

B I L L D R A F T I N G M A N U A L

Prepared primarily for use of the staff
of the Revisor's office in conjunction
with the Styles and Forms Booklet.

NOTE

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

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Rev. 1968

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ENGROSSING
AND
ENROLLING

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ENGROSSING

Engrossing is the process of incorporating amendments adopted by the legislature into a bill. The result is the first or subsequent engrossment and this fact is shown on the cover where all actions on a bill are recorded.

Amendments to bills are made in different ways. Committees amend bills and report their amendments on forms furnished to them by their legislative body. The committee of the whole, which is either the entire house or the entire senate, sitting as a committee, amends bills. These amendments are called floor amendments. Conference committees, which are committees made up of both senators and representatives who meet to resolve differences between the two bodies, amend the bill in controversy.

Committee amendments are to the typewritten bill, either the unengrossed original or the last engrossment, if any. Amendments prepared in the senate and the house will be prepared on the new committee report forms (Form 6A for the senate and Form 107 for the house).

Bills will be amended by line number. All lines on typewritten bills are numbered by the computer printer. For examples of various ways of amending, see pages 3 to 9.

The practice of amending a bill by striking everything after the enacting clause is to be avoided. It defeats the purpose of the computerized system.

Floor amendments are to either the typewritten bill or the printed bill, and must specify one or the other. A bill is printed at the time it is favorably reported out of committee. It may also be printed if amended thereafter.

Conference committees amend the typewritten bill which has attached to it the amendments that are in controversy.

Amendments must be clearly stated since we must follow the instructions exactly in preparing the engrossment. There is no room for guessing. If the instructions cannot be followed, the bill must be returned for further instructions.

We engross the bill for the body in which the bill originated, even if the amendments were made by the other body. That is, if the house amends a senate bill, we do not prepare the engrossment until the amendments are adopted by the senate. The bill comes to us with amendments attached, stamped to show their adoption, and with the cover showing the actions taken on

that bill up to the time it is sent to us. When we receive it, we retrieve the bill on the CRT by typing "copy" and the document name (the bill drafting number if the bill has never been engrossed, or the senate file number or house file number if it has been engrossed), followed by a colon. The instructions in the amendments are followed and the amendments are incorporated in the bill.

The bill is then printed on the computer printer and five Xerox copies of the master are made. Four covers are prepared, copying the cover of the bill that came to us, and adding the words "First Engrossment" or whatever subsequent engrossment it happens to be, above the H. F. or S. F. number. Four copies of the engrossed bill, in the covers, are delivered to the body that sent the bill to us. We retain in our files the bill with the amendments attached, and a copy of the engrossment we prepared.

(Senate Form 6A)

(NOTE: This form to be used only for bills which are reported out of committee with amendments. All other bills reported out of committee are on white Form 6.)

Mr. Jones from the Committee

on Local Government, to which was referred

S. F. No. 1419, A bill for an act relating to certain villages; operation of village information bureaus; amending Laws 1953, Chapter 243, Sections 1, 3, and 5.

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

Page 1, line 4, strike "shall" and insert "may"

Page 2, strike all of section 3

Page 2, insert a new section 3 to read:

"Sec. 3. Laws 1953, Chapter 243, Section 4, is amended to read:

~~Sec. 4. Any village having a population in excess of 400 and less than 500 according to the 1950 federal census in any county having over 200,000 and less than 300,000 inhabitants according to such census~~ The village of Cook is hereby authorized to appropriate \$500 \$1,000 annually out of the profits of the municipal liquor store to an information bureau of such village."

Page 3, line 12, strike "\$500" and insert "\$1,000"

Amend the title in line 2 by striking "certain villages" and inserting in lieu thereof "the village of Cook"
Further, amend the title in line 3 by striking "bureaus" and inserting in lieu thereof "bureau" and in line 4, after "3," and before "and" insert "4,"

and when so amended the bill do pass.

and when so amended the bill do pass and be placed on the Calendar of Ordinary Matters.

and when so amended the bill do pass and be re-referred to the Committee on

(NOTE: This form to be used only for bills which are reported out of committee with amendments. All other bills reported out of committee are on blue Form 106.)

Mr. Henning from the
Committee on Forestry and Public Domain to which
was referred:

H. F. No. 13, A bill for an act relating to the land use committee; transferring the powers and duties to the state planning officer; amending Minnesota Statutes 1969, Sections 92.35 and 92.36; repealing Minnesota Statutes 1969, Section 92.34.

Reported the same back with the following amendments:

Page 2, after line 18, insert a new section 3 as follows:

"Sec. 3. Minnesota Statutes 1969, Section 92.37, is amended to read:

92.37 [REPORT TO THE LEGISLATURE.] The land use committee, or its successor, the state planning officer, shall report the results of its land classification to the legislature with such recommendations as it may deem advisable."

Renumber Sec. 3 as Sec. 4

Amend the title in line 6 by striking "and 92.36" and inserting in lieu thereof ", 92.36 and 92.37"

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

With the recommendation that when so amended the bill do pass and be placed on the Consent Calendar.

With the recommendation that when so amended the bill do pass and be re-referred to the Committee on

And without further recommendation.

This Committee action taken _____, 19____

_____, Chairman

EXAMPLE - FLOOR AMENDMENT

Mr. _____ moves to amend S. F. No. 139,
the printed bill, as follows:

Page 5, line 3, strike "\$10" and insert in
lieu thereof "\$15" and in line 4, restore
the stricken "\$10" and strike "\$15"

Strike all of Section 7

Renumber Section 8 as Section 7

Add a new section at the end of the bill as follows:

"Sec. 8. This act takes effect July 1, 1972."

Amend the title in line 4 by striking "148.261,
Subdivision 3;"

EXAMPLE - CONFERENCE REPORT-HOUSE BILL

CONFERENCE COMMITTEE REPORT ON H. F. No. 1500

May 10, 1971

Honorable (Name) , Speaker of the House of Representatives

Honorable (Name) , President of the Senate

We, the undersigned conferees on the part of the House and the Senate, upon the disagreeing votes as to H. F. No. 1500, report that we have agreed upon the items in dispute and recommend as follows: That the Senate recede from its amendments and that H. F. No. 1500 be amended as follows:

Page 1, line 3, reinstate the stricken "may"
and strike "shall"

Line 5, strike "\$10" and insert in lieu
thereof "\$15"

Page 2, line 8, after "He may" and before
"establish" insert ", upon the recommendation
of the committee,"

We request adoption of this report and repassage of the bill in accordance therewith.

House Conferees:

THOMAS THOMPSON

ALBERT WILSON

G. R. HOUSE

Senate Conferees:

RUPERT SMITHE

FRANCES KELLY

(MRS.) ANN HALL

EXAMPLE - CONFERENCE REPORT-HOUSE BILL

CONFERENCE COMMITTEE REPORT ON H. F. No. 2332

April 26, 1971

Honorable (Name) , Speaker of the House of Representatives

Honorable (Name) , President of the Senate

We, the undersigned conferees on the part of the House and the Senate, upon the disagreeing votes as to H. F. No. 2332, report that we have agreed upon the items in dispute and recommend as follows:

That H. F. No. 2332, as amended by the Senate, be

further amended by adding a section as follows:

"Sec. 8. This act takes effect January 1, 1972."

We request adoption of this report and repassage of the bill in accordance therewith.

House Conferees:

ROBERT J. BROWN

WILLIAM WILSON

HAROLD VANCE

Senate Conferees:

JOHN SIMMERS

VERN KLIEN

(MRS.) M. C. SMITH

EXAMPLE - CONFERENCE REPORT-SENATE BILL

CONFERENCE COMMITTEE REPORT ON S. F. No. 123

May 24, 1971

Honorable (Name) , President of the Senate

Honorable (Name) , Speaker of the House of Representatives

We, the undersigned conferees on the part of the Senate and the House, upon the disagreeing votes as to S. F. No. 123, report that we have agreed upon the items in dispute and recommend as follows:

That the House recede from its amendments.

We request adoption of this report and repassage of the bill in accordance therewith.

Senate Conferees:

J. L. BAGLEY

SAMUEL OLSEN

ROBERT J. FLYNN

PHILIP CHASE

JOSEPH WILLIAMS

House Conferees:

JAMES NELSON

(MRS.) NANCY LEE

ALBERT SHLIEF

JOHN RUDOLPH

HOWARD BAKER

EXAMPLE - CONFERENCE REPORT-SENATE BILL

CONFERENCE COMMITTEE REPORT ON S. F. No. 320

May 20, 1971

Honorable (Name) , President of the Senate

Honorable (Name) , Speaker of the House of Representatives

We, the undersigned conferees on the part of the Senate and the House, upon the disagreeing votes as to S. F. No. 320, report that we have agreed upon the items in dispute and recommend as follows: That the House recede from its amendments and that S. F. No. 320 be amended as follows:

Page 2: Line 3, strike "\$9,160" and insert in lieu thereof "\$9,220"

Line 4, strike "\$7,560" and insert in lieu thereof "\$7,600"

Line 6, strike "\$6,360 to \$6,760" and insert in lieu thereof "\$6,400 to \$6,800"

Line 7, strike "\$4,600 to \$6,160" and insert in lieu thereof "\$4,700 to \$6,280"

We request adoption of this report and repassage of the bill in accordance therewith.

Senate Conferees:

ALBERT J. JONES

ROBERT L. FLYNN

JAMES M. EDWARDS

House Conferees:

THOMAS A. LEE

PAUL J. ROBERTS

MARK S. BROWN

ENROLLING

After a bill has passed both bodies of the legislature in the same form, either as introduced or as finally engrossed, the bill is ready to be enrolled.

The bill is carefully checked, then the coding is removed from the master, and the words "A bill for an act" are also removed. The house file or senate file number is added, seven lines down and 18 spaces from the right hand edge of the paper on the first page, and five lines down and 18 spaces from the right on the second and subsequent pages.

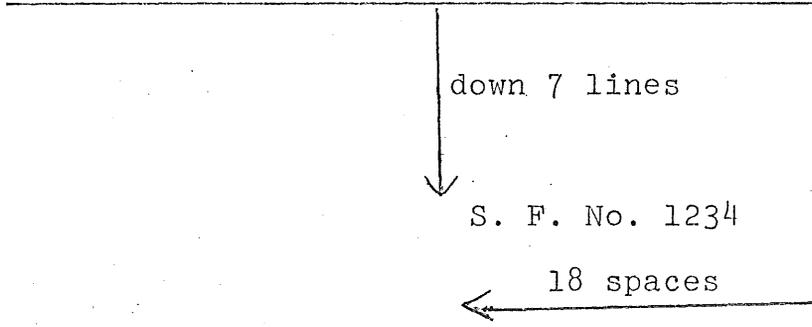
A pre-printed signature page for the house or senate is used, with dates of passage inserted.

The bill is Xeroxed on special enrollment paper, the first page of which is headed by the words "An Act". Subsequent pages are Xeroxed on plain enrollment paper. In the case of a resolution, the words "A resolution" are not removed, and plain enrollment paper is used for all pages, including the first.

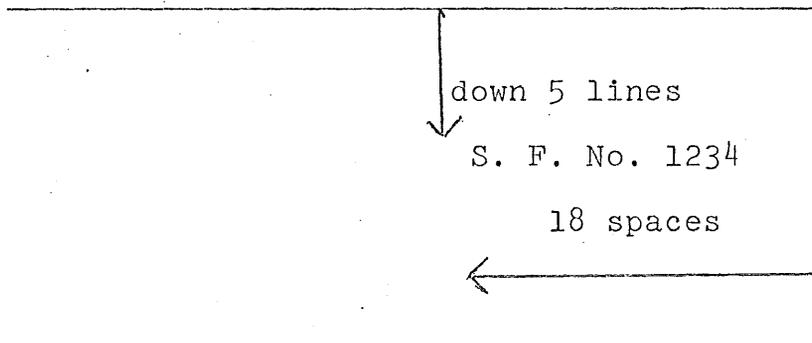
The signature sheet is also Xeroxed on plain enrollment paper.

Two extra copies of the entire enrollment are made on plain white paper.

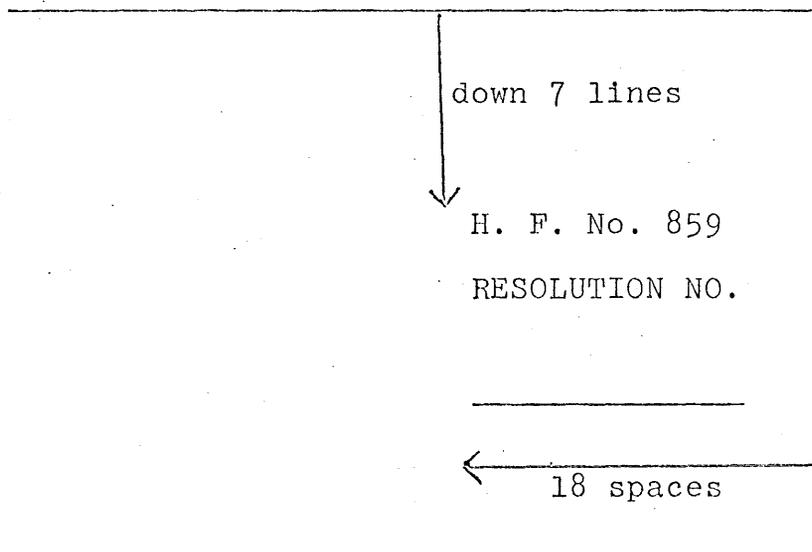
EXAMPLE - INSERTING OF FILE NUMBER ON ENROLLMENTS



Page 1
of bills



Page 2 and
following
pages



Page 1 of
resolutions

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FOREWARD

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

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

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

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

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

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

INSTRUCTIONS TO DRAFTSMEN

STATUTORY PROVISIONS

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

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

" * * *

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

" * * * "

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

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

STATUTORY PROVISIONS - continued

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

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

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

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

GENERAL DRAFTING RULES

a. Nonpartisan attitude

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

b. The drafting service

Bills, resolutions, and other legislative proposals may be drafted for legislators, legislative committees, state departments and agencies, and the governor. Others who may request bill drafting services should be politely

GENERAL DRAFTING RULES - continued

informed that the request for such services must come from some member of the legislature.

c. Confidential nature of work

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

d. Tailor-made drafts

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

GENERAL DRAFTING RULES - continued

e. Procedure for taking drafting requests

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

The request form should show the subject matter of the requested measure so that it may be properly indexed by the bill drafting clerk. The draftsman who takes the request is responsible for the initial classification of each request he takes, but it is subject to review and change by the revisor or his assistant.

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

(3) Sections affected When taking a request, obtain as much information as possible and check the statutes which are affected with the requester so that both the requester and the draftsman will clearly understand what is wanted. Also check the statutory cross reference tables maintained in this office so as to ascertain whether or not other sections of the statutes are affected by the requester's proposal. (See "12. REPEAL CLAUSE," beginning on page 32.) If as a result of such a check it is necessary to amend other sections

GENERAL DRAFTING RULES - continued

or subdivisions, the request should clearly so indicate.

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

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

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

(7) Redrafts A simple measure usually can be drafted in final form at its first writing. More complex measures may seem to require preliminary drafts, to be submitted to the requester for his approval. A draftsman may feel

GENERAL DRAFTING RULES

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

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

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

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

GENERAL DRAFTING RULES - continued

f. Processing bill drafting requests

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

- (1) When a bill drafting request has been completed by the draftsman and signed by the requester it shall be given to the bill drafting clerk.
- (2) The bill drafting clerk will prepare a file. Files are numbered consecutively in the order in which the bill drafting requests are received by the clerk. She will also prepare two cards, the first listing the subject matter of the request, and the second listing the name of the requester. All drafting requests of a single requester are listed on a single card, chronologically in order.
- (3) If the draftsman has some special reason for handling a particular drafting request, he will so notify the assistant revisor, so that after the request has been properly docketed and recorded the file may be assigned to him. Normally, however, the bill requests are distributed by the assistant revisor to the draftsmen in the order in which the requests are numbered. No request shall be handled out of turn except upon express permission of the revisor.
- (4) If the draftsman is unable to prepare his draft within a reasonable time, the drafting clerk shall be notified of his reasons.
- (5) The drafting clerk will maintain a tickler file showing the number of bill requests that each draftsman has under consideration, and the name of the requester and subject matter of the request. Reasons for delay in complying with the request will be noted in this tickler file.
- (6) Draftsmen are requested to cooperate with the drafting clerk at all times in order that adequate and accurate files may be maintained and the requester may be advised of the status of his request at any time.

g. Bill drafting aids

- (1) Xerox copies of statutes for amendments In order

GENERAL DRAFTING RULES - continued

to draft a bill amending an existing statute the page or pages containing the statutes to be amended can be used by the draftsman for indicating changes desired by using a xerox copy. This copy enables the typist to use a "Line-a-time" for copying unamended portions. The copy used remains in the bill file.

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

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

(3) Subject cards - bill requests for sessions of 1959 and subsequent sessions Subject cards for bill drafting requests for the regular and special sessions of 1959 and subsequent sessions are in the office and give the file number of the request. These may prove time-savers in finding a prior bill which may fulfill the requirement of the current request. You may also inquire of senior staff members as to prior bills. Such a bill should not be used without checking for amendments or other changes in the law since it was prepared. Any dates in the draft must be made current. Do not assume the bill is satisfactory, as it usually can be improved.

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

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

GENERAL DRAFTING RULES - continued

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

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

h. General procedure

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

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

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

GENERAL DRAFTING RULES - continued

to the draftsman, again notifying the bill drafting clerk, who records the fact in the docket.

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

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

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

(5) Headnotes Whenever possible the draftsman will write the headnote of each section of a bill. The headnote shall be in full caps and enclosed in brackets as it is not a part of the enactment. If a bill contains a headnote it must be stamped with the "Headnotes Authorized" stamp, which the draftsman shall initial, before it can be introduced.

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

GENERAL DRAFTING RULES - continued

the bill will be processed as are other bills requested. In the case of a bill drawn in the revisor's office, the draftsman who draws the bill will be responsible for endorsing the approvals before delivery of the bills to the requester.

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

(7) Coding On initial legislation, general in nature, it may be desirable to assign code numbers in conformity with the statutes. Bills containing coding must be stamped with the "Coding Approved" stamp and be initialed by one of the staff. More about coding in the section on amendments.

THE BILL AND ITS PARTS

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

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

ARRANGEMENT

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

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

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

OUTLINE OF PARTS

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

OUTLINE OF PARTS - continued

10. Severability clause
11. Saving clause
12. Repeal clause
13. Effective date

1.

TITLE
(and the one-subject rule)

Minnesota Constitution, Art. IV, Section 27, provides:

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

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

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

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

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

A broad and comprehensive title is more likely to run the gauntlet of the constitution than a restricted one. Under a restricted title an act may well contain provisions not fairly within such restricted title, and therefore fail under the constitutional provision. For instance, in WATKINS v. BIGELOW, 93 Minn. 210, 100 N.W. 1104, the title of the act in question provided for the amendment of a section of the statutes and then added the clause "relating to express trusts"; the court said (93 Minn. 222):

OUTLINE OF PARTS - continued

"The title is a restrictive one, for it gives no intimation that the act deals with the general subject of trusts, as might have been the case if it had simply read. 'An act relating to express trusts.' In construing this title the last clause thereof cannot be disconnected from that which precedes and limits it. The title cannot be construed as if it read 'An act relating to express trusts,' for the declared purpose of the act is to amend the sixth subdivision of a certain section relating to express trusts. Or, in other words, the title simply gives notice that the proposed amendment relates only to the subject-matter of such subdivision.

"In determining whether the subject-matter of the act here in question is embraced in its title, the distinction between a general title to a statute and a restricted one and the rules applicable to each must be observed. The rule is that the title to a statute, if it be expressed in general terms, is sufficient if it is not a cloak for legislating upon dissimilar matters, and the subjects embraced in the enacting clause are naturally connected with the subject expressed in the title. General titles to statutes should be liberally construed in a common-sense way. STATE v. CASSIDY, 22 Minn. 312; WINTERS v. CITY OF DULUTH, 82 Minn. 127, 84 N.W. 788. But if the title to a statute be a restrictive one, carving out for consideration a part only of a general subject, legislation under such title must be confined within the same limits. All provisions of an act outside of such limits are unconstitutional, even though such provisions might have been included in the act under a broader title.***"

Another case, which quotes from WATKINS v. BIGELOW, supra, is STATE ex rel. FINNEGAN v. BURT, 225 Minn. 86, 29 N.W. (2d) 655. The title to the act in question purported to establish a classification and salary system and created a commission for that purpose in counties of a certain population. Section 8 of the act related to the discharge or demotion of employees. The court held that section 8 was invalid as it covered a separate and distinct subject not declared or suggested in the title. The contention was made that the act was complete code or revision of existing laws relating to the subject. The court pointed out that the title of the act is a restrictive one and does not purport to cover a complete code. See also STATE v. PALMQUIST, 173 Minn. 221, 217 N.W. 108; 17 Dunnell, Dig. (3 ed.) § 8909, and cases cited therein.

The title requirement and the one-subject rule as provided in the constitution have been given a liberal construction by

OUTLINE OF PARTS - continued

the Minnesota supreme court. This was reiterated in the case of VISINA v. FREEMAN, 252 Minn. 177, 201, 89 N.W. (2d) 635, where the court said:

"We have frequently held that this provision of our constitution should be given a liberal construction.

"In JOHNSON v. HARRISON, 47 Minn. 575, 577, 50 N.W. 923, 924, 28 A.S.R. 382, 384, we established the applicable rule, since followed in construing this constitutional provision, where we said:

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

"In STATE ex rel..PEARSON v. PROBATE COURT, 205 Minn. 545, 551, 287 N.W. 297, 300, we said:

"The objects of the constitutional provision have been often expressed in the decisions of this court. They are, first, to prevent 'log-rolling legislation' or 'omnibus bills,' by which a large number of different and disconnected subjects are united in one bill and then carried through by a combination of interests; and, secondly, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the proposed legislation, or of the interests affected.'"

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

[8908.] "The generality of a title is no objection if it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The subject need not be specifically or exactly expressed. The title is not designed as an index of the law. The fact that a title is broader than the act itself is not fatal. A title broader than the statute, if it is fairly indicative of what is included in it, does not offend the Constitution. It is the 'subject' and not the 'object' of the law which must be expressed. It is unnecessary

OUTLINE OF PARTS - continued

that the various objects or purposes of the act should appear in its title. It is the subject and not the effect of the law which is required to be expressed in the title. ***" (Underlining supplied.)

[8910.] "The term 'subject' is to be given a broad and extended meaning so as to allow the legislature full scope to include in one act all matters having a logical, common, or natural connection. To constitute duplicity of subject an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. The connection or relationship between the subjects need not be logical; it is sufficient, if they are connected in the public mind. Everything fairly germane to the general subject expressed in the title or appropriate to its accomplishment -- everything which might reasonably be expected to be found in a law of such a character -- may be included without specific reference in the title. ***"

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

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

A BILL FOR AN ACT

RELATING TO SCHOOL DISTRICTS.

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

RELATING TO SCHOOL DISTRICTS; AUTHORIZING
SCHOOL DISTRICTS TO PROVIDE TEACHERAGES.

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

RELATING TO SCHOOL DISTRICTS; AUTHORIZING
SCHOOL DISTRICTS TO PROVIDE TEACHERAGES;
AMENDING MINNESOTA STATUTES 1967, SECTION
122.12; AND REPEALING MINNESOTA STATUTES
1967, SECTION 122.34.

OUTLINE OF PARTS -- continued

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

Examples (See also Styles and Forms booklet):

RELATING TO [etc.]; AMENDING [or REPEALING] MINNESOTA STATUTES 1967, SECTION 12.34.

RELATING TO [etc.]; AMENDING [or REPEALING] MINNESOTA STATUTES 1967, SECTION 456.78, SUBDIVISION 3.

RELATING TO [etc.]; AMENDING MINNESOTA STATUTES 1967, SECTIONS 12.34, 12.35, 12.36, AND 12.37.

RELATING TO [etc.]; REPEALING MINNESOTA STATUTES 1967, SECTIONS 123.45 TO 123.67.
[Note: It is unnecessary to add "inclusive"; M.S. § 645.48.]

RELATING TO [etc.]; AMENDING [REPEALING] MINNESOTA STATUTES 1967, SECTION 234.56, AS AMENDED. [Where amendment made since compilation of statutes.]

RELATING TO [etc.]; AMENDING [REPEALING] LAWS 1945, CHAPTER 123.

RELATING TO [etc.]; AMENDING [REPEALING] EXTRA SESSION LAWS 1957, CHAPTER 456, SECTION 7.

RELATING TO [etc.]; AMENDING MINNESOTA STATUTES 1967, SECTION 78.91, BY ADDING A SUBDIVISION.

RELATING TO [etc.]; AMENDING MINNESOTA STATUTES 1967, SECTION 234.56, AND ADDING A SUBDIVISION TO THE SECTION.

RELATING TO [etc.]; AMENDING MINNESOTA STATUTES 1967, CHAPTER 169, BY ADDING A SECTION.

Note: For a simple repealer do not say "A bill for an act providing for [etc.]; repealing [etc.]." The act is not

OUTLINE OF PARTS - continued

providing for the subject -- it is repealing it; therefore the words "relating to" the subject are more accurate.

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

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

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

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

2.

PREAMBLE ("Whereas" clause)

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

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

3.

ENACTING CLAUSE

The style of the enacting clause is fixed by the constitution,

OUTLINE OF PARTS - continued

article 4, section 13. It is required in every bill. Its wording is:

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

4.

SHORT TITLE

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

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

Note that instead of saying "This act" we recommend the use of reference to sections of the bill. (See THIS ACT - USE OF, page 44.)

5.

STATEMENT OF PURPOSE OR POLICY

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

6.

DEFINITIONS

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

OUTLINE OF PARTS - continued

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

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

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

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

Do not write substantive law in a definition.

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

Example:

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

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

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

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

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

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

"(1) Words and phrases are construed according to

OUTLINE OF PARTS - continued

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

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

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

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

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

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

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

If a bill applies to a person, meaning a human being, it is unnecessary to use a definition, as was done in the "Shoplifting Law," section 629.365.

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

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

OUTLINE OF PARTS - continued

Minn. 437, 84 N.W. (2d) 261):

"* * * Although enacted at different times there can be little doubt that the legislature has regarded all three acts as supplementary to one another and as integral parts of a unified plan for controlling the sale and consumption of intoxicating liquor. When legislative acts involve a single subject or problem, there is an unusually strong reason for applying the rule of statutory construction that when statutes are in pari materia they are to be construed harmoniously and together. * * *"

7.

BASIC PROVISIONS

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

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

The arrangement of sections in a particular bill depends upon the individual case. Generally, the main provision or principle precedes formal details. The reader can then ascertain the "heart" of the legislation -- understand the leading principle -- by the first section or sections, and then easily read on to the subordinate provisions: Details, procedures, exceptions, and special provisions.

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

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

This order is merely suggestive. For example, Sutherland, on

OUTLINE OF PARTS - continued

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

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

8.

APPROPRIATIONS

Minnesota Constitution, Article IV, Section 12, provides:

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

Article IX, Section 9, provides:

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

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

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

An appropriation provision in a bill should be carried in a separate section, should be mentioned in the title, should specify the purpose for which made, the officer or department to whom made, the source of the appropriation, and the amount.

OUTLINE OF PARTS - continued

The usual form is: "There is appropriated to the department of administration from any money in the general revenue fund in the state treasury the sum of \$ _____ for operating the electronic data processing center established by section 1."

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

The effective date of an appropriation is provided by M.S. § 645.02, the second paragraph of which reads:

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

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

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

To circumvent the legislature's aversion to standing appropriations the device of creating a revolving fund has frequently been used. A revolving fund is created; the receipts from a given source are deposited to the credit of the revolving fund; the appropriation for a given purpose is made from the revolving

OUTLINE OF PARTS - continued

fund. If it becomes necessary to use this device the following form is suggested: "There is established within the state treasury a cigarette license account. All receipts from cigarette licenses shall be deposited in the state treasury and credited to the cigarette license account. All money in the state treasury credited to the cigarette license account is annually appropriated to the commissioner of taxation for travel purposes."

The foregoing device is suggested in lieu of creating a fund, and to facilitate accounting practices by the state treasurer. The draftsman is admonished to avoid creating funds and accounts from which appropriations are to be paid; in any case, he is directed to obtain the suggestions of the state auditor and the public examiner, wherever possible, before so doing. He should have in mind that "State Accounting Procedures" by Tannery states "Each fund should be broad but definite in scope and should be established only after all other possible means for controlling expenditures have been exhausted."

By all means avoid writing accounting into legislation.

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

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

9.

LIBERAL INTERPRETATION

A liberal interpretation provision is of doubtful value. That statutes shall be so construed as to effectuate the intention of the legislature and secure the most beneficial operation is a familiar rule of construction. The statement

OUTLINE OF PARTS - continued

of this principle is set forth in M.S. § 645.16.

Uniform acts always carry a provision as follows: "This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it." Section 645.22 contains practically the same language.

10.

SEVERABILITY CLAUSE

There is no need for a severability provision in a bill in view of decisions of the courts, and M.S. § 645.20, which provides:

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

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

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

or

"Sec. __. Notwithstanding Minnesota Statutes, Section 645.20, if any provision of sections 1 to 20

OUTLINE OF PARTS - continued

(or it might apply to only one section) is found to be unconstitutional and void the remaining provisions shall be of no effect."

11.

SAVING CLAUSE

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

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

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

Ordinarily, it is unnecessary to have a saving clause because of M.S. section 645.35, which reads:

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

As to amendatory laws, see M.S. section 645.31. It is said

OUTLINE OF PARTS - continued

in 17 Dunnell, Dig. (3 ed.) § 8923:

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

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

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

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

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

On the other hand, the general saving statute or a saving clause in the act itself does not necessarily save all existing right or actions. Rights which are not substantive and private in nature are not protected. A general saving statute, for

OUTLINE OF PARTS - continued

instance, will not save a rule of evidence or a mode of procedure. See 1 Sutherland, Statutory Construction, § 2047. See also, Id. § 2050, as to the effect of repeal on remedies.

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

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

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

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

"197.48 [APPLICATION.] No provision of any subsequent act relating to any such appointment, employment, promotion, or removal shall be construed

OUTLINE OF PARTS - continued

as inconsistent herewith or with any provision of sections 197.45 and 197.46 unless and except only so far as expressly provided in such subsequent act that the provisions of these sections shall not be applicable or shall be superseded, modified, amended, or repealed. * * *

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

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

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

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

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

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

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

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

OUTLINE OF PARTS - continued

12.

REPEAL CLAUSE

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

"Sec. _____. Minnesota Statutes 1967, Sections 51.02 and 51.03, are repealed."

(If a series of sections):

"Sec. _____. Minnesota Statutes 1967, Sections 51.02 to 51.06, are repealed." (It is unnecessary to add "inclusive" because of § 645.48.)

(If the repeal is of a session law not coded):

"Sec. _____. Laws 1967, Chapter 411, is repealed."

Caution 1: Be sure that the title of the bill contains a reference to the repealed sections. See this manual, under TITLE (and the one-subject rule), pages 17 and 18, where there are suggested forms for the title.

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

Caution 3: Do not repeal sections of the statutes that are included in M.S.A. (West's publication) but are not in Minnesota Statutes. In these instances repeal by reference to the session law. M.S.A. is not the official publication and cannot be used for legislative drafting. (This is generally a problem only in those sessions which immediately precede a new compilation of the statutes. The revisor's proposed coding for the previous session's acts are used by M.S.A. in pocket parts or a new volume. An act repealing a law not yet compiled should never refer to the proposed coding as though it were in the statutes, but should repeal by express reference to the chapter number of the act.)

OUTLINE OF PARTS - continued

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

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

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

Minnesota Statutes 1967, Section 645.39, reads:

"When a law purports to be a revision of all laws upon a particular subject, or sets up a general or exclusive system covering the entire subject matter of a former law and is intended as a substitute for such former law, such law shall be construed to repeal all former laws upon the same subject. When a general law purports to establish a uniform and mandatory system covering a class of subjects, such law shall be construed to repeal preexisting local or special laws on the same class of subjects. In all other

OUTLINE OF PARTS - continued

cases, a later law shall not be construed to repeal an earlier law unless the two laws are irreconcilable."

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

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

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

13.

EFFECTIVE DATE

Minnesota Statutes 1967, Section 645.02, provides:

"645.02 [EFFECTIVE DATE AND TIME OF LAWS.] Each act, except one making appropriations, enacted finally at any session of the legislature takes effect at the beginning of the day 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."

Minnesota Statutes 1967, Sections 645.023 and 645.024, provide:

"645.023 [SPECIAL LAWS; ENACTMENT WITHOUT LOCAL APPROVAL; EFFECTIVE DATE.] Subdivision 1. A special

OUTLINE OF PARTS - continued

law enacted pursuant to the provisions of the Constitution, Article XI, Section 2, shall become effective without the approval of any affected local government unit or group of such units in a single county or a number of contiguous counties.

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

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

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

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

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

"Section ____ . This act takes effect July 1, 1969."

or

"Section ____ . This act applies to proceedings instituted on and after July 1, 1969."

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

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

AMENDMENTS AND REPEALS

(See also REPEAL CLAUSE, beginning on page 32)

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

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

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

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

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

"Section 1. Minnesota Statutes 1967, Section 169.14, is amended by adding a subdivision to read:

"Subd. . Where the commissioner [etc.]"

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

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

AMENDMENTS AND REPEALS - continued

"Section 1. Minnesota Statutes 1967, Section 169.14, is amended to read:

"169.14 [HEADNOTE.] Subdivision 1. [Here insert the existing section, amended or not, as desired]

"Subd. 2. The department [here insert the desired new text, entirely underlined; if a subdivision headnote is inserted, omit underlining under the headnote.]

New subdivisions may be inserted in a section at any point (ahead of existing subdivisions, if this is necessary to continuity). In order to establish the desired location within the section, all existing subdivisions must be set forth even if they are not to be amended; the entire section must be amended in one bill section. (Note: This is contrary to the general rule of amending each subdivision in a separate bill section - see page 36 of this manual.) To insert new matter ahead of old, the following is a sample form:

A BILL FOR AN ACT

RELATING [etc.]; AMENDING MINNESOTA STATUTES 1967, SECTION 700.03, BY ADDING SUBDIVISIONS.

[ENACTING CLAUSE.]

Section 1. Minnesota Statutes 1967, Section 700.03, is amended to read:

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

Subd. 2. [Copy from existing law.]

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

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

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

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

AMENDMENTS AND REPEALS - continued

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

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

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

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

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

Minnesota Statutes 1967, Sections 645.31 and 645.32,

"645.31 [CONSTRUCTION OF AMENDATORY AND REFERENCE LAWS.] Subdivision 1. [AMENDATORY LAWS.] When a section or part of a law is amended, the amendment shall be construed as merging into the original law, becoming a part thereof, and replacing the part amended, and the remainder of the original enactment and the amendment shall be read together and viewed as one act passed at one time; but the portions of the law which were not altered by the amendment shall be construed as effective from the time of their first enactment, and the new provisions shall be construed as effective only from the date when the amendment became effective. When an act has been amended 'so as to read as follows,' or otherwise, a later reference to that act either by its original title or as it exists in any compilation of the laws of this state includes the act as amended.

Subd. 2. [ADOPTION OF LAW BY REFERENCE.] When an act adopts the provisions of another law by reference it

AMENDMENTS AND REPEALS - continued

also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the contrary."

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

See also Section 645.34.

Frequent errors occur by using the phrase "this act" in amendatory laws. Bear in mind that the rule of statutory construction is as set out in 1 Sutherland, *Statutory Construction*, (3 ed.) 1935: "The phrase 'this act' in a section as amended is generally held to refer to the whole act as amended and not merely to the amended act." As one illustration, note Laws 1953, Chapter 460, amending M.S. 1949, section 145.12, as amended by a 1951 act. The 1951 amendment carried as language "Under the provisions of section 1, subdivision 3 of this act" and the 1953 amendment, by subdivision 2, continued this same reference, although the 1953 amendment had no subdivision 3 in section 1. The error continued into the 1953 and 1957 statutes. The 1953 amendment should have referred to the proper section in the statutes or to the 1951 act. Another illustration in Laws 1957, Chapter 646, relating to standard time. This amended section 645.07, concerning uniform standard time. The amendment added to section 645.07 the authority of the governor to establish daylight saving time; in section 3 it stated: "This act is effective on passage and shall continue in effect until July 1, 1959." All of section 645.07, therefore, and not merely the amendatory provisions, would have expired on July 1, 1959. (However, the section was repealed at the 1959 extra session.) See *STATE v. COUNTY BOARD*, 255 Minn. 413, 96 N.W. (2d) 580. See a more complete discussion on the use of "this act" under such subject head, beginning on page 44.

As was pointed out under the subject REPEAL CLAUSE, beginning on page 32, the section proposed to be amended may be referred to in other sections of the statutes, which then may also require amendment. Again, the internal reference cards should be checked, to see if the section is referred to elsewhere.

The temptation, where there are multiple changes proposed in an amendatory bill, is to repeal the entire section and reenact the old law as well as the new. In doing this the

AMENDMENTS AND REPEALS - continued

historical reference to the old section is lost, and the procedure definitely affects any other section of the statutes that refers to the repealed section. As an example, Laws 1957, Chapter 620, concerning fees of the clerk of district court, instead of amending the existing section, reenacted it, raising the fees in many of the cases itemized, and repealed the old section. The old section was referred to in another section concerning fees in the supreme court, which latter section was not amended in any manner. Repealing and reenacting therefore should be avoided where possible.

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

Bills amending or repealing statutes should refer in both the title and the body to the affected sections of the statutes, omitting any reference to the legislative act from which the statute was compiled. This is provided by sections 645.29 and 648.33. Therefore reference should be to "Minnesota Statutes 1967, Section _____." If the amendment or repeal pertains to a session law which is not contained in the statutes, the proper reference is to "Laws [year], Chapter _____, Section _____," or "Extra Session Laws [year], Chapter _____, Section _____." If the bill affects laws passed at the 1891, or prior, session, reference is to "Special Laws [year], Chapter _____, Section _____," or "General Laws [year], Chapter _____, Section _____."

Prior to the 1958 amendment to article IV, section 33 of the constitution, none of the special or local laws enacted in 1891 or prior thereto could be amended, extended, or modified. They could only be repealed. (The exception to this was special laws relating to courts. See DAHLSTEN v. ANDERSON, 99 Minn. 340, 109 N.W. 697.) The present article IV, section 33, reads in part: "The legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as provided in Article XI." (Underlining supplied.) For drafting of special laws see page 49 of this manual.

AMENDMENTS AND REPEALS - continued

As was discussed under the heading REPEAL CLAUSE, beginning on page 32, do not attempt to amend a section that appears in Minnesota Statutes Annotated (M.S.A.), West's publication, but which does not appear in Minnesota Statutes 1967. M.S.A. is not the official publication and cannot be used for legislative drafting. An amendment in this case shall be to the session law itself.

A bill amending a section in Minnesota Statutes, amended in a session subsequent to the latest publication, should refer to the section of the statutes and to the amendment as follows: "Minnesota Statutes 1967, Section 722.06, as amended by Laws 1969, Chapter 456, Section 7, is amended to read:" The changes made should be based on the amendatory session law (Chapter 456, Section 7, in this instance) and not on the section as it appears in the 1967 statutes.

Where a section appearing in the 1967 statutes was not subdivided, but a subsequent amendment to the section created new subdivisions, a bill to amend one of the new subdivisions would refer to it as follows: "Minnesota Statutes 1967, Section 122.06, Subdivision 2, as added by Laws 1969, Chapter 60, Section 3, is amended to read:" The text to be amended, of course, would come from Section 3 of Chapter 60.

The title of an amendatory bill should contain proper reference to the law to be amended, in addition to its subject matter, briefly expressed. See TITLE (and the one-subject rule), beginning on page 14 of this manual, and particularly the suggested forms of titles found on pages 17 and 18.

A bill for the amendment of a statute must contain the full text of the section or subdivision to be amended. That is, if the section is not divided into subdivisions, the text of the entire section must appear; if the section is subdivided, only the text of those subdivisions to be amended need appear, but each subdivision must be amended in a separate section of the bill. Insert in the proper place in the text the words and characters constituting the amendatory matter. When the bill is typed, the newly inserted matter shall be underscored, and the matter to be eliminated by the amendment shall have a line of hyphens run through it. Note that if new matter is substituted for stricken matter, the stricken old matter appears first, followed by the underlined new. A simple amendatory bill might read:

"Section 1. Minnesota Statutes 1967, Section 67.89, is amended to read:

"67.89 [HEADNOTE.] ~~Upon-the-filing-of-the-report~~

AMENDMENTS AND REPEALS - continued

~~the board of county commissioners and the city council shall consider the report and may either reject the same or ratify the action taken by the commission; and~~
In the event that either or both of these governing bodies shall reject the report of the commission-
contract for acquisition of a site the matter shall be re-submitted to the commission for further action."

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

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

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

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

AMENDMENTS AND REPEALS - continued

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

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

For further examples see the note following section 482.15.

THIS ACT - USE OF

The draftsman should avoid use of the phrase "this act" wherever possible in drafting, either original legislation or amendatory bills.

New Mexico's drafting manual states:

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

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

Several illustrations of errors in amendatory acts using "this act" are pointed out under the subject AMENDMENTS AND REPEALS, beginning on page 36.

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

THIS ACT - USE OF - continued

This is not desirable from a statutory standpoint.

Keep in mind then that the bill may be incorporated into the statutes. How will it fit? Refer to the sections of the bill, where possible, rather than to "this act". Study the following examples:

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

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

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

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

Reference to specific sections will force a subsequent draftsman to be specific when he amends the act.

The use of "this act" is at times unavoidable, but with an awareness of the problem we hope it can be cut down to a minimum.

"This chapter," "this article," and "this code" are subject to the same objections as "this act".

ADOPTION OF STATUTES BY REFERENCE

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

[5207] "A statute may refer to another statute and incorporate part of it by reference. The constitutional provision that no law shall be revised or amended by mere reference to its title is sometimes used to attack these statutes. Reference statutes are not considered amendatory, however, but complete in themselves, so that the constitutional objection is met.

"There are two general types of reference statutes; statutes of specific reference and statutes of general reference. A statute of specific reference, as its name implies, refers specifically to a particular statute by its title or section number. A general reference statute refers to the law on the subject generally. An example of this type of reference is a provision that contracts made under the statute are to be let 'in the manner now provided by law'."

[5208] "A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments, unless the legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute. In the absence of such intention subsequent amendment of the referred statute will have no effect on the reference statute. Similarly, repeal of the statute referred to will have no effect on the reference statute unless the reference statute is repealed by implication with the referred statute. In a statute of specific reference only the appropriate parts of the statute referred to are taken. When the reference is made to a specific section of a statute, that part of the statute is taken as though written into the reference statute.

"A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted."

The above is no longer the rule in Minnesota. The Minnesota rule as to the effect of later amendments to the

ADOPTION OF STATUTES BY REFERENCE - continued

adopted statutes is now governed by M.S. 645.31, subdivision 2, which reads:

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

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

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

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

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

"A competent draftsman will first of all if the proposed reference is to adopt an act or portion of an act examine the whole of that act, its textual environment, construction, history and administrative application, to make sure that the adoption will neither heap up a series of statutes, be unsuitable, nor achieve unintended results. Having satisfied himself that serious dangers of that sort are avoidable, he will employ at least the following safeguards: (a) Make the reference express and clear.

ADOPTION OF STATUTES BY REFERENCE - continued

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

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

SPECIAL LAWS

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

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

LOCAL GOVERNMENT UNITS.

It is no longer necessary to have a special law applicable to the local government unit or units to have the act provide for approval by the voters or the governing body as a general law has been enacted pursuant to section 2 as above quoted. This law is Minnesota Statutes, Sections 645.023 and 645.024, which read as follows:

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

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

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

"645.024 [SPECIAL LAWS; LOCAL APPROVAL AS A REQUIREMENT OF THE ACT.] Section 645.023 does not

SPECIAL LAWS - continued

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."

The draft of a bill for a special law should not contain a local approval section unless the requester asks for it. If such a request is made to have local approval, if the bill pertains to a single local government unit, it should take substantially the following form:

A BILL FOR AN ACT

AUTHORIZING THE VILLAGE OF HIBBING [ETC.]

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

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

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

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

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

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

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

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

SPECIAL LAWS - continued

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

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

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

Another example:

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

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

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

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

SPECIAL LAWS - continued

counties, see M.S., Section 375.20.

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

"Shall the 1967 legislative act authorizing the village of Hibbing to provide ambulance service be approved?"

Yes
No"

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

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

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

COURTS.

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

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

SPECIAL LAWS - continued

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

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

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

MISCELLANEOUS

RESOLUTIONS - See Styles and Forms booklet

REGULATORY MEASURES - LICENSING - BONDS

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

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

TAX LEVY IN EXCESS OF LIMITATIONS

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

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

For another example, see M. S. § 12.26, subdivision 2.

TAX LEVY AUTHORITY GENERALLY

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

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

INTERIM COMMISSION BILLS - APPROPRIATION

Bills creating interim commissions should contain appropriation language as follows:

MISCELLANEOUS - continued

"There is hereby appropriated from the general revenue fund in the state treasury the sum of \$10,000 or so much thereof as may be necessary to pay the expenses incurred by the commission. Such expenses of the commission shall be approved by the chairman or such other member as the rules of the commission may provide and such expenses shall then be paid in the same manner as other state expenses are paid."

TRANSFER OF DUTIES OF DEPARTMENT OR AGENCY

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

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

RATIFICATION OF PROPOSED AMENDMENT TO U.S. CONSTITUTION

Ratification of a proposed amendment to the U.S. Constitution is not legislation. To accomplish such a ratification the Minnesota legislature adopts a resolution ratifying the proposed amendment. The resolution is in the form and style of a memorial resolution. The title may be: A RESOLUTION TO RATIFY A PROPOSED AMENDMENT TO THE UNITED STATE CONSTITUTION. The entire text of the proposed constitutional amendment is contained in the resolution. The requirements of Minnesota Statutes, Section 5.06, relating to notice of ratification are also complied with. Federal law makes the administrator of the General Service Administration the appropriate recipient of the resolution. United States Code Annotated, Title 1, Section 106b. A sample resolution is contained in Laws 1967, Resolution 1.

The rules of neither the house nor the senate appear to provide for this resolution. The foregoing, however, is in accordance with the customs and usage of the Minnesota legislature. It should be remembered that the enrollment of this resolution does not provide for the signature of the governor, since the constitution of the United States provides for ratification by the legislature only.

MISCELLANEOUS - continued

BILLS PASSED OVER GOVERNOR'S VETO

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

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

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

Edward A. Burdick
Chief Clerk, House of Representatives

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

H. Y. Torrey
Secretary of the Senate

MISCELLANEOUS - continued

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

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

L. L. Duxbury
Speaker of the House of Representatives

Edward A. Burdick
Chief Clerk, House of Representatives

James B. Goetz
President of the Senate

H. Y. Torrey
Secretary of the Senate

Filed June 1, 1967

Joseph L. Donovan
Secretary of State"

GRAMMAR AND STYLE

CONSISTENCY

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

TENSE

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

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

rather than the future tense:

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

Use the perfect tense:

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

rather than the future perfect:

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

SHALL-MAY

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

GRAMMAR AND STYLE - continued

VOICE

Use the active voice if it is possible. Say "the director shall give notice" rather than "notice shall be given by." However, use the passive voice when the legal subject is merely to submit passively; e.g. where a punishment is directed to be submitted to by the person described as the legal subject: "Violation of section 1 is punishable by a fine of [etc.]" rather than "Any person who violates section 1 shall be punished [etc.]"

NUMBER; GENDER

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

PUNCTUATION

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

CAPITALS

Use capitals sparingly. Follow the "down style". Every letter of the heading of a bill, down to and including the enacting clause, is capitalized. Capitalize proper names; derivatives of proper names; the first word following a colon; and the first word of each item in a tabulated enumeration following a colon. Do not capitalize generic political subdivisions, whether used in conjunction with a proper name

GRAMMAR AND STYLE - continued

or not (district, state of Minnesota, Polk county); boards, commissions, and other bodies (boards of regents, legislature, department of public welfare, bureau of Indian affairs); or titles of officials, whether elective or appointive (president, governor, revisor of statutes, director, senator). Do not capitalize "section" or "subdivision" unless part of a formal citation (section 1, subdivision 1, of the municipal court act). Do not capitalize "this act".

NUMBERS

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

ABBREVIATIONS

Do not use abbreviations within the text of a bill.

SUCH, SAID,
ANY, etc.

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

OBJECTIONABLE
PHRASES

The phrase "this act" is especially troublesome and should be avoided wherever possible. When the phrase is unavoidable, it should be used with extreme caution and with understanding. See THIS ACT - USE OF, beginning on page 44 of this manual.

AVOID

SUBSTITUTE

is directed to

shall

is hereby authorized and it
shall be his duty to

shall

GRAMMAR AND STYLE - continued

AVOID, continued

is authorized to
shall have the power to
means and includes
necessitate
forthwith
prior to
not later than
in cases in which
in the case of
in case
in the event that
per annum
per day
null and void and of no effect
full force and effect
together with

SUBSTITUTE, continued

may
may
means (or includes, as
required)
require
immediately
before
before
when, whenever (where
wherever)
when [etc. as above]
if
if
a year
a day
void
force (or effect)
and

OFFICIAL
TITLES

In referring to a public officer or a state department or agency, the official and correct title of that public officer or state department or agency should be used. Do not call the commissioner of conservation the "director of conservation" or the department of highways the "highway department." (But note that for amendatory purposes, within certain sections a definition section has shortened these titles.) In addition to the statutory provision originating the department or office in question, the appendix which relates to

GRAMMAR AND STYLE - continued

state government structure and which is found in volume 2 of the statutes will be helpful.

CONCLUSION

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

"It is traditional that statutes are unreadable, indefinite, confusing, and misleading. The very length of sentences and sections contributes to this result. The traditional belief that statutes must couch simple and direct statements in pompous and verbose language adds greatly to confusion. * * *

"In the expression of legislative policy simplicity is the primary standard. Simplicity may be gained not only by the exclusion of unnecessary words, but also by following strictly a single pattern of statutory expression. Unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony."
(Underlining supplied.)

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

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

CHECKLIST FOR DRAFTSMEN

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

FORM APPROVAL

The House rules require that all bills introduced in the House be approved by the revisor of statutes as to form.

To comply with the rules (H.R. 4a) each House bill submitted for approval shall be examined as to the following:

- (1) Does the bill contain a title?
- (2) If the bill includes amendatory or repealing material, are the sections amended or repealed expressed in the title?
- (3) Does the bill contain an enacting clause?
- (4) Is the bill divided into sections, subdivisions, or both, as distinguished from paragraphs, subparagraphs, etc.?
- (5) If the bill is amendatory, does it amend only sections or subdivisions?
- (6) In the case of amendatory provisions, is the material from the statutes to be eliminated stricken, and the new material underlined?
- (7) If the bill amends sections or subdivisions, is there reference to Minnesota Statutes 1967?
- (8) If the bill is a special act, does it have an approval provision by the appropriate governmental unit and does it cover all governmental units affected by the bill?
- (9) If the bill amends sections or subdivisions of an uncoded law, is there reference to the laws of a given year, the chapters of the laws, and the sections or subdivisions thereof?
- (10) Are there any misspellings in the bill?
- (11) Is the punctuation correct?
- (12) Is the bill in pica type? On 8-1/2x13" paper? Has it proper margins? Is it printed in black?

If the bill affirmatively meets the foregoing requirements, it shall be approved. If the bill does not meet all of the foregoing, the draftsman shall notify the author of the bill as

FORM APPROVAL - continued

soon as possible and inform him that, unless he otherwise directs, we shall retype the bill for him in order that it may be approved.

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

It is emphasized that approval as to form does not involve any legal considerations whatsoever. It does not involve the legality or illegality, the workability or nonworkability of any provision, or the wisdom thereof. The revisor is not concerned with the substance of any bill submitted by the House for approval as to form.