little Cedar Lake in Stearns county, enabling boats, pontoons, and recreational watercraft, up to ten feet in width, to cross back and forth between the lakes.

BILL AFTER ENGROSSING. Note new language inserted. Old language was not stricken, but deleted from bill because the bill is not amendatory.

EXAMPLE - CONFERENCE COMMITTEE REPORT

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

A bill for an act

relating to business or agricultural loans; rate of interest therein; amending Minnesota Statutes 1984, section 334.011, subdivisions 1 and 4.

May 16, 1985

The Honorable .....
President of the Senate

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

We, the undersigned conferees for S.F. No. 49, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate concur in the House amendments and that S.F. No. 49, the unofficial engrossment, be further amended as follows:

Page 1, line 18, after "four" insert "and one-half"

EXAMPLE - CONFERENCE COMMITTEE REPORT (Cont.)

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

House Conferees: (Signed)

....

....

.....

Senate Conferees: (Signed)

....

....

.....

NOTE: If all conferees have signed the report and both houses have adopted the report it is ready for engrossing and enrolling.

EXAMPLE - CONFERENCE COMMITTEE REPORT (Cont.)

TEXT BEFORE ENGROSSING.

lender may, in the case of loans for business or agricultural purposes, charge on any loan or discount made or upon any note, bill or other evidence of debt, interest at a rate of not more than ~~five~~ four percent in excess of the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District encompassing Minnesota.

For the purposes of this subdivision, the term

TEXT AFTER ENGROSSING. New language of the report has been inserted in the proper place.

Amendment on page ...

lender may, in the case of loans for business or agricultural purposes, charge on any loan or discount made or upon any note, bill or other evidence of debt, interest at a rate of not more than ~~five~~ four and one-half percent in excess of the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District encompassing Minnesota.

For the purposes of this subdivision, the term

EXAMPLE - FLOOR AMENDMENT

..... moves to amend H.F. No. 187 as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 1984, section 128A.03, subdivision 3, is amended to read:

Subd. 3. ~~The councils shall expire and~~ The terms, compensation and removal of members of the councils shall be as provided in section 15.059; however, the councils shall expire on December 31, 1985.

Sec. 2. [EFFECTIVE DATE.]

Minnesota Statutes 1984, section 128A.03, is effective the day following final enactment of this act, notwithstanding Laws 1984, chapter 271, section 99.

Sec. 3. [EFFECTIVE DATE.]

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

Amend the title as follows:

Line 3, after "councils" insert "; amending Minnesota Statutes 1984, section 128A.03, subdivision 3"

EXAMPLE - FLOOR AMENDMENT (Cont.)

A bill for an act

relating to education; braille and deaf schools; providing for appointment of advisory councils.

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

Section 1. [123.45] [ADVISORY COUNCILS; SPECIAL SCHOOLS.]

The governor shall appoint an advisory council for each school for the visually or hearing impaired.

Bill before engrossing the amendment on the preceding page.

EXAMPLE - FLOOR AMENDMENT (Cont.)

A bill for an act

relating to education; braille and deaf schools; providing for appointment of advisory councils; amending Minnesota Statutes 1984, section 128A.03, subdivision 3.

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

Section 1. Minnesota Statutes 1984, section 128A.03, subdivision 3, is amended to read:

Subd. 3. ~~The councils shall expire and~~ The terms, compensation and removal of members of the councils shall be as provided in section 15.059; however, the councils shall expire on December 31, 1985.

Sec. 2. [EFFECTIVE DATE.]

Minnesota Statutes 1984, section 128A.03, is effective the day following final enactment of this act, notwithstanding Laws 1984, chapter 271, section 99.

Sec. 3. [EFFECTIVE DATE.]

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

Bill after engrossing.

EXAMPLE - VETO OVERRIDE, HOUSE FILE

The attached bill, H.F. No. ...., passed the House of Representatives and the Senate in conformity with the rules of each house and the joint rules of the two houses and was presented to the Governor on ...., 19... The Governor did not sign it, but returned it with objections on ...., 19.., to the House of Representatives. The objections were entered in the journal of the House of Representatives. The House proceeded to reconsider the bill. Upon reconsideration, it was repassed on ...., 19.., by a vote of two-thirds or more of the House of Representatives. The vote of the House of Representatives was determined by yeas and nays and the names of the persons voting for or against the bill were entered in the journal of the House of Representatives. The bill, together with the objections of the Governor, was then sent to the Senate.

_____
James M. Whistler
Speaker of the House of Representatives

_____
Frederick E. Church
Chief Clerk, House of Representatives

The attached bill, H.F. No. ...., having passed the House of Representatives notwithstanding the veto of the Governor, was received by the Senate on ...., 19... It was reconsidered

EXAMPLE - VETO OVERRIDE, HOUSE FILE, Cont.

and repassed by a vote of two-thirds or more of the Senate on ...., 19... The vote of the Senate was determined by yeas and nays and the names of the persons voting for or against the bill were entered in the journal of the Senate. The House of Representatives was then advised of the action of the Senate.

George Bellows
President of the Senate

_____

John S. Sargent
Secretary of the Senate

The attached bill, H.F. No. ...., having passed the House of Representatives and the Senate notwithstanding the objections of the Governor, has become law. It is transmitted to the Secretary of State of the State of Minnesota to be deposited as a law of the State of Minnesota, the Governor's veto to the contrary notwithstanding.

Dated this .... day of ....., in the year of Our Lord one thousand nine hundred and .....

James M. Whistler
Speaker of the House of Representatives

_____

George Bellows
President of the Senate

Frederick E. Church
Chief Clerk, House of Representatives

John S. Sargent
Secretary of the Senate

Filed

_____

Mary Cassatt
Secretary of State

EXAMPLE - VETO OVERRIDE, SENATE FILE

The attached bill, S.F. No. ...., passed the Senate and the House of Representatives in conformity with the rules of each house and the joint rules of the two houses and was presented to the Governor on ...., 19... The Governor did not sign it, but returned it with objections on ...., 19.., to the Senate. The objections were entered in the journal of the Senate. The Senate proceeded to reconsider the bill. Upon reconsideration, it was repassed on ...., 19.., by a vote of two-thirds or more of the Senate. The vote of the Senate was determined by yeas and nays and the names of the persons voting for or against the bill were entered in the journal of the Senate. The bill, together with the objections of the Governor, was then sent to the House of Representatives.

George Bellows
President of the Senate

_____
John S. Sargent
Secretary of the Senate

The attached bill, S.F. No. ...., having passed the Senate notwithstanding the veto of the Governor, was received by the House of Representatives on ...., 19... It was reconsidered and repassed by a vote of two-thirds or more of the House of Representatives on ...., 19... The vote of the House of Representatives was determined by yeas and nays and the names of

EXAMPLE - VETO OVERRIDE, SENATE FILE, Cont.

the persons voting for or against the bill were entered in the journal of the House of Representatives. The Senate was then advised of the action of the House of Representatives.

_____
James M. Whistler
Speaker of the House of Representatives

_____
Frederick E. Church
Chief Clerk, House of Representatives

The attached bill, S.F. No. ...., having passed the Senate and the House of Representatives notwithstanding the objections of the Governor, has become law. It is transmitted to the Secretary of State of the State of Minnesota to be deposited as a law of the State of Minnesota, the Governor's veto to the contrary notwithstanding.

Dated this .... day of ....., in the year of Our Lord one thousand nine hundred and .....

_____
George Bellows
President of the Senate

_____
James M. Whistler
Speaker of the House of Representatives

_____
John S. Sargent
Secretary of the Senate

_____
Frederick E. Church
Chief Clerk, House of Representatives

Filed

_____
Mary Cassatt
Secretary of State

9

Practical Aids to Research and Drafting

9.1 Finding Minnesota Law

(a) Laws of Minnesota

Laws of Minnesota is published annually by the revisor of statutes approximately three months after adjournment. It contains all the acts of the legislature exactly as passed. See the explanation at the beginning of the volume for information about its use. It contains a subject index. The most important tables in the volume are discussed below.

(b) Minnesota Statutes

Minnesota Statutes is published biennially, about November of each even-numbered year, by the revisor of statutes. It contains all laws that have been coded by the revisor—usually laws of a general and permanent nature. Volume 1 of the set contains historical documents, the Minnesota and United States Constitutions and the University Charter. The preface contains a user's guide which explains the arrangement and numbering systems of the statutes and explains the statutory history and notes contained in the statutes. Using the guide will help you find material in the statutes quickly. The final volume of the statutes contains a subject index. A user's guide at the beginning of the index explains how to use it.

Each volume of the statutes is updated in odd-numbered years by a pocket part, cited as "Minnesota Statutes Supplement." The tables in the statutes most needed for drafting are discussed below.

(c) Tables

Tables are worked on during each session and completed shortly after the session 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 may be available from the revisor's office in typed form or on cards before publication. The local law tables published in the session laws are incorporated into Table 1 of the statutes. The following tables may be useful to the drafter.

(1) *Session laws amended or repealed.* Table 1 in the session laws is the table of session laws amended or repealed. It shows all session laws amended or repealed during the preceding legislative year. It is arranged by year. It lists amendments to law that are not coded (local laws, effective date sections, and the like), and amendments to laws passed in the session that are coded but not yet published in Minnesota Statutes.

(2) *Coded laws amended, repealed or new.* Table 2 of the session laws lists coded laws amended, repealed, or 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 a tool for determining, between statutory compilations, whether or not an existing coded law has been amended or repealed. In drafting new law between compilations, check the table to be sure that proposed tentative coding has not already been allocated to another section or subdivision. The table 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.

(3) *Special law tables.* Table 4 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. 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 and the cumulative local law table in the statutes.

The cumulative local law table is found in Table 1 of Minnesota Statutes. It is cumulative from 1893. 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. Amendments or repeals of local laws 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.

(4) *Internal cross-reference table.* Table 4 in Minnesota Statutes is a numerical table of the sections 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, it may be necessary to amend other sections that refer to it.

(d) Computer Searches

The Office of the Revisor of Statutes maintains a computer data base of all of the material in Minnesota Statutes. With the help of computer specialists, this data base may be searched for specified information.

A search can find every instance in which a particular subject that can be identified by a word or word combination is dealt with in the statutes. Combinations of words are used to limit the subject. A computer search can be used to locate and remove or alter obsolete terms; locate different definitions of a single word; locate and change as necessary any verbal references to a program, person, or provision. There are two types of searches: the "cite search," which produces a list of entries and their cites, and the "text search," which prints out the text of each reference.

For example, you might conduct a search for the term "legislature." The search would produce a list of all sections of the statutes where the term "legislature" is used. With this information, you can be sure that you have not overlooked sections that require amendments to accomplish the requester's objective.

Using multiple words in logical combinations, a search can be narrowed to a particular duty of the legislature, eliminating 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.

The search can only be made with the assistance of persons specially trained in 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 taken both by the requester and the person who prepares the search.

To request a search, contact the revisor's office.

9.2 Finding Minnesota Bills to Use as Drafting Models

(a) Subject Cards for Bill Requests

All bill requests submitted to the revisor's office 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 cards and the corresponding bill drafting

files are retained for four years. They apply to all bill drafting requests whether or not a bill was ever introduced.

A legislator may specifically request a redraft of a bill request made at a prior session. The author card then would be the fastest method of locating the bill.

The subject card index is useful to find 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 a starting point 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.

(b) 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 find out whether the requester wants the original draft or a particular engrossment or variation of the bill.

(c) 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.

A bill or amendment request may specify a particular engrossment of a House or Senate file, or the file as amended by a particular committee. Files are maintained in the revisor's office on all engrossments until October during the end of the biennium. Engrossments for the current biennium may also be obtained from the chief clerk of the House or the secretary of the Senate. The Legislative Reference Library retains engrossments for ten years.

Use a copy of the appropriate engrossment in drafting the request.

(d) 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 introduced during the current session. It may also be used to check if bills similar to a bill request have been drafted and introduced. Bills are indexed by House file or Senate file number, topic, author, and committee. The House index system also contains an author/topic cross index and a statutory reference index. The statutory reference index displays the number of all house files which, as introduced, amend a specific section of Minnesota Statutes, the session laws, and the constitution. Terminals for the House are available in many House offices, the legislative reference library, and the revisor's office. The Senate system is accessed by calling the Senate Index office.

(e) House and Senate Journals

The House and Senate journals contain the day-by-day floor action of the House and the Senate.

The Senate journal contains a numerical index by House file or Senate file number at the back of each day's publication.

The House and Senate journals' cumulative indexes contain the same information as House and Senate index systems, but it is available for previous years because it is published as a printed index. An unofficial index is available in the fall or early winter after the first year of the session. The official index is published after the end of the two-year session. The index contains a numerical index by House file or Senate file number, a subject index of all bills introduced under 150 broad topics, author index, and companion bill comparison table. The Senate journal also includes a miscellaneous section.

After you obtain a House file or Senate file number from the journal, ask the Legislative Reference Library for a copy of the bill. It maintains House bills for the past ten years, Senate bills since 1957.

9.3 Finding Laws or Bills in Other States

Issues of concern to Minnesotans are often issues of concern to other states as well, so do not hesitate to borrow from statutes or bills of other states. Three organizations are helpful in locating statutes or bills from other states. They are:

(1) *Council of State Governments*, National Headquarters, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578, 606-252-2291; (Midwestern Office), 203 N. Wabash, Chicago, Illinois 60601, 312-236-4011

The Council of State Governments is a joint organization of all the state governments. It performs three functions which are useful to drafters. It researches and publishes pamphlets on state programs and problems. It provides an information service for the states, legislators, and staffs. Finally it issues several useful publications. Among the most helpful are an annual volume containing model drafts of suggested state legislation (it contains a cumulative index), a monthly publication containing information on the current activities of the states, and a quarterly journal containing discussion of selected governmental problems and solutions. The council also publishes research pamphlets on issues of concern to the states.

(2) *National Conference of State Legislatures*, 1125 Seventeenth Street, Suite 1500 Denver, Colorado 80202, 303-623-6600

The National Conference of State Legislatures is an organization of the legislatures of the states. It collects information of importance to the states, writes guides and manuals on various state issues, and drafts model legislation. It also provides a research staff to assist in research of government employees. The National Conference of State Legislatures also publishes the magazine "State Legislatures" which contains articles on current issues, collects data, and summarizes actions of the states.

(3) *Advisory Commission on Intergovernmental Relations (ACIR)*, 1111 - 20th Street Northwest, Washington, D.C. 20575, 202-653-5536

The Advisory Commission on Intergovernmental Relations is most helpful if the bill request affects state/federal programs or raises the issues of federalism of federal preemption. This organization is a national bipartisan body representing the executive and legislative branches of federal, state, and local governments. The organization researches and formulates policy positions on selected issues and suggests solutions. It also drafts model legislation.

The state law library's Ford building collection contains the statutes of all 50 states.

Copies of bills may be obtained from the state office which corresponds to the revisor's office or secretary of the Senate or chief clerk's office in Minnesota. The Council of State Governments publishes a directory of state offices in the 50 states.

9.4 Finding General Research Materials

The Legislative Reference Library (LRL) is directed by statute to collect, index, and disseminate information of interest to the legislature and its staff. The library contains over 25,000 books and pamphlets, 500 active periodical subscriptions, and 31 newspaper subscriptions. It is part of the state university system's on-line catalog, PALS, and maintains an on-line computer search service using three computer data base services: Lockheed, LEXIS/NEXUS, and New York Times. Together the three data bases search over 150 data bases of governments, industries, and universities and provide journal articles, books, reports, proceedings, and government documents and data. The search service can also be used to obtain extensive bibliographies.

In 1983 the legislature added to the library's charge the responsibility to locate, list, and describe in published form information about manual and automated systems and data files existent in Minnesota state government.

The library maintains a Minnesota associations and organizations file containing, where possible, statements of the purposes, programs, and offices of the organizations.

The library is the deposit for state government publications, including consultants reports. The LRL checklist indexes these publications. The library publishes *LRL Resources*, a monthly listing of newly acquired books and pamphlets, and occasional topical bibliographies called *Topics in the News*. The library's selective information services provide notification to patrons of new materials in their areas of interest. Ongoing distribution of contents pages of recently received periodicals is also available. (Contact the library for more information.) The library also maintains:

(1) Newspaper clippings by subject, by district, by state agency or individual's name: 1969 to date.

(2) Minnesota government publications: 1974 to date.

(3) Speech materials: quotes or examples.

(4) Legal materials: USCA, MSA, Minnesota and federal rules and regulations, uniform laws.

(5) Mandated reports to the Legislature.

(6) Minnesota documents on microfiche: some from 1940 - 1973, most 1974 to date.

(7) Legislative Manuals: 1887 to date; House and Senate journals.

(8) Bills introduced: House - last ten years; Senate on microfilm-1955 to date.

(9) Senate and House Committee Books: Call for details.

(10) Tape recordings of floor and committee debate: Call for details.

The legislative reference librarians can direct you to the indexes, bibliographies, and directories which will provide you with experts or documents needed for your research. The librarians are also familiar with and can direct you to the collections of other libraries, and individual experts both private and public.

9.5 How to Begin Drafting

(a) Photocopies or Computer Printouts

In drafting a bill requiring amendments to existing law, use a photocopy of the law and mark the desired changes on the copy. If the existing law is coded in the statutes, always copy from the latest compilation of the statutes (or the supplement). If the law has been amended since the last compilation and the data base has been updated to include the latest amendments, use a computer printout for drafting. The revisor's office will furnish the printout. If the computer data base has not been updated and there are amendments made since the latest compilation, photocopy the session law or laws amending the particular law to be again amended, and fit the new amendments into that copy. To learn whether or not changes have been made in coded sections, use 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. Check the local law tables to determine if the local law has been amended.

Use of photocopies or computer printouts reduces errors, permits rapid identification of coded law on the computer terminals, and permits proofreading of local laws without the cumbersome session law book.

(b) 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, use the cut and paste method of preparing the first draft of the bill. Photocopy the pages from Minnesota Statutes and cut out the section or subdivision to be amended. Tape the sections to a sheet of paper. Then insert the changes in handwriting by striking out words and showing insertions by marginal notes with arrows to show the point of insertion.

Do not write existing wording or have it typed. To do so invites 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.

Subsequent drafts should then be changed by handwritten changes on computer printed copy.

Keep a drafting file with one copy of all preliminary drafts. These drafts are useful in tracing the drafting history of a bill.

10

Clear Drafting

This chapter is not directly concerned with legal ambiguity and problems of legal construction. Its aim is to tell how to draft simply and directly and to show how to avoid things that make laws hard to understand.

10.1 The Question of Audience

Bills are not all aimed at the same readers. Rather, the primary audience of bills varies with the bill. If your bill regulates migrant labor and orders recruiters and employers to put workers' terms in writing, then employers, recruiters, and workers are your audience, some with limited education. On the other hand, if you are drafting a bill regulating securities sales, then brokers and bankers are your audience, and your bill will have to use the technical vocabulary of their trade. Laws addressed to people in general—for example, laws prohibiting dumping in state parks—ought to aim at people of average intelligence and average education.

Writing for a less knowledgeable audience means that you must work hard at keeping sentences short and eliminating or defining difficult words. But writing for a knowledgeable audience does not give you an excuse to write long, unwieldy sentences. For sophisticated readers you may be able to be briefer; you can pack information into specialized words. For other readers your material must be less dense.

*** BEFORE YOU DRAFT, CONSIDER YOUR AUDIENCE.**

10.2 Methods of Drafting

There are a variety of methods that may be used to draft complex legislation. All have one factor in common: a plan of attack. A drafter cannot receive a drafting request and just start writing. To do so is a prescription for poor drafting or, even worse, drafting that destroys the integrated fabric of existing statutes.

This chapter discusses three basic drafting methods. They are: the "assembly of the parts" method; the "preliminary outline" method; and the "key provision first then fill in the detail" method. There are undoubtedly others, perhaps as many methods as there are drafters. But an individual method cannot be developed without some thought.

The "assembly of the parts" method is described by Jack Davies, Professor of Law at William Mitchell College of Law, 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.

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 to put in the bill. The list lengthens as research and thought indicate what else must be included. When the drafter thinks that the list is complete, it is then arranged into a logical outline. The outline is reworked until the provisions in the bill fit together as a logical, consistent whole. This method is particularly advantageous when the various sections of the bill will be interdependent and internal cross-references will be frequent. It may also help to ensure that everything that should be provided in the draft is provided and that individual sections do not contain material that 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, the other, or "detail" provisions are drafted. Those who use this method think that most bills contain key provisions and that any remaining "detail" provisions (like administrative provisions, organization, appellate procedure, forms, and so on) can be easily developed once the "keystone" has been done.

It does not matter what method you choose to draft your bill. As long as you stay in touch with everyone concerned with the bill and are willing to change your draft as new ideas develop, any method will work.

*** CHOOSE A METHOD OF DRAFTING BEFORE YOU BEGIN.**

10.3 Order and Organization

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. What matters is the way the bill looks on the page. The key question is: Can readers find what they need to know? They will be helped to find what they need if your headnotes show a pattern of organization.

You should probably put definitions first and basic provisions before special cases, but for everything else you're free to use one of several patterns.

First, try chronological order. This works especially well in bills that describe procedures. For example, a section regulating employers' treatment of migrant workers might tell what employers must do at several stages of the work season:

—when they recruit and hire;

—when they write contracts setting hours and pay;

—when they meet special situations (a worker is fired, quits, becomes ill, or refuses to work);

—when they pay wages; and

—when they settle at the end of the season.

Using chronological order may mean preferring one audience to another. For example, bills governing prisons affect not only prisoners but prison workers who must comply with the law and agency workers who have to check compliance. There is no particular order to obeying these laws. It might be best to decide on a convenient order for inspection and to order sections that way. If food service, health equipment, and sanitation will be checked together, laws governing them should be next to one another.

Not all chronological order is this obvious. It may take some discussion and reflection to decide what the order of sections should be.

*** CHOOSE AN ORDER AND SHOW IT IN HEADNOTES.**

10.4 Section, Subdivision, and Paragraph Length

The more material you place in a single block, the harder it is for readers to find the particular provisions they are interested in. Long, solid blocks of text also make it more difficult to keep one's place in reading. To make reading easier, try to limit the length of unbroken passages. Eighteen lines as produced by the revisor's printer is a rough rule of thumb.

*** KEEP BLOCKS SHORT.**

10.5 Sentence Length

Many existing statutes are written in an archaic single-sentence form like this:

> In the prosecution of any offense committed upon, or in relation to, or in any way affecting real estate, or any offense committed in stealing, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it shall be proved on trial that, at the time when such offense was committed, either the actual or constructive possession, of the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof.

This sentence is frightfully hard to read because, among other things, the most important parts are buried in separate phrases near the end. Don't use sentences like these as models of legal writing. Many of the recommendations below suggest ways to break up long sentences so that you can keep your average sentence length under 25 words. If your subject forces you to use terms of art or other difficult words, make your sentences shorter.

*** PREFER SHORT AND SIMPLE SENTENCES.**

10.6 The Subject

The first difficulty readers meet in the example above is in finding the main thought of the sentence. The main clause starts with "it shall be sufficient..." There are 39 words in front of it; they describe circumstances but force us to wait a long time to find out what the circumstances relate to. When we finally find the main clause, we have to wade through even more information.

To avoid losing your audience, *limit your introductory phrases or clauses to 20 words*. If the information will not fit into 20 words, put it in a separate sentence:

> At a trial, ownership of real estate or personal property is sufficiently proved if the person or community named in the indictment or other accusation as its owner is proved to have had actual or constructive possession of all or part of it when the offense was committed. *This section applies to prosecution of an offense affecting real estate or committed in stealing, destroying, injuring, or fraudulently receiving or concealing personal property.*

*** PUT THE SUBJECT UP FRONT.**

10.7 Person

Drafters need to compromise between the needs of statutory drafting and the requirements of plain English. Most plain English contract laws call for the use of the second and first person—addressing the consumer as "you" and calling the provider "we." Using "we" and "you" is impractical in bills which have to deal with several different sets of people and their duties at once. Write in terms of "the commissioner," "the department," and so on.

*** WRITE IN THE THIRD PERSON.**

10.8 Number

Minnesota Statutes, section 645.08, clause (2), provides that "The singular includes the plural; and the plural, the singular...." Nevertheless, a drafter should ordinarily use the singular form of a noun rather than the plural. This custom is based on the practical difficulty of using plurals consistently.

Examples:

Use: A person who....

Do not use: All persons who....

*** USE THE SINGULAR RATHER THAN THE PLURAL.**

10.9 Voice

"Never use the passive when you can use the active." This advice is quoted from George Orwell's *Politics and the English Language*, an essay that first appeared in 1945. The advice has been repeated for 39 years, but it never seems to take hold. Maybe it needs to be better explained.

What is passive voice? A sentence is in the active voice when the subject "does" the verb: "Agencies publish rules in the State Register," is in the active voice. "Rules are published in the State Register by agencies," is in the passive voice because the subject *rules* is not the doer of the verb *are published.* The doer shows up in *by agencies*. "Rules are published in the State Register" is still in the passive voice, although the doer of the action does not show up at all.

Another way to recognize passive voice is to look for the verbs *be*, *is*, *are*, *was*, *were*, *has been*, *have been*, and *had been* followed by words that end in *-ed*, *-t*, or *-en*. Here are some examples:

is taken
must be arithmetically averaged
are taught
have been reduced

Clauses or sentences that contain verbs like these are in the passive voice.

What's wrong with passive voice? In laws and rules, passive sentences without phrases containing "by" are dangerous because they do not say what duties are assigned to whom. Wydick's *Plain English for Lawyers* demonstrates the problem with this sentence from a patent license:

> All improvements of the patented invention which are made hereafter shall promptly be disclosed, and failure to do so shall be deemed a material breach of this license agreement.

Nothing in the sentence tells us who must disclose improvements to whom. If rules and laws exist to explain people's responsibilities, then drafters must avoid sentences that don't assign responsibilities clearly.

When is the passive voice needed? Passive voice lets you put old or repeated information at the beginning of the sentence where it demands less attention and new information at the end of the sentence where it stands out.

> The indictment, information, or affidavit must charge the person with having committed a crime. It must be authenticated by the executive authority making the demand.

Passive voice can also let you put a long string of nouns at the end of a sentence so that your reader will not have to work through the series before coming to the verb:

> The application may be made by the prosecuting attorney of the county in which the offense was committed, the parole board, or the chief executive officer of the facility or sheriff of the county from which the person escaped.

Sometimes passive voice will help you avoid using *he* or *she*.

When you use passive voice for any of these reasons, be certain that the duty or permission is assigned clearly, either in the passive sentence or in one of the sentences nearby.

When is the passive voice unnecessary? When the passive voice does not solve these specific problems, it is probably unneeded. When a sentence contains a phrase beginning with *by* ("by the commissioner") and that phrase is not at the end of the sentence, you can safely change the sentence to active voice. Passive: The required monitoring frequency may be reduced by the

commissioner to a minimum of one sample analyzed for total trihalomethanes per quarter. Active: The commissioner may reduce the required monitoring frequency to a minimum of one sample analyzed for total trihalomethanes per quarter. Passive: When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person charged with crime.... Active: When the executive authority of another state demands that the governor of this state surrender a person charged with crime....

Drafters use the passive voice needlessly when they concentrate on things and requirements rather than on people and duties. For example, the passive sentences above concentrate on "the required monitoring frequency" and "a demand." Remember that it's better to impose a duty or grant a permission in the active voice than to state a requirement in the passive.

10.10 Tense

A drafter is tempted to look forward to the time when the statute will be applied and, therefore, to frame legislation in the future tense. Avoid that error. Use the present tense and write the statute as you want it to read at the time it is applied.

> Use: A person who drinks intoxicating liquors or uses profane language on any passenger railway car is guilty....
>
> Do not use: A person who shall drink intoxicating liquors or shall use profane language...shall be guilty....

*** USE THE PRESENT TENSE.**

10.11 The Legal "Shall"

Most speakers of English stopped using *shall* to mean "is ordered to" in the seventeenth century. Dictionaries show that we generally use *shall* as a more formal form of *will*, meaning simple futurity; so to most readers the lawyer's use of *shall* to state a command is an obsolete legalism.

Dr. Janice Redish, in "How to write administrative rules...in clear English," tells us not to use *shall* at all and to substitute *must*. For most drafters, though, this is far too radical a change. So the rules given here, backed by the authority of drafting experts, keep *shall* but minimize its use:

> *Shall.* Use *shall* when you are imposing a duty on a person or body:
>
> "The licensee shall give the debtor a copy of the signed contract," or "An association that issues shares by series shall keep a record of every certificate that it issues."

In conditional sentences, don't use *shall* at all. Use present perfect tense, not future perfect. Don't write, "If it *shall* have been established..." Write, "If it has been established..." Don't write, "When the officers *shall* have completed their investigation..." Write, "When the officers have completed their investigation..."

Must. Use *must*, not *shall*, to talk about a thing rather than a person:

> "A copy of the signed contract must be given to the debtor," or "A record must be kept whenever a certificate is issued."

Use *must* to express requirements, that is, statements about what people or things must be rather than what they must do:

> "Public members of the board must broadly represent the public interest and must not be members of health professions licensed by the state of Minnesota..."

Need not. Use *need not* or *is not required to*, to say that a thing is not required:

> "If fewer than seven people object to the rule, a hearing need not be held," or "no hearing is required."

Should. Use *should* to mean "ought to" (as opposed to "must," or "have to"). Reserve this for provisions that are directory and not mandatory.

May. Use *may* to mean "is permitted to" or "is authorized to" or "is entitled to" or "has power to":

> "The commissioner may call a special meeting of the board when necessary."

Must not. Use *must not* to mean "is forbidden to" or "is prohibited from." Don't use *shall not*. Say "a person must not," not "a person shall not."

Means. In definitions, write *means*, not *shall mean*. Write "have the meanings given them," not "shall have the meaning given them."

Is. Don't use *shall* to say what the law is, to make a law that accomplishes itself. For example, say that a person *is* eligible for a grant under certain conditions, not that he or she *shall* be eligible. Say that a person who commits a certain crime *is* guilty of a misdemeanor, not *shall be* guilty. Write "Grammatical errors do not invalidate a rule," not "Grammatical errors shall not invalidate a rule."

*** LIMIT YOUR USE OF "SHALL."**

10.12 Simplifying

Most sentences in bills have verbs with more than one part: *shall* + (verb), *may* + (verb), *must* + (verb), and so on. Sometimes a word is placed between these parts, as in "The commissioner shall *immediately* order an investigation of a reported epidemic."

One-word adverbs in this position do no harm; sometimes they are necessary. But longer divisions are difficult to read, as in this sentence:

> Within ten days after service of the notice of appeal, the appealing party *shall* in writing, with a copy to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record, *order* from the Bureau of Mediation Services a transcript of any parts of the proceedings it deems necessary..."

The interrupting words make no sense without the verb *order*, but the reader must struggle through 20 words to reach it. The interrupting words would serve better as a separate sentence:

> ...the appealing party shall order from the Bureau of Mediation Services a transcript of any parts of the proceedings it considers necessary. The transcript order must be in writing. The appealing party shall give a copy of the transcript order to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record.

Avoid interrupting a group of words that must be understood together. In this sentence, the interrupted phrase is italicized:

> The judge or magistrate must commit the accused to the county jail *for a time*, not exceeding 30 days specified in the warrant, *that* will enable the arrest of the accused to be made.

Again, the interrupting words should be a separate sentence: "The commitment time must not exceed 30 days."

*** DON'T PUT MORE THAN ONE WORD BETWEEN THE PARTS OF A VERB.**

10.13 Paragraphs and Outlines

Some authorities on drafting maintain that long sentences are clearer if they are set out in outline form. This example is adapted from Richard Wydick's *Plain English for Lawyers*:

> One who is liable to another for interference with a contract of prospective advantageous economic relation is liable for damages for:
>
> (1) the pecuniary loss of the benefits of the contract of the prospective relation;
>
> (2) other pecuniary loss for which the interference is a legal cause; and
>
> (3) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.

For this example, the advice is true; outline style helps. Outlining can, however, be taken too far. Most long, tabulated sentences do not need to be as long as they are. Here is a case in which outlining has created a monster:

> (a) "Firefighter" includes an employee whose primary duties, as set forth in the official position description, require the performance of work directly connected with the control and extinguishment of fires, or the maintenance and use of firefighting apparatus and equipment.
>
> (b) "Firefighter" also includes an employee who is transferred to a position the primary duties of which are not the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, or from such a position to another such position, if -
>
> (1) service in the position transferred to follows service in a firefighter position without -
>
> (i) a break in service of more than three days; or
>
> (ii) intervening employment that was not as a firefighter;
>
> (2) the duties of the position transferred to are in the firefighting line of work in an organization with firefighting responsibilities; and
>
> (3) the position transferred to is -

> (i) supervisory - one which requires a duty of supervising subordinate employees who are directly engaged in firefighting and/or in the maintenance and use of firefighting apparatus and equipment; or
>
> (ii) administrative - one which includes an executive or managerial position and may include a clerical, technical, semiprofessional, or professional position of a type also found in organizations with not firefighting responsibilities; provided, that experience as a firefighter is a basic qualification for the administrative position.

Outline style makes it just possible to read this otherwise unreadable sentence, but it does not make the sentence easy to read. Every numbered or lettered part is a sentence fragment, meaningless unless the reader works backward in the sentence to see how the part relates to the other parts. By the time readers get to (2), they have to survey the letters and numbers to be sure that (2) is one of the conditions governed by *if*.

The drafter could have made the same points more clearly in sentences like these:

> (a) "Firefighter" includes employees whose primary duties, as shown in their official job descriptions, are controlling and putting out fires or maintaining and using firefighting equipment.
>
> (b) "Firefighter" also includes employees transferred from firefighting jobs to other jobs. To be considered firefighters, transferred employees must be supervisors of firefighters or hold jobs that require previous firefighting experience. They must work for organizations with firefighting responsibilities and their duties must be in the firefighting line of work. Between the firefighting jobs and the supervisory or other jobs, they must not have spent more than three days out of work or worked at any job other than firefighting.

These rewritten sentences use brevity and clarity rather than white space to get their meaning across. They omit needless words and turn subordinate clauses and noun phrases into sentences.

*** PREFER PARAGRAPHS TO OUTLINES.**

10.14 Conditions and Exceptions

One of the most common functions of a statute is to set forth a simple, general proposition, subject to certain conditions and exceptions. Even when a proposed statutory section is drafted for introduction with few or no conditions or exceptions, conditions and exceptions are often added by amendment during the legislative process. The more conditions and exceptions that apply, the longer and more complex the statute becomes. One of the challenges to the drafter is to organize the statute so that the general proposition remains clear while conditions and exceptions are added to it, one after another, without needing to rewrite the whole statute each time.

If only one condition applies, the usual way to express it is to begin the sentence with an *if* or *when* clause: "If the person under arrest refuses to permit chemical testing, none may be given." Use *if* or *when*, not the legalism *where*.

Sometimes more than one condition introduces a sentence. When this happens, keep the main clause as short as possible:

> If the basic member and the surviving dependent spouse are killed in a common disaster, and the total of all survivor's benefits paid under this subdivision is less than the accumulated deductions plus interest payable, *the surviving children shall receive the difference in a lump sum payment.*

If you can't keep the main clause short, or if there are more than two conditions, put the conditions after the main clause:

> The city is eligible for a proportional share of the subsidy provided for the counties if the city has a population of 40,000 persons or more; has a board of health organized under Minnesota Statutes, section 145.913; and provides local matching money to support the community health services as provided in Minnesota Statutes, section 145.921.

*** MAKE CLEAR THE RELATIONSHIP OF CONDITIONS AND EXCEPTIONS TO THE MAIN CLAUSE.**

10.15 Provisos

Don't use the phrase *provided that*. You can accomplish the same thing with *if* or with a new sentence or clause.

Example: (an unnecessary *provided that*)

> The board may revoke a supervised release if the supervised release fails to enter a program; provided, however, that if no community program is available at the time of supervised release, the board may order the supervised releasee to enter the first available community program.

Example: (a clearer version, without *provided that*)

> The board may revoke supervised release if the supervised releasee fails to enter a program. If no community program is available at the time of supervised release, the board may order the supervised releasee to enter the first available community program.

*** AVOID PROVISOS.**

10.16 Series, Lists, and Outlines

Write a series of short items in paragraph form without designation (that is, without numbers or letters marking each item). Separate the items with commas. Use a comma before the conjunction.

> Butter, fortified margarine, cream, or salad oil may be used in moderate amounts to make food palatable.

> The administrator shall draw up rules that govern work hours, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance evaluation procedures, promotions, personal hygiene practices, attire, conduct, disciplinary actions, and other matters that need to be regulated so that employees can do their jobs properly.

If you use an introductory expression, follow it with a colon.

The administrator shall keep the following records: registers, daily logs, medical records, dental records, programming records, and good time records.

If some of the items in a series contain commas, separate the items with semicolons.

...the following: soups; sweets such as desserts, sugar, or jellies; or fats such as bacon, cream, and salad dressings.

*** USE OUTLINING SPARINGLY.**

When several of the items in a series are more than one typed line long, when they have complex internal punctuation, or when they are subordinate clauses, the series needs to be listed in outline form for ease of reading. If you list verb phrases, end the introductory expression with a colon, begin each item in the list with a lower case letter, use a conjunction after the next-to-last item in the list, end each item except the last with a semicolon, and end the last item with a period.

Example:

The entrance salary may be above the minimum rate only if:

(1) the individual's exceptional qualifications justify an appointment at a higher rate;

(2) others with similar qualifications are offered the same rate; and

(3) the appointment at a higher rate is made at one of the established steps of the salary range.

*** PREFER LISTS OF SENTENCES.**

When several items in a list are more than two typed lines long, or when the items are conditions that are complex, the list may need to be divided into separate sentences. Full sentences should have their first words capitalized and should end in periods. The items in a list of sentences are lettered rather than numbered.

Here is a list of conditions that needs to be divided into separate sentences:

Corporations are members of a parent-subsidiary controlled group if:

(1) more than 50 percent of the total combined voting power or more than 50 percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation, is owned by one or more of the corporations; and

(2) the common parent corporation owns stock with more than 50 percent of the total combined voting power of at least one of the other corporations. There shall be excluded in computing the percent of voting power or value any stock owned directly by the other corporations.

Here is the clearer version in several sentences with passive voice changed to active. It takes more words to say but requires less mental processing.

(a) Corporations are members of a parent-subsidiary controlled group if they satisfy the conditions in this subdivision.

(b) One or more of the corporations must own more than 50 percent of the total combined voting power or more than 50 percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation.

(c) The common parent corporation must own stock with more than 50 percent of the total combined voting power of at least one of the other corporations. Stock owned directly by these other corporations is excluded in computing the percent of voting power or value.

10.17 Sentences within Sentences

Do not write lists in which sentences are attached to phrases or clauses. For example, don't write:

Subd. 2. [EXCLUDED STOCK.] "Excluded stock" for a brother-sister controlled group means:

(1) stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees;

(2) stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. *A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock;*

(3) stock in a member corporation that is held by a nonprofitable educational or charitable organization.

If only one item has an inserted sentence, you can move that item to the end of the list. That will solve the problem temporarily, but an amendment may add a new item and make the sentence an interrupter again. You can also move the sentence to a paragraph after the list and refer to the item that the sentence applies to: "In clause (2), a bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock." That will add an internal reference, and internal references should be minimized. You can turn the sentence into an independent clause by deleting the period and inserting a semicolon. The best solution is to turn your list of sentence parts into a list of sentences, so that the inserted sentence can be left next to the item it explains:

Subd. 2. [EXCLUDED STOCK.] (a) "Excluded stock" for a brother-sister controlled group has the meanings given in this subdivision.

(b) It means stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees.

(c) It means stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock.

(d) It means stock in a member corporation that is held by a nonprofitable educational or charitable organization.

*** AVOID SENTENCES WITHIN SENTENCES.**

10.18 Parallel Form

When writing a series or list, be careful to keep similar ideas in similar, or "parallel," form. Here is an example of what to avoid:

An applicant must not be hired who has any of the following conditions: blood pressure over 160/60, any communicable disease, or applicant not of good general health.

The key word is "conditions." "Applicant not of good general health" is not the name of a condition in the way that "blood pressure" and "disease" are. The last clause should be rewritten as "poor general health." Here is another example:

> A person shall not drain, throw, or deposit upon the lands and waters within a state park any substance that would mar the appearance, create a stench, or destroy the cleanliness or safety of the park.

"Appearance," "cleanliness," and "safety" all go with "of the park," but "stench" doesn't. The sentence needs to be rearranged this way:

> ...anything that would mar the park's appearance, destroy its cleanliness or safety, or create a stench.

When you write a series or list, make sure that every item in it does the same job in the sentence.

*** KEEP PARALLEL IDEAS IN PARALLEL FORM.**

10.19 "And" and "Or"

Normally *and* means that the items are to be taken together, and *or* means that one is to be chosen from the list. But these examples adopted from Reed Dickerson's *Legislative Drafting* show how a choice of *and* or *or* can depend on the wording of your items:

The security roll includes:

(1) each person who is 70 years of age or older;

(2) each person who is permanently, physically disabled; *and*

(3) each person who has been declared mentally incompetent.

The security roll includes each person who:

(1) is 70 years of age or older;

(2) is permanently physically disabled; or

(3) has been declared mentally incompetent.

*** BE CAREFUL WITH "AND" AND "OR."**

10.20 Tables

When you need to present many numbers, as in appropriations, approved complements, and revisor's instructions, use tables. See those topics in other parts of this manual for examples.

10.21 Computations

Computations probably cause more headaches than any other feature of bills. In the standard phrasing for computations, the sentences are often long: they include long multiple conditions; they include references that block sentence flow and delay the arrival of the next sentence elements; they have long subordinate clauses that separate modifiers from the things they modify. On top of all this, computations are usually in the passive voice and they almost always include a misused *shall.* Here is a relatively simple example:

> If only a portion of the rent constituting property taxes is paid by these programs, the resident shall be a claimant for purposes of this chapter, but the refund calculated pursuant to section 290A.04 shall be multiplied by a fraction, the numerator of which is income as defined in subdivision 3 reduced by the total amount of income from the above sources other than vendor payments under the medical assistance program or the general assistance medical care program and the denominator of which is income as defined in subdivision 3 plus vendor payments under the medical assistance program or the general assistance medical care program, to determine the allowable refund pursuant to this chapter.

We desperately need a more readable way to describe computations. Reed Dickerson recommends the "cookbook" approach, that is, describing the steps, one by one, that produce the right figure. Here is part of Dickerson's own example:

> The seller shall compute the price of any item that is packed in a new container type or size as follows:
>
> (1) He shall first determine the most similar container type for which he has established a price for that product. From that container type he shall select the nearest size that is 50 percent or less larger than the new size, or if he has no such size, the nearest size that is 50 percent or less smaller. This is the base container.
>
> (2) The seller shall take as his base price his price for the product when packed in the base container. If this price is a price delivered to any point other than the shipping point, he shall convert it to a price f.o.b. shipping point by deducting the transportation charges that are reflected in it.

The advantages of this method are short sentences, information delivered in small amounts, and active voice.

*** WRITE COMPUTATIONS IN SHORT STEPS.**

10.22 Modifiers

A modifier is a word or group of words that tells more about another word's meaning. In these examples, the modifiers are italicized:

—the *escaped* prisoner

—the *executive* officer *of the county*

—an order *that has been signed by the governor*

—an order *signed by the governor*

—a document *stating the accused's name*

Modifiers should appear right next to the words they modify. When they don't, sentences at best look silly and at worst look confusing, as in this rule:

> "The public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available to the nonpublic school students *by August 15*.

Are the services to be made available by August 15, or is the district to inform the school by August 15? The drafter probably meant "...shall inform the nonpublic school by August 15..." and should have said it.

Here are some misplaced modifiers that are unintentionally funny:

> "Card issuer means a financial institution... providing use of a terminal to a customer to be activated by a card."

> "The goals of food service in each facility shall be to provide food and beverages to clients that are nutritionally adequate."

Law has enough problems without customers activated by cards or nutritionally adequate clients.

An especially infamous kind of misplaced modifier is the dangling participle. Participles are verb forms that end in *-ed*, *-t*, *-en*, or *-ing*. Sometimes, a participle appears near a noun that it does not modify:

> If *asked* to do so, an effective date *clause* should be added by the drafter.

> When *completed*, the *requester* should pick up the draft.

These participles are called "dangling" because they are not attached to the right words. In context, these sentences are probably clear, but could be made clearer by avoiding the dangling participle. Here are two sentences that use participles correctly:

> If *asked* to do so, the *drafter* should add an effective date clause.

> When *completed*, the *draft* should be sent to the requester.

The participle goes with the nearest noun. The drafter is the one who is asked; the draft is the thing that is completed.

*** PUT EVERY MODIFIER NEXT TO WHAT IT MODIFIES.**

10.23 Consistent Terms

Throughout your draft, use one term consistently to mean one thing. This rule seems easy to follow, but the following definition shows how thoroughly it can be broken:

> ...Unless the context clearly indicates a different meaning, "warehouse" may be used interchangeably with "elevator," "storage house," or "facility."

The same problem appears here:

> Community water *supplies* which serve a population of 10,000 or more individuals...shall analyze for total trihalomethanes in accordance with this part,...*Systems* serving 75,000 or more individuals shall begin sampling and analysis not later than January 1, 1982.

Drafters make variations like these unconsciously. Variations often show up near the beginnings of sentences, which usually don't deliver new information and so get less of drafters' attention. To keep from varying your terms, choose one of the terms available, try to use it consistently, and check your draft or have someone else check it for variations, especially near sentence beginnings.

**** KEEP TERMS CONSISTENT.**

10.24 Familiar Words

*** USE FAMILIAR, LESS FORMAL WORDS.**

Use speaking vocabulary, not writing vocabulary, as much as you can without being slangy. The list below mentions some words to avoid and suggests some plainer words to replace them with, but there are many other words that should be avoided.

Use the list, but remember the principle: prefer the most familiar words. It is not the length of the word that matters, but its formality and the proportion of the readers who will understand it.

Don't Use	**Use**
accorded	given
afforded	given
approximately	about
as to	about, concerning
attempt	try
cease	stop
commence	begin, start
deem	consider, judge
effect(as a verb)	make, carry out, do
effectuate	carry out, do
employ	use
endeavor (verb)	try
evince	show
expedite	hasten, speed up
expend	spend
formulate	make
forthwith	immediately
furnish	give
impact on	influence, affect
indicate	show (or more specific verb)
inform	tell
initiate	begin (depends on use)
inquire	ask
institute	begin, start, set up
interrogate	question
modify	change
necessitate	require
negotiate (in the sense of "enter into a contract with")	make

obtain	get
occasion (as a verb)	cause
portion	part
possess	have
preserve	keep
procure	get, obtain
prior to	before
promulgate	adopt
proceed	go, go ahead
purchase	buy
pursuant to	under
remainder	rest
render ("cause to be")	make
render ("give")	give
request	ask for
require	need
retain	keep
specified	named
subsequent to	after
suffer ("permit")	permit, allow
summon (verb)	send for, call
terminate	end
(be) unable to	cannot
utilize	use

10.25 Obsolete or Vague Terms

These words are often unclear and nearly always unnecessary.

Don't Use	**Use**
all, any, each, every, some	a, an, the
such, said, same	a, an, the, it, that, them (or some other word or nothing)
above, aforesaid, aforementioned, beforementioned, hereby, herein, hereinafter, hereinbefore, herewith, therefor, therein, thereinafter, thereinbefore, thereof	Name a specific section or part.
thereupon, whereupon	when, at that time
to wit	namely

10.26 Wordy Expressions

Replace Wordy Expressions With Shorter Substitutes

Don't Use	**Use**
absolutely null and void and of no effect	void
adequate number of	enough
all of the	the

attains the age of 21 years	becomes 21 years old
at the time, at such time as,	
at the time as	when
at that (this) point in time	then (now)
by means of	by
corporation organized and existing under Minnesota laws	corporation organized under Minnesota laws
does not operate to	does not
due to the fact that	because
during such time as	while
during the course of	during
excessive number of	too many
for the duration of	during
or the purpose of holding (or other gerund)	to hold OR in holding (or other infinitive or gerund)
for the reason that	because
from and after	after
from July 1	after June 30
full force and effect	force, effect
in case	if
in order to	to
in the event that	if
in the interest of	for
is able to	can
is applicable	applies
is authorized and empowered to	may
is binding upon	binds
is entitled (in the sense of "has the name")	is called
is unable to	cannot
means and includes	means
not later than June 30, 1981	before July 1, 1981
not less than	at least
not to exceed	not more than
notwithstanding any other provision of law to the contrary	notwithstanding any other law
null and void	void
of a technical nature	technical
on and after July 1, 1981	after June 30, 1981
on or before June 30, 1981	before July 1, 1981
or, in the alternative	or
party (person, individual)	person (but keep in mind the statutory definition of person)
per annum, per day, per foot	a year, a day, a foot
per centum	percent
period of time	period, time
pursuant to	under, according to
remainder	rest
sole and exclusive	sole

sufficient number of	enough
the manner in which how	
to the effect that	that
true and correct	true, correct
under the provisions of	under
unless and until	unless, until
until such time as	until
whatsoever	whatever
whensoever	when, it
whenever	when, if
wheresoever	wherever
whosoever	whoever
with the object of changing (or other gerund)	to change (or other infinitive)

10.27 "There"

*** CUT OUT "THERE."**

Avoid starting a sentence or clause with *There is* or *There are* or *There shall be* or *There may be*. Often these words are needless, as in this example:

> There shall be excluded in computing the percent of voting power or value stock owned directly by the other corporations.

The sentence is more direct if turned around:

> Stock owned directly by the other corporations is excluded in computing the percent of voting power or value.

If you want to put different information at the end of the sentence, you can write:

> In computing the percent of voting power or value, stock owned directly by the other corporations is excluded.

If you know who is to do the computing and the excluding, you can put the verb in the active voice and make the sentence even shorter:

> When computing the percent of voting power or value, the registrar shall exclude stock owned directly by the other corporations.

10.28 Clauses v. Phrases

Clauses that contain *who*, *which*, or *that* plus *have been*, *has been*, or *had been* will sometimes work as well if those words are stricken: "applicants who have been declared ineligible" can become "applicants declared ineligible." But cut words carefully. Research shows that cuts of this sort can make sentences harder to understand.

10.29 Redundant Words

Most drafters don't see their own repetitions, so have another reader check for these errors. Here is an example:

> The purpose of vision *screening* is *to screen each applicant* to guarantee that those individuals with substandard vision are required to take the *necessary* steps *required* to achieve the best vision possible.

*** DON'T REPEAT WORDS OR ELEMENTS OF MEANING.**

10.30 Overdrafting

Usually this manual tells you to be as specific as possible, but being specific does not mean naming every single thing you are forbidding or requiring.

This National Park Service rule has been called the classic example of trying to cover all the possibilities:

> S 50.10 Trees, shrubs, plants, grass and other vegetation. (a) General injury. No person shall prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower, or part thereof, nor shall any person permit any chemical, whether solid, fluid, or gaseous, to seep, drip, drain or be emptied, sprayed, dusted or injected upon, about or into any tree, shrub, plant, grass, flower, or part thereof, except when specifically authorized by competent authority; nor shall any person build fires, or station, or use any tar kettle, heater, road roller or other engine within an area covered by this part in such a manner that the vapor, fumes, or heat therefrom may injure any tree or other vegetation.

Dr. Redish points out that using general terms—like "No one may harm the plants,"—will probably give more legal protection than trying to list specific things.

*** DON'T OVERDRAFT.**

10.31 Jargon

Jargon has neutral and negative meanings. It refers to the useful technical vocabulary of a trade or profession, but it is also used for unclear expressions that have a technical ring. Real technical language can save time and space; if your audience understands it and expects it, then use it. Jargon-like terms created to dignify your subject are simply hard to read. Learn to recognize them and weed them out.

If you must create a general term, don't make it more general than necessary. Government writing is said to be full of "buzzwords," phrases that sound imposing but mean little. It's not hard to see why we write them since drafters often have to create names that cover broad classes. For example, the phrase "health care facility" in a bill might cover hospitals, clinics, and nursing homes.

To avoid creating buzzwords when you write broad terms, don't depend on abstract words like *facility*, *entity*, *organization*, and *structure*. Phrases like "regional channel entity," "entity operational structure," or "parallel policy options" are meaningless unless the reader looks back at the definitions. Be as specific as possible. Don't call something a "programming entity" if you can call it a programming *company*. If certain boards grant licenses, don't call them "credentialing organizations;" call them licensing boards.

Some drafters argue in favor of jargon; they note that people coin expressions like these constantly in speech and may be using them regularly by the time they draft a bill. While this is true, the readers of a bill should not be expected to use the same expression that legislators or agencies are using. If you must create an expression, remember that what you create is likely to be perpetuated in future bills and rules.

What if the jargon already exists in the law? Drafters are conservative by nature; they often repeat any language that works legally in order to avoid lawsuits. For example, the phrase "Flesch scale analysis readability score," which would horrify Dr. Flesch by its unreadability, was copied into Minnesota law from another state's draft. It is certainly not the clearest or briefest way to refer to the Flesch test. Let your guide be communication with your readers, and don't preserve bad wording unless you have a compelling legal reason. Consistency is valuable, but so is clarity.

*** AVOID CREATING JARGON.**

10.32 Noun Strings

A string of four or five nouns is hard to read because it masks the relationships between words. You may need more words in order to make their relationships clear, as these examples show:

Don't Use	**Use**
electronic financial terminal authorization application	application for the right to use an electronic financial terminal.
Flesch scale analysis readibility score	Flesch test score, or readability score on the Flesch scale
early childhood program alternative case loads	case loads for early childhood programs

10.33 Initials

Initials are hard to read because they force a lay reader to go back to the definition section and to make repeated mental substitutions. A set of initials by itself gives no clue of what its meaning may be and, as more sets are used in laws, the same set or very similar sets are likely to be used for different phrases. If you don't want to write the phrase "large electric power generating plant" over and over, don't call it an LEPGP. Instead, define a short substitute like "large power plant" or just "plant."

*** AVOID STRINGS OF INITIALS.**

10.34 Euphemisms

When bills are very controversial, drafters are tempted to coin words that tone down the controversy. An example is the phrase "pregnancy termination facility" to refer to a clinic where legal induced abortions are performed. The usual words "abortion clinic" stir up so much argument that the drafter has tried to avoid the argument by avoiding the words.

When you feel the need to make up a new, neutral term, remember a few truths about people, language, and the reputation of government writing. A euphemism may offend just as many people as an emotionally charged word. When it becomes familiar it may be just as offensive as the phrase it replaced. For example, almost every one of the long series of terms that has been used to describe people with mental problems has become a term of insult. The euphemism you write will add to the evidence that government writing tries to hide the truth; it will lessen public respect for law. It may not even get through to your readers if it differs from the terms they understand.

*** AVOID EUPHEMISMS.**

10.35 Nominal Style

Many verbs have related nouns: *decide* is related to *decision*; *complain*, to *complaint*; *speak*, to *speech*. An idea can often be expressed with either a verb or a related noun. For example, you can *complain* or *make a complaint*.

Writing that uses verbs (verbal style) is usually brief and clear. Writing that uses nouns (nominal style) can be too formal and wordy. Most drafters overuse nominal style and need to be trained to prefer verbal style.

Don't Use	**Use**
to implement pupil behavior management techniques...	to manage pupils' behavior
established a contractual relationship with...	contracted with
has knowledge or suspicion that...	knows or suspects that...
make application for	apply for
make payment for	pay for
make provision for	provide for
upon X's request to Y	if X asks Y
upon a determination by X that	if X determines that

There are many other possibilities. The suffixes *-ance*, *-ancy*, *-ant*, *-ence*, *-ency*, *-ent*, *-ion*, and *-ment* often mark nouns derived from verbs, so check for nominal style whenever you see these suffixes.

Not all nominals, however, show how they are related to specific verbs. For example, "to *have an adverse impact* on the environment" could mean "to *harm* the environment" or "to *disturb* the environment" or any of a number of verbs. Nominals of this kind are harder to spot and correct, so learn to concentrate meaning in your verbs in the very first draft.

*** AVOID NOMINAL STYLE.**

10.36 "Which + Noun"

The following sentences contain obsolete types of relative clauses:

> The executive secretary shall give as much notice as possible to all board members prior to any special meeting, *which notice* shall state the time, place, and subject matter of the meeting.
>
> All parties have the right to a hearing before the hearing examiner *at which hearing* the parties may cross-examine witnesses....

Changing the relative clauses to separate sentences produces more modern English and shorter sentences:

> Before any special meeting, the executive secretary shall give all board members as much notice as possible. The notice must state the time, place, and subject matter of the meeting.
>
> All parties have the right to a hearing before an administrative law judge. At this hearing, the parties may cross-examine witnesses....

*** DON'T USE "WHICH + NOUN."**

10.37 Gender-Neutral Language

There are many ways to avoid gender-specific nouns like *workman* or *manhours*. A list of substitutes follows:

Don't Use	**Use**
Brother, sister	Sibling
Businessman	Business person, executive, member of the business community, business manager
Crewman	Crew member
Daughter, son	Child, children
Draftsman	Drafter
Enlisted man	Enlisted personnel, enlisted member, enlistee
Father, mother	Parent, parents
Female, male	Person, individual
Fireman	Firefighter
Foreman	Supervisor
Grandfather, grandmother	Grandparents
Husband and wife	Married couple
Mailman	Mail carrier
Man	Person, human, human being
Manhours	Person hours, hours worked, worker hours
Mankind	Humanity, human beings, humankind
Manmade	Artificial, of human origin, synthetic, manufactured

Manpower	Personnel, workforce, worker, human resources
Midshipman	Cadet
Per man	Per person
Policeman	Police officer
Seaman	Sailor, crew member
Serviceman, servicemen	Service member service members
Six-man commission	Six-member commission
She, her (reference to a ship)	It, its
To man a vessel	To staff
Trained manpower	Trained workforce, staff, personnel
Widower, widow	Surviving spouse
Wife, wives, husband, husbands	Spouse, spouses,
Wife's, husband's	spouse's
Workmen's compensation	Workers' compensation

Avoiding pronouns like *he* or *she* is much harder. Normal English word order begs for a pronoun in the main clause of a sentence like this: "If the commissioner finds that the sampling frequency may be safely reduced, he may order it reduced to the rate specified in subdivision 2." Not every method for avoiding pronouns works in every sentence. Consider the methods in the following order of preference.

Repeat the noun: "If the commissioner finds...the commissioner may order..." This is legally clear but awkward because the two nouns are so close together.

Use a relative clause: ~~If~~ An applicant who has been licensed in another state ~~he~~ shall submit verification of licensure and the required fee.

Use a modifier without an expressed subject: ~~If the commissioner finds~~ Upon finding that the sampling frequency can be safely reduced, ~~he~~ the commissioner may order it reduced as specified in clause (2).

Remove the nominal: A person who imports or ~~has in his possession~~ possesses untaxed intoxicating liquor is guilty of a misdemeanor.

Use he or she or his or her: The duties, if delegated, are to be exercised in the name of the commissioner and under his or her supervision and control. (*Note: This works only in isolated sentences.* If you must use he or she or his or her in several clauses or sentences in a row, look for a different solution.)

Use the plural: Sections 150A.01 to 150A.12 do not apply to unless ~~he practices~~ they practice dentistry as a specialty. certified, the candidate, ~~he~~ may begin supervised clinical practice.

*** AVOID GENDER-SPECIFIC LANGUAGE WITHOUT SACRIFICING CLARITY.**

10.38 Questions of Usage

All of us want to believe that we understand English usage perfectly. The truth is that no one can know the rules perfectly because language cannot be entirely reduced to rules and because language changes constantly. A very conservative usage looks incorrect to younger speakers who have never heard of it. For example, the negative comparison, "He is not so old as she is," is the form preferred by conservative grammar textbooks, but it sounds odd to people who expect "He is not as old as she is."

How can you be sure that you are not jarring your readers? You can try to avoid controversial constructions, and in order to avoid them you must know what they are. You can use *An Index to English* or the *American Heritage Dictionary* to get a detailed view of usage questions. You can have other people read your drafts. Reconsider anything that disturbs more than one reader, even if it is not strictly wrong. Use the guide to punctuation, mechanics, and style in chapter 12.

*** BE CONSIDERATE OF READERS IN MATTERS OF USAGE.**

10.39 Suggestions from Readers

In the drafts that come through the revisor's office, few usage problems are standard errors of the kind discussed by composition texts. Most are quirks that "sound funny" to some readers but not to others. Of course these constructions don't look wrong to the people who wrote them. The only practical way to deal with disagreements like these is to have several people read and comment on your drafts and to change anything that distracts more than one person. If you really want to weed out errors, keep a list of the constructions your readers object to.

Suggestions from readers can also help you learn whether your draft is understandable. The only real test of readability is to ask a reader specific questions about what the bill says. Have the bill read by some of the people it affects. If people can't find some of the information you ask for, you know you need to reorganize or write better headings. If people can't answer a specific question correctly, you know you have to rewrite that section. A test like this will not reveal legal ambiguity, but it will help you produce law that is easy to use.

You will be able to see more of the defects in your drafting if you create a first draft and then let some time pass before doing a second. Be willing to do as many drafts as are needed to get the right wording—or at least as many as time allows.

*** MAKE USE OF THE SUGGESTIONS OF YOUR READERS.**

11

References

References in bills must be written out in full, not abbreviated. To make your drafts comprehensible to general readers, not just attorneys, follow the forms given here, not those in *A Uniform System of Citation.*

11.1 Minnesota Statutes

(a) In Titles

When a bill amends existing Minnesota Statutes, the introduction for each amendatory section of the bill includes the title and date of the most recent edition of the statutes. For example: "Minnesota Statutes 1984, section 14.41, is amended to read:" Joint Rule 2.01 requires this form. If the amended text is included in the Supplement, the form is "Minnesota Statutes 1985 Supplement, section 14.41, is amended to read:"

***** IN THE TITLE, SPECIFY THE EDITION OF THE STATUTES BEING AMENDED.**

(b) In Text

A reference in the text of a bill to an existing section of the statutes should use the statutory section number without the phrase "Minnesota Statutes" when:

(1) the drafter does not intend to tie the reference permanently to any specific edition of statutes; and

(2) the reference is in a section of the bill which either amends an existing statutory section or proposes new law to be included in statutes.

An example of the proper form for a reference to an existing statutory section under these usual circumstances is:

"... as provided by section 14.31."

(c) To Proposed New Law

The proper form for a reference to a section of a bill which is proposing a new section to be added to Minnesota Statutes is different. The reference should be to the bill's section number: "...as provided by section 22." A reference to proposed coding is not a proper reference to a section of the bill.

***** REFER TO PROPOSED NEW LAW BY BILL SECTION NUMBER.**

(d) To Include Future Amendments

A reference to a statutory section number with or without the title and date of the edition includes future amendments to the statutory section. Minnesota Statutes, section 645.31, subdivision 1, provides that adoption of another law by reference also adopts any subsequent amendments to the law unless the contrary is specifically provided. The effect of section 645.31 may be overcome by the context of the reference, if the meaning is clear, or by other explicit language.

(e) To Exclude Future Amendments

A reference in the text of a bill to an existing section of the statutes must include "Minnesota Statutes" and the date of the edition if the drafter intends to tie the reference permanently to either the current or a specific prior edition of statutes.

The form under these circumstances is:

"... as provided by Minnesota Statutes 1941, section 14.41."

It should also be implicit or explicit in the context that the law is not intended to be changed by later amendment to the section that is referred to.

(f) In Uncompiled Text

A reference in the text of a bill to an existing section of statutes should include the phrase "Minnesota Statutes" if the section containing the reference is not intended to be included in the statutes.

The proper form under these circumstances is:

"... as provided by Minnesota Statutes, section 14.31."

Naming the statutes is appropriate because the language will appear only in the session laws, not in Minnesota Statutes itself.

The phrase "Minnesota Statutes" should be used as many times as necessary so that the reader will easily understand that the references are to that publication. It may not be necessary to repeat the phrase with every citation.

11.2 Laws of Minnesota

Uncoded Minnesota laws are cited in this form:

Laws 1984, chapter 123, section 4, subdivision 5.

Laws 1979, extra session chapter 9, section 10.

Laws 1981, third special session chapter 6, section 7.

11.3 Minnesota Rules

Ordinarily, a reference in a bill to Minnesota Rules should be in this form: "as provided by Minnesota Rules, part 1001.0100, subpart 1, item A, subitem (2)." If there is a special reason to tie the reference to the text of a particular edition of Minnesota Rules, give the date of the edition: "Minnesota Rules 1983, part 1001.0100," and so on. You can also refer to larger units of Minnesota Rules: "Minnesota Rules, chapter 1400."

11.4 State Constitution

Cite the Constitution of Minnesota as "the Minnesota Constitution, article VI, section 1."

11.5 Federal Laws and Regulations

(a) The Problem of Future Amendments

Adoption of federal laws and regulations is troublesome. Drafters should usually refer to this "foreign" law as it exists at the time the Minnesota law is enacted. A drafter may attempt to adopt federal laws or regulations as they may be amended in the future "where a state law exists solely pursuant to a national program and where national uniformity is needed" *Minnesota Recipients Alliance v. Noot,* 313 N.W. 2nd 584.

When adoption of federal law or regulation by reference is necessary, it should follow a consistent form. If federal law has been compiled in the *United States Code,* the reference should be to it and not to *Statutes at Large.* If the text is not compiled in *United States Code,* the reference may be to *Statutes at Large.* If the text is not yet published in *Statutes at Large,* its Public Law number may be used.

The correct forms of reference to exclude future amendments are "... as provided by United States Code, title 14, section 1401, as amended through December 31, 1984" or "... as provided by Statutes at Large, volume 38, page 730, section 123" or "... as provided by Public Law Number 89-110." Abbreviations for the titles ("U.S.C.," "Stat.," "Pub. L.," or "P.L.") should not be used. The date for the *United States Code* is necessary to tie the reference to the law in existence at the time the law is enacted. The other references are, by nature, tied to a specific enactment.

*** LIMIT REFERENCES TO FEDERAL LAW THAT INTEND TO INCLUDE FUTURE AMENDMENTS.**

(b) Popular Names and Scattered Law

Drafters should generally avoid referring to federal law by its popular name alone (for example: "The Furgeson-Jones Act) or its short title alone (for example: "The Inland Waterways Improvement Act of 1947"). These types of references make it difficult to locate the compilation of the law; they also leave it unclear whether the reference is intended to be to the laws as originally enacted or to the law with amendments enacted prior to enactment of the bill referring to the law.

In some cases, though, the law is codified in many scattered locations so that it is difficult to cite. Cite these laws by following the approach recommended in section 12.2.2 of *A Uniform System of Citation,* 13th edition, but spell out the publication names as shown above. Your goal should be to cite the law in such a way that a reader can find it easily and that a court will know exactly what amendments are included in the reference.

A usual exception to the rule that reference should not be made to a short title is the *Internal Revenue Code* which may be referred to directly. The correct form is "... as provided by the Internal Revenue Code of 1954, as amended through December 31, 1980."

All references should be to the official compilation *United States Code*, not to the unofficial *United States Code Annotated* or *Federal Code Annotated.*

*** GIVE FULL REFERENCE INFORMATION WHENEVER POSSIBLE.**

(c) Regulations

When referring to the *Code of Federal Regulations*, an example of the proper form of reference is "... as provided by Code of Federal Regulations, title 22, section 41.30 (1981)." The abbreviation "C.F.R." or "CFR" should not be used. Only when a rule is not yet published in the *Code of Federal Regulations* should reference be made to the *Federal Register*. An example of the correct form is "... as provided by Federal Register, volume 46, page 23405 (1981)." References to the *Federal Register* are to its volume and page number, not to any section or paragraph numbers within a document published in it.

11.6 Safety Codes

Numerous references occur in the statutes to various building and safety codes. They can be adopted by reference, but similar problems exist when adopting them by reference as when foreign law is adopted by reference. The drafter should use language which adopts a code as it exists on a specific date prior to enactment. The proper form of reference is "... as provided by standard 501B of the National Fire Safety Code as in effect on December 31, 1980." This form has three elements. The exact wording of the reference may vary slightly as long as all three elements are included and in the same order as listed here. First, give the number of the standard. Second, identify the source of the standard by its title or publisher. Third, give a date for the reference that is earlier than the effective date of the bill where the reference occurs. Ideally, the date should be the publication date shown on the publication where the standard is published.

If a building, safety, or other code is included in foreign law, it can be treated like other foreign law.

11.7 Court Rules

Refer to court rules by the names given in their title or citation sections, if any. The correct forms are:

Minnesota Juvenile Court Rules, rule 4-4.

Minnesota Rules of Appellate Procedure, rule 103.01, subdivision 2.

11.8 Other Materials

The laws of other states, the *United States Code Congressional and Administrative News,* and the *Congressional Record* may be useful for Laws of Minnesota, but they should not be incorporated by reference. Instead, the language from those sources should be duplicated.

11.9 Examples

EXAMPLE - REFERENCES TO MINNESOTA STATUTES

To an entire chapter: "chapter 645"

To a chapter when the reference is within the same chapter: "this chapter"

To a section: "section 645.01"

To a section, when the reference is within the same section: "this section"

To a subdivision, when the reference is within the same subdivision: "this subdivision"

To another subdivision within the same section: "subdivision 4"

To a range of subdivisions: "subdivisions 4 to 7"

To several subdivisions: "subdivisions 4, 5, and 7"

To paragraphs and clauses:
"this paragraph"
"paragraph (a)"
"this clause"
"clause (2)"

To a range of sections: "sections 645.01 to 645.31"

To several sections and subdivisions: "sections 645.01, subdivisions 2, 3, and 5; 645.04; and 645.08"

To a choice of sections or subdivisions:
"section 5.01 or 5.02"
"subdivision 2 or 3"

EXAMPLE - REFERENCES TO MINNESOTA RULES

To an entire chapter: "chapter 1325"

To a part: "part 1001.0300"

To smaller divisions of a part: "part 1001.0300, subpart 4, item C, subitem (1)"

To a chapter when the reference is within the same chapter: "this chapter"

To a part, when the reference is within the same part: "this part"

To a subpart, when the reference is within the same subpart: "this subpart"

To another subpart within the same part as the reference: "subpart 4"

To a range of subparts: "subparts 4 to 7"

To several subparts: "subparts 4, 5, and 7"

To another item within the same part as the reference: "item A"

To an item in another subpart within the same part as the reference: "subpart 2, item A"

To a range of parts: "parts 1001.0300 to 1001.1500"

To several disparate parts: "parts 1001.0300, 1001.0400, and 1001.0900"

To a choice of parts or subparts: "part 1001.0300 or 1001.0400"
"subpart 2 or 3"

To emergency rules: "part 1001.0405 [Emergency], subpart 4, item A"

EXAMPLE - REFERENCES TO FEDERAL LAW

Compiled form

"...as provided by United States Code, title 14, section 1401, as amended through December 31, 19XX"

Uncompiled form (used for specific section appearing on a single page)

"...as provided by Statutes at Large, volume 38, page 730, section XXX"

Uncompiled form (used for inclusive reference to entire bill or portion of it)

"...as provided by Statutes at Large, volume 38, pages 220 to 236"

Public law

"...as provided by Public Law Number 89-110"

Internal revenue code

"...as provided by section 482 of the Internal Revenue Code of 1954, as amended through December 31, 19XX"

EXAMPLE - FIRST REFERENCES TO SAFETY STANDARDS

Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," issued by the U.S. Department of Interior, Bureau of Mines, as Information Circular 8179 (Washington, D.C.: Government Printing Office, 1963).

The "American National Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks," issued by the American National Standards Institute as ANSI A17.1-1978, with supplement ANSI A17.1a.-1979 (New York, 1978) is incorporated by reference.

Copper tubing in these installations must conform to standard B 88-81, "Specification for Seamless Copper Water Tube," in the "Annual Book of ASTM Standards," issued by the American Society for Testing and Materials (Philadelphia, 1981).

EXAMPLE - SECOND AND LATER REFERENCES

If your draft names a publication several times, it will be awkward to give full reference information each time. If you want to use a shortened reference form, either define the short form in the definitions section or provide a cross-reference to the section or subdivision that contains the full reference.

```
1       Subd. 4.  [SAFETY RECOMMENDATIONS.] "Safety recommendations"
2  means "Safety Recommendations for Sensitized Ammonium Nitrate
3  Blasting Agents," issued by the U.S. Department of Interior,
4  Bureau of Mines, as Information Circular 8179 (Washington, D.C.,
5  Government Printing Office, 1963).
6       Subd. 4.  [SAFETY PRACTICES.] Safety recommendations as
7  described in section 19 shall be followed on all pyramid
8  projects.
```

EXAMPLE - GENERAL FORMAT

```
1       ...on pages 10 to 14 of "Empire Building," by James J.
2       Hill, issued by the United States Department of Commerce as
3       Pamphlet No. 666 (Washington, D.C.:  United States
4       Government Printing Office, 1983).
5
6       ...in section 42.42 of "Life, the Universe, and Everything,"
7       issued by the State Department of Ultimate Questions (Saint
8       Paul, 1982).
```

A reference probably will not have all of the parts shown in the examples. It is important, though, to give as much information as is available from the publication, especially if the work is being incorporated by reference. Try to examine the publication you are citing.

12

Punctuation, Mechanics, Style

This chapter sets out preferences in matters such as choosing between two possible correct spellings of a word, deciding whether to hyphenate, and knowing what to capitalize. In some cases, this chapter refers the reader to another part of the manual or to more extensive reference works:

The American Heritage Dictionary of the English Language, second college edition edited by William Morris, (Boston: Houghton Mifflin Company, 1982) for usage questions.

The Chicago Manual of Style, 13th ed., rev. (Chicago: The University of Chicago Press, 1982) for capitalization, punctuation, and hyphenation questions.

Webster's Third New International Dictionary. (Springfield, Massachusetts: G. and C. Merriam Company, 1976) for spelling and hyphenation questions.

This chapter contains the following entries in alphabetical order:

Abbreviations

*** AVOID ABBREVIATIONS.**

When in doubt about whether to abbreviate a word, spell it out or check with the revisor's office.

In particular, avoid using initials as a substitute for an official name. For example, write "Environmental Protection Agency" or "the agency." Do not write "the EPA." Full names are especially important for publications being incorporated by reference. For examples, see chapter 11, References.

The following are exceptions to the general rules:

(1) *Proper names.* An abbreviation may be used if it is part of a proper name, as in "Cargill, Inc."

(2) *a.m. and p.m.* The abbreviations a.m. and p.m. may be used to express time, as in "1:00 a.m." or "2:34 p.m." See Numbers.

(3) *Special materials.* Abbreviations may be used in tables, illustrations, and similar material.

(4) *Compass points in street names.* The names of the compass points may be abbreviated after a street name as in "821 Fifth Avenue SE." The names of the compass points are written without periods.

(5) *Land descriptions.* In legal land descriptions, names of the compass points should remain exactly as they are in the legal instrument the drafter is working from. Whether the points of the compass are abbreviated with periods, abbreviated without periods, or written out, they should not be changed.

Example:

within the S.W. 1/4 of section 19, township 105N, range 32W

Do not use the abbreviations *e.g.*, *i.e.*, *et al.*, *et seq.*, and *etc.* Do not abbreviate any part of a citation of Minnesota Statutes or Minnesota Rules.

Addresses

*** WRITE ADDRESSES IN PARAGRAPH FORM.**

Do not put quotation marks around the address. Capitalize as you would on the front of an envelope. (This is an exception to the rule that names of officers are lowercased.) Abbreviate only the points of the compass and the state name.

Example:

Mail applications to: Director, State Building Construction Division, Department of Administration, Administration Building, 50 Sherburne Avenue, Saint Paul, MN 55155.

Apostrophes

*** USE APOSTROPHES TO MARK SINGULAR AND PLURAL POSSESSIVE FORMS.**

Example: the court's intention (singular)
children's television
farmers' cooperative associations (plural)

However, some possessives are "frozen"; that is, the apostrophe is omitted. These include:

(1) names of countries and organized bodies ending in s, as in "United States laws," "House of Representatives session," "United Nations meeting"; and

(2) words more descriptive than possessive, that is, words not indicating ownership, as in "teachers college," "the Editorial Experts, Inc., Proofreaders Manual."

If an existing name is usually written without an apostrophe, don't add one.

Use apostrophes to pluralize abbreviations, single letters, or figures used as nouns, such as "Btu's," "x's," or "4's."

Brackets

***** PUT BRACKETS AROUND HEADNOTES AND PROPOSED CODING.**

Example:

Section 1. [222.02] [RETURNS AND RECORDS.]

Brackets show that the enclosed material is not part of the law.

Capitalization

The rules set out here apply to bills. For resolutions, see the example pages in chapter 6. To answer a question not addressed here, refer to *The Chicago Manual of Style*.

Capitalized words.

(1) ***** HEADNOTES FOR SECTIONS AND SUBDIVISIONS ARE SHOWN IN FULL CAPITALS.**

Example:

Section 1. [222.02] [RETURNS AND RECORDS.]

Subdivision 1. [SALES AND USE TAX RETURN.]

(2) *** IN REFERENCES, CAPITALIZE ONLY THE WORDS "MINNESOTA RULES," "MINNESOTA STATUTES," "LAWS," AND NAMES OF OTHER PUBLICATIONS.**

Examples:

Minnesota Statutes 1971, section _____, subdivision _____, clause _____.

Minnesota Rules, part _____, subpart _____, item _____, subitem _____.

Laws 1978, chapter 785, section 4, subdivision 8.

In the layout of each section, capitalize "Subdivision" and "Subd."

Example:

Subdivision 1. XXXXXXXXXXXXXXXXXXXX.

Subd. 2. XXXXXXXXXXXXXXXX.

(3) * **CAPITALIZE THE IMPORTANT WORDS IN TITLES** of books, government documents, periodicals, or serials and in the titles of chapters or sections of these publications. See References for more information.

(4) * **CAPITALIZE PROPER NAMES.**

These include the names of political subdivisions, as well as the names of people, places, and institutions. They do not include titles of individual civic officers except when such titles precede names. They do not include agency names.

Examples: Hennepin county
Floyd B. Olson Memorial Highway
Governor Rudy Perpich
University of Minnesota
Houghton Mifflin Company

Uncapitalized words.

(1) * **DO NOT CAPITALIZE WORDS REFERRING TO A CIVIC OFFICE OR AGENCY.**

Examples: the commissioner of agriculture, the department of agriculture, the senate

(2) Do not capitalize words referring to a political subdivision, law, person, institution, or place if they are not part of a proper name. Do not capitalize them when they refer back to a capitalized proper noun. "University of Minnesota" in line 1 will be "the university" in lines 2 and 3. See Addresses for the one exception to this rule.

Examples: the state
the department
the department of revenue
the county
Ramsey county
the highway
the governor
the university
the company
the act
the rules
the state board of chiropractors

(3) If you are not sure whether something is a proper name, do not capitalize it. Names of forms (like "certificate of live birth") or programs (like "home improvement loan program") should not be capitalized. Neither should funds, grants, types of aid, or other state administrative creations.

(4) Lowercase "state" in the phrase "state of Minnesota" and elsewhere. Do not capitalize the words "federal" or "legislature."

(5) Do not capitalize initial words in numbered clauses unless each is a complete sentence.

Example: a list of phrases

A certification by the director under Minnesota Statutes, section 179.69, subdivision 3 or 5, must contain:

(1) the petition requesting arbitration;

(2) a concise written statement by the director indicating that an impasse has been reached and that further mediation efforts would serve no purpose;

(3) a determination by the director of matters not agreed upon based upon the director's effort to mediate the dispute;

(4) the final positions submitted by the parties; and

(5) those agreed-upon items to be excluded from arbitration.

Example: a list of sentences

Instructions must be printed on the ballot envelope and must include the directions printed below:

(a) After you have voted, check your ballot to be sure your vote is recorded for the candidate or question of your choice.

(b) Put your ballot in this envelope, leaving the stub exposed.

(c) Return this envelope with the ballot enclosed to the election judge.

(d) If you make a mistake in voting or if you spoil your ballot, return it to the election judge and get another ballot.

*** CAPITALIZE THE FIRST WORD IN EACH SENTENCE IN A LIST.**

Clauses

A section, subdivision, or paragraph may be divided into clauses numbered (1), (2), and so on. Every clause but the last should end in a semicolon.

*** A CLAUSE IS LESS THAN A FULL SENTENCE AND ITS FIRST WORD SHOULD BEGIN WITH A LOWERCASE LETTER.**

Coding

***** CODED SECTIONS ARE GIVEN DECIMAL SECTION NUMBERS.**

Example: Section 100.01. Sections are ordered decimally, not numerically, so that extra sections can be inserted between existing sections. For example, a new section numbered 100.125 would follow section 100.12 and precede section 100.13.

Colons

(1) ***** PLACE A COLON AFTER THE ENACTING CLAUSE OF A BILL.**

Example:

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

(2) ***** PLACE A COLON AFTER THE INTRODUCTORY CITATION IN A SECTION OF A BILL.**

Example:

Minnesota Statutes 1984, section 100.01, subdivision 1, is amended to read:

(3) *** PLACE A COLON AFTER AN EXPRESSION THAT INTRODUCES A SERIES OF ITEMS.**

Example:

The petition must contain the following information: the name and address of petitioner, the names and addresses of adverse parties, a concise statement of the grievance, and references to all the relevant documents.

For further examples, see Series.

(4) Place a colon between the place of publication and the publisher's name in a citation. See the chapter on References.

Commas

If you wonder whether or not to use a comma, consult *The Chicago Manual of Style*. Here are the most important rules regarding the use of the comma in drafting:

(1) Use a comma to set off a nonrestrictive dependent clause that follows or falls within a main clause. A nonrestrictive clause is one that can be omitted without altering the meaning of the main clause.

Example:

The application, which may be obtained from the department of education, must be submitted by June 30, 1981.

(2) Use a comma to separate words, phrases, or clauses in a simple series. When a conjunction joins the last two elements in a series, use a comma before the conjunction.

Example:

The members of the commission are the commissioner of education, the commissioner of administration, and the commissioner of transportation.

(3) Use a comma to set off the year following the month and day.

Example: Before June 30, 1982, ...

Omit the commas around the year when no day is given.

Example:

The exemption expires in March 1982 unless the agency reapplies.

(4) Use commas to separate the parts of references. For examples, see References.

Compound Words

See Hyphens.

Dashes

**** AVOID THE USE OF DASHES IN TEXT MATERIAL.**

It is nearly impossible to show that a dash has been stricken in the amendment process.

Dates

*** EXPRESS COMPLETE DATES IN MONTH-DAY-YEAR SEQUENCE.**

Spell out the month of the year. Do not abbreviate the month, and do not use the numerical symbol for it. If only the month and year are used, do not insert a comma after the month or after the year. See Commas.

Example:

Before September 2, 1980, the commissioner ....

In September 1980 and every month after that ....

Fractions

See Numbers.

Hyphens

Do not hyphenate to divide a word at the end of a line. Only hyphenate when a word's proper spelling includes a hyphen.

*** IN AMENDMENTS, KEEP HYPHENATION CONSISTENT WITH EXISTING TEXT.**

In new language, to answer questions about hyphenation, first consult *Webster's Third New International Dictionary*. If that gives no answer, consult *The Chicago Manual of Style*, table 6-1. Most hyphenation questions concern compounds like "part-time" and "60-day." These compounds are hyphenated when they precede nouns, as in "part-time job" or "60-day license."

With four classes of exceptions, words beginning with the following prefixes are spelled without hyphens: ante, anti, co, extra, infra, intra, non, over, post, pre, pro, pseudo, re, semi, sub, super, supra, ultra, un, and under.

Here are the exceptions to the general rule:

(1) Hyphenate if the second element of the word is capitalized or a figure.

Examples: anti-Semitic, pre-1914

(2) Hyphenate to distinguish certain homographs.

Examples: re-cover, un-ionized

(3) Hyphenate if the second element has more than one word.

Examples: pre-Civil war, non-English-speaking people

(4) Hyphenate some compounds in which the last letter of the prefix is the same as the first letter of the word following.

Examples: semi-independent, non-native

Use hyphens in compound numbers (like "thirty-three"), in fractions (like "one-half"), in mixed numbers (like "4-3/4"). See Numbers to learn when these should be spelled out. Use hyphens in dates representing periods extending over more than one year (like "1981-1982").

Do not use a hyphen in any other case as a substitute for the word *to*.

Initials

See Abbreviations.

Italics

Italics cannot be used in bills.

Lists

See sections 10.16 to 10.21.

Measurements

Treat quantities such as distance, length, area, and volume according to the rules for spelling out numbers:

Examples: 45 miles
ten degrees Celsius
three cubic feet
240 volts

Money

Use figures to express dollar amounts.

Examples: $5, $300, $750

Express a dollar amount that begins a sentence as a figure.

Example: $100 may be paid....

Express an even dollar money amount with a dollar sign and the dollar amount, omitting the decimal and zeros.

Examples: $5, $700

In running text, express money amounts with dollar signs, omitting the decimal and zeros for figures which represent even dollar amounts.

Examples: $4, $9.50, $23.35, and $50

However, in tables that include at least one figure with cents, show the decimal point and zeros for even dollar amounts.

Examples: $12.50
38.00
50.75

For amounts under a dollar in text, spell out the word cent or cents. Avoid the cents symbol. In tables, use dollar signs, decimal points, and zeros. Include the dollar sign only once, with the first figure in the column.

Examples: 50 cents $7.50
.50
2.25

Numbers

Numbers used as designators. Use figures for numbers used to refer to specific entities: grades K to 8, school district 24.

Amounts.

**** WRITE NUMBERS TEN AND UNDER IN WORDS; WRITE NUMBERS 11 AND OVER IN FIGURES.**

Examples: two sheets and one towel at least 24 hours

Write a number that begins a sentence in words (but see also Money, above, and Fractions, below).

Example:

Thirty days after the commission has received the report, the commissioner shall....

Order.

**** WRITE OUT THE ORDINAL NUMBERS ONE TO TEN. WRITE ORDINAL NUMBERS GREATER THAN TEN IN NUMBERS AND LETTERS.**

Examples: first, second, fifth
11th, 15th, 81st

Do not use an abbreviation or period following an ordinal figure.

Fractions and decimals.

**** WHEN THE DENOMINATOR IS TEN OR LESS, WRITE THE FRACTION IN WORDS.**

When it is over ten, express the fraction with figures.

Examples: three-tenths, one-half
5/16, 3/25, .04, .007

Express mixed numbers in figures, except at the beginning of a sentence.

Examples: 1-1/2, 9-15/16
"One and one-half" at the beginning of a sentence.

Fractions expressed in figures should not be followed by endings like sts as in "21sts," rds as in "23rds," nds as in "32nds," ths as in "64ths," or by an "of" phrase as in "1/2 of one."

Inclusive numbers. Use the word "to" to link two figures that represent a continuous sequence. The only exceptions are references to school years, tax years, and the like. In these references, do not abbreviate the second figure.

Example: the 1970-1971 school year

Do not use: the 1970-71 school year

Percentages. In text, spell out the word "percent" and write the number according to the other rules here.

Example: 12 percent, three percent, 2-1/2 percent, .04 percent

Official Titles

When referring to a public officer, agency, or organization, **** USE THE OFFICIAL TITLE** of the officer, agency, or organization. The official titles for state officers or agencies are usually found in the constitutional or statutory sections that create them. For rules on capitalization in official titles see Capitalization.

Paragraphs

A section or subdivision may be divided into paragraphs (a), (b), and so on. *** TO RECEIVE A PARAGRAPH LETTER RATHER THAN A CLAUSE NUMBER, A PIECE OF TEXT SHOULD BE AT LEAST A FULL SENTENCE,** preferably several sentences.

Parentheses

Use parentheses to set off place of publication, publisher, and date in references. See the chapter on References.

*** GENERALLY, AVOID PARENTHESES IN TEXT.**

Commas or rephrasing will usually do as well to separate a parenthetical expression.

Percentages

See Numbers.

Periods

***** USE A PERIOD AFTER A SECTION OR SUBDIVISION HEADNOTE.**

Example:

Section 1. [999.09] [RECORDS AND SAMPLES.]

Use periods at the ends of complete sentences. Do not use periods after phrases or clauses in a tabulated list; use semicolons. See Series and Capitalization for examples of this rule.

Punctuation

See individual marks. To answer questions about punctuation that are not addressed in this manual, see *The Chicago Manual of Style*.

Quotation Marks

(1) *** USE QUOTATION MARKS FOR DEFINITIONS.**

Example: "Commissioner" means ....

(2) Short titles or citations are discouraged, but if you must use them, put them in quotation marks when you first assign them to a group of sections. Do not use quotation marks in later references to the short title.

Example:

Sections 1 to 20 may be cited as the "tax reform act."

(3) Use quotation marks to enclose words and phrases following terms such as "marked," "designated," "named," or "entitled."

(4) Use quotation marks around titles of published and unpublished works.

(5) Do not use quotation marks in text to indicate words used in a special sense. Try not to use words this way. If you must use a word in a special sense, define it so that it will not need quotation marks.

Semicolons

(1) ***** USE A SEMICOLON AFTER EVERY PHRASE IN A BILL'S TITLE.**

Example:

An act relating to children; providing for review of foster care of certain developmentally disabled children; permitting Ramsey and Hennepin county juvenile court referees to hear certain contested cases; amending Minnesota Statutes 1984, section 257.071, subdivision 3, and by adding a subdivision.

(2) Use a semicolon to separate closely related independent clauses not connected by a conjunction. Be careful not to overuse this construction. Separate sentences are better than needlessly connected ones.

Example:

The commissioner may call a meeting of the board whenever necessary; he may require all members to be present.

(3) Use a semicolon between independent clauses joined by a transitional connective such as also, furthermore, moreover, however, nevertheless, namely, that is, for example, hence, therefore, thus, then, later, finally. Again, don't overuse this construction.

Example:

Applications must be submitted before January 1, 1985; however, the board may grant an extension for good cause.

(4) Use a semicolon to separate equal elements that contain commas.

Example:

For the purpose of this part, "surety" means any note; stock; bond; assumption of any obligation or liability as a guarantor, endorser, or surety; or collateral trust certificate.

(5) **** USE SEMICOLONS TO SEPARATE REFERENCES WHEN ONE OR MORE OF THE REFERENCES CONTAIN INTERNAL COMMAS.**

Example:

Minnesota Statutes, sections 325.01, subdivision 2; 468.01; and 524.03, subdivision 5.

(6) Use semicolons after clauses or phrases in a list, except after the last item in the list. If the listed items are complete sentences, use periods. See Capitalization and the chapter on clear drafting for examples of this rule.

Slashes

Use the slash between the numerator and denominator of fractions.

Examples: 5/6, a/b

Do not use slashed alternatives such as and/or, she/he, or federal/state.

Spelling

*** IN AMENDMENTS, KEEP SPELLING CONSISTENT WITH EXISTING TEXT.**

In new text, use *Webster's Third New International Dictionary* to decide spelling questions. When you have found the entry that is the right part of speech and has the right meaning, use the main spelling (first spelling) for that entry. Do not use a variant (second or third spelling). For example, if you find *labeling* and the note says "or *labelling*," use the form with the single *l*.

Strikeouts

In amendments, ***** STRIKE OUT MATERIAL TO BE REMOVED FROM THE TEXT OF EXISTING LAWS.**

Example: ~~one-year~~.

See Underscoring.

Subdivisions

A subdivision is the largest division of a section. The first subdivision is always spelled out as "Subdivision 1." but the second and later subdivisions are abbreviated "Subd. 2." and so on. In references, always write the word "subdivision" in full.

Symbols

Do not use symbols such as § or % in bills, resolutions, or amendments.

Tables

In tables, * **CAPITALIZE EVERY IMPORTANT WORD IN A COLUMN HEADING.** See materials on appropriations for examples.

Temperature

Treat temperature numbers according to the ordinary rules for numbers. Write out "degree" and "Fahrenheit" or "Celsius."

Time of Day

Spell out time of day in most text matter, but use figures when the exact moment of time is to be emphasized. Always use figures in designations of time with a.m. or p.m.

Examples: "eight o'clock," but "2:00 p.m."

Underscoring

*** **UNDERLINE NEW MATERIAL** to be inserted or substituted for old material in the text of existing laws.

Example: <u>two years</u>

See Strikeouts.

Word Division

See Hyphens.

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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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"See" references followed by words in full capitals refer the reader to a different main heading. "See" references followed by words in upper and lower case letters refer the reader to a different subheading under the same main heading where the reference appears.

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WORDS AND PHRASES (Cont'd)

Drafting Standards

A Reference List

The drafting standards that appear throughout this manual are listed here for quick reference. Standards with three asterisks must be met; standards with two asterisks should be met unless the context requires otherwise; standards with one asterisk express the revisor's view of the best form and style of drafting. For further discussion of each standard, turn to the page listed.

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