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MINNESOTA REVISOR'S MANUAL

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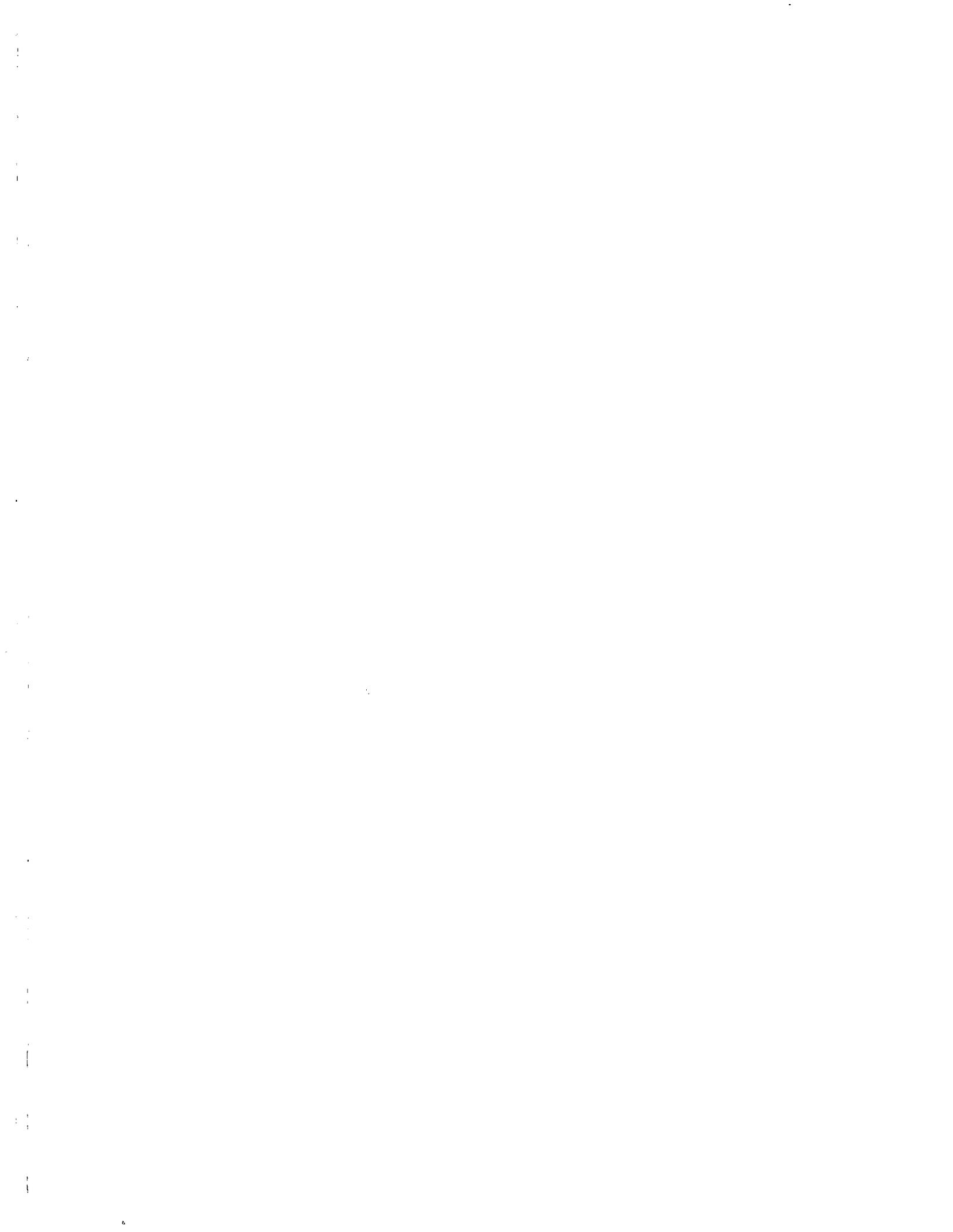
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Introduction

- 1.1 Authority
- 1.2 Functions of Manual
- 1.3 Organization of Manual
- 1.4 Statements of Standards
- 1.5 Acknowledgment

1.1 Authority

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

1.2 Functions of Manual

The manual serves several functions. First, it is used by the revisor's office as a text to teach new drafters general methods of drafting legislative bills and the specialties of drafting for the Minnesota legislature. Second, the manual is a ready reference for those who are familiar with Minnesota bill drafting. A wide variety of cases, laws, rules, and principles available in other publications have been collected here. Third, the manual serves as a guide to drafting as a part of the legislative process.

The reader may wish to read other materials on the subject of bill drafting. The bill drafting manuals produced by the legislatures of other states provide perspective and information for comparison.

1.3 Organization of Manual

The manual is organized to provide both ready reference and a manual of instruction. A drafter can rapidly locate examples, cases, laws, rules, and principles that may govern a problem. Bills, resolutions, and amendments are treated separately. Practical helps, style suggestions, mechanics, and certain complex subject areas are also treated separately but apply to all legislative documents. This manual includes many examples but any reader can also find a wealth of good examples and a small supply of bad examples in each volume of session laws.

1.4 Statements of Standards

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

- (1) **Mandates:** provisions that drafts must comply with.
- (2) **Directives:** provisions that drafts should comply with unless the context requires otherwise.
- (3) **Recommendations:** provisions that express the revisor's view of the best form and style of drafting, which drafts should comply with unless the drafter's best judgment requires otherwise.

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

1.5 Acknowledgment

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

Interpretation of Statutes

What Drafters Need to Know

2.1 The Aim of This Chapter

2.2 The Basics: Minnesota Statutes Chapter 645

2.3 Beyond the Basics: Principles of Interpretation Outside Chapter 645

2.4 The Plain Meaning Rule

2.5 What Makes a Law Unclear?

2.6 Judges' Approaches to the Text

2.7 Conclusion

2.1 The Aim of This Chapter

Creating meaning from written words is a two-part process: writer and reader create the meaning together. Part of the drafter's job, though, is to try to control the reader's creativity--that is, to prevent the reader from interpreting the law in unintended, or hostile, ways. For this reason, drafters need to be aware of readers' habits and patterns in interpreting the law, and of the most common situations in which questions of interpretation arise.

Some information about the habits of readers and the slipperiness of words is available in books of instruction about drafting. Most drafting texts contain explanations of the ways certain word patterns are likely to be misread and tell what the drafter can do to avoid misreadings. Other information about the same problems appears in works about the interpretation of statutes by courts. Those works also contain explanations of specific problems of wording, but they contain other useful discussions too. Their authors recognize that not every interpretation problem is the fault of the drafter: Sometimes woolly language results from legislative compromise; sometimes new situations arise that cause old language to be seen in a new light.

Both of these types of information--drafting advice and discussions of statutory construction--are useful to drafters who want to know what will happen when their drafts are read. Both subjects are large, too large to be discussed in depth here. So this chapter is limited to basic information and bibliography with annotations. The books and articles mentioned here have been chosen and organized to give drafters an overview of the problems involved in reading and understanding statutory text.

2.2 The Basics: Minnesota Statutes Chapter 645

Chapter 645 of Minnesota Statutes codifies certain standard rules of statutory interpretation that will apply to all drafting.

(a) Basic Concepts.

Chapter 645 states when laws become effective (645.02), how amendments are read together (645.29 to 645.33), how repeals work (645.34 to 645.43), how time is computed (645.071, 645.14, 645.15, 645.151), how references to subdivisions and paragraphs work (645.46, 645.47), what "to" means in range references (645.48), and which law controls when amendments to the same section cannot be reconciled (645.28). All these matters are basic to drafting. Other matters that are also important but that do not affect every draft are the provisions about special laws (645.021 to 645.024), penalties (645.24, 645.241), and surety bonds (645.10).

(b) Definitions.

In day-to-day drafting, the things next in importance in chapter 645 are its lists of definitions. Unless a different definition is provided in a draft, the definitions in chapter 645 will control. The list of terms defined includes technical matters like "final enactment" and everyday concepts like "child." Drafters need to know which terms are there.

They also need to know that many other definitions of general application are found in the statutes, but outside of chapter 645. Examples include the definitions of "rule" in section 14.02 and the definition of "official newspaper" in section 331A.01. The main heading DEFINITIONS in the index to Minnesota Statutes can help a drafter learn whether there is a general definition that might apply to his or her draft.

(c) Rules of Construction.

Besides drafting basics and definitions, chapter 645 also contains a collection of well-known rules about statutory construction. These rules are of three basic types: rules about language, rules about the application of laws, and rules about legislative intent.

Mandates on language use in drafting.

Some of the rules of construction in chapter 645 answer questions that are purely linguistic or grammatical—for example, "Roman and Arabic numerals are parts of the English language" (645.09) and "Provisos [expressions that begin with "provided that"] shall be construed to limit rather than to extend the operation of the clauses to which they refer" (645.19). A number of these provisions are sometimes cited as mandates governing drafting, but not all drafters see them as absolutes. Here are the most important linguistic or grammatical concepts, with some annotations to show how they actually apply:

- (1) "The singular includes the plural, and the plural, the singular..." (645.08). Most drafting texts advise drafters to use the singular when possible. See Reed Dickerson, *The Fundamentals of Legal Drafting*, pp. 124-125.
- (2) "Words of one gender include the other genders" (645.08). The policy of the revisor's office is to draft in a gender-neutral style. The revisor has the authority to change statutes and rules editorially to remove gender-specific words that are not essential to meaning. Drafters are advised to avoid the various forms of "he" and "she" unless they are essential. See chapter 10 of this manual for more information on gender-neutral drafting.

- (3) "Shall" is mandatory; "may" is permissive (645.44). In practice, some drafters also use "must" as a verb of mandate even though it is not defined by statute. It appears frequently in statute and rule text.

Another complication is that "shall" is often construed as directory rather than mandatory; and "may" in some contexts is construed as mandatory. Context nearly always determines the meaning more surely than does the verb alone. While drafters should know that the definitions in chapter 645 exist, they should not rely on them as a substitute for care in drafting. For advice on choosing wording for mandates, directions, permissions, and entitlements, see Reed Dickerson, *Materials on Legal Drafting* (West Publishing, 1981), p. 182.

- (4) Provisos and exceptions (645.19). Even though the statute tells how to construe them, drafters would do well not to draft provisos. Most of them are really conditions, which should begin with "if", or exceptions, which should begin with "except that." See Dickerson, *Fundamentals*, pp. 128-129.
- (5) Headnotes are catchwords, not part of the statute (645.49). See *In re Dissolution of School District No. 33*, 239 Minn. 439, 60 N.W.2d 60 (1953). Also, in the Uniform Commercial Code, the headnotes are made part of the act by section 336.1-107 and are available as an aid to statutory construction.

Readers make use of headnotes even if judges may not, and the point of having a headnote is to use it as a finding aid. Drafters should write headnotes that help readers. There is no rule that headnotes should be single words. For advice about writing headnotes, see chapter 10 of this manual; and Daniel Felker et al., *Guidelines for Document Designers*, (Washington, 1981), pp. 17-20.

Status and application of laws.

Another group of provisions in chapter 645 deals with legal ideas about the status and application of laws. Among these are:

- (1) Severability (the question of whether sections that were passed together remain valid individually if one of them is declared unconstitutional)--section 645.20.
- (2) Retroactivity (the question of whether a section can apply to cases that arose before it was passed)--section 645.21.
- (3) Saving clauses (clauses designed to preserve certain rights, duties, or privileges that would otherwise be destroyed by an enactment.) The sections in chapter 645 prohibiting retroactive effect and governing amendments and repeals contain many general savings provisions. Those sections make it unnecessary to draft special savings clauses in most cases. See also *State v. Chicago Great Western Railway Co.*, 222 Minn. 504, 25 N.W.2d 294 (1946) and *Ogren v. City of Duluth*, 219 Minn. 555, 18 N.W.2d 535 (1945).
- (4) The application of laws to the state--section 645.27.

Legislative intent.

Still another group of provisions gives very general rules about determining legislative intent. Section 645.16 makes legislative intent the object of all construction, binds interpreters to the text if it is clear, and tells what sources may be considered if the text is not clear. Section 645.17 gives some basic presumptions about what the legislature intends: it does not intend absurdities, ineffective language, or constitutional violations, and it does intend to follow precedent and to favor the public interest.

2.3 Beyond the Basics: Principles of Interpretation Outside Chapter 645

The words of chapter 645 do not guarantee the way a specific law will be read. Readers of statutes, and courts in particular, take a variety of approaches to the text. They can decide whether the statute has a "plain meaning" or needs to be construed. They can choose whether to supplement their understanding of the text with other materials: things said and done during the proceedings of the law's passage, the history of the amendments to the text, statutory precedents, the views of an administrative agency, and common knowledge. Even if they limit themselves to the text of the statute alone, they have a choice of many, sometimes opposing, canons of construction.

A good source for the study of all these matters is *Statutes and Statutory Construction*, an exhaustive multivolume set. The most current edition is the fifth, edited by Norman J. Singer. The work is commonly cited as *Sutherland Statutory Construction* after its original author.

Some other comprehensive works on interpretation are these:

Dickerson, Reed. *The Interpretation and Application of Statutes*. Boston: Little, Brown, 1975.

Hart, Henry M., and Albert M. Sacks. *The Legal Process: Basic Problems in the Making and Application of Law*. Cambridge: tentative edition 1958.

See also part 3 of the bibliography.

2.4 The Plain Meaning Rule

The "plain meaning rule" is the canon that states that if a statute's meaning is clear, the statute does not need to be interpreted by a court. A form of the rule is codified as section 645.16. Some scholars, however, have criticized the rule, arguing that words do not have intrinsic meanings and that one person's "plain meaning" is another's subjective reading.

Readings on plain meaning:

Minnesota Statutes, sec. 645.16.

Mellinkoff, David. *Legal Writing: Sense and Nonsense* (Saint Paul: West Publishing 1982), p. 17.

Sutherland Statutory Construction, sec. 46.02.

2.5 What Makes a Law Unclear?

Although judges can declare any statute plain, they will always have a rich fund of ways to declare it unclear. English has a multitude of ways to be vague, or over-general, or ambiguous, or all three, although the differences are important.

Ambiguity exists when words can be interpreted in more than one way. For example, is a "light truck" light in weight or light in color? *Vagueness* exists when there is doubt about where a word's boundaries are. If a law applies to the blind, who exactly is blind? What degree of impairment counts? *Over-generality* exists when the term chosen covers more than it should. If a law applies to "communicable diseases," is it really meant to cover the common cold? Legislatures sometimes choose to be vague or general and to let administrative agencies supply the specifics. They rarely choose to be ambiguous.

Readings on ambiguity and vagueness:

Dickerson, Reed. "The Diseases of Legal Language," 1 *Harvard Journal on Legislation* 5 (1964)

Christie, George C. "Vagueness and Legal Language," 48 *Minnesota Law Review* 885 (1964)

Evans, Jim. "Ambiguity" (chapter 4) and "Vagueness" (chapter 5), in *Statutory Interpretation: Problems of Communication*, Oxford University Press 1988.

Readings on specific problems leading to ambiguity:

Dickerson, Reed. "Substantive Clarity: Avoiding Ambiguity" in *Fundamentals of Legal Drafting*, 2nd ed., 1986.

Child, Barbara. "Choosing Language: Vagueness, Generality, and Ambiguity," in *Drafting Legal Documents: Materials and Problems*, West Pub. Co., 1988.

Of course, not every case of ambiguity, vagueness, or over-generality arises from drafting errors. The many participants in the legislative process, and the need for compromise among them, sometimes produce indefinite wording. A case in point is the 1991 Civil Rights Act (105 Stat. 1070, 1991); its passage was complicated by a fight to create competing legislative histories to bend later interpretation of language left uncertain (New York Times, Nov. 18, 1991).

Sometimes, too, new ideas, inventions, and situations appear that the legislature did not foresee, so that they are not clearly included under a statute, or are included when reason says they should not be. A classic example of this sort of unclarity is an ancient law of Bologna, forbidding the spilling of blood in the streets. Logically it forbids emergency surgery at the scene of an accident, but history tells us that violence, not surgery, is what its drafters had in mind.

2.6 Judges' Approaches to the Text

When a judge decides that the words of a statute are unclear, he or she has a choice of philosophies to guide interpretation. One is the **textualist** approach, which emphasizes the actual words of the law. The second is the **archaeological** or **intentionalist** approach, which emphasizes the historical and legislative background of the statute. The third is the interpretive approach, which draws on the current legal and social context of the law to decide what it ought to mean.

(a) Textualist approach.

The textualist judge will determine the meaning of the statute by using definitions, rules of grammar, punctuation, context, the text of related statutes, and the canons of statutory construction, especially the ones that solve specific problems of ambiguity. These aids are intrinsic aids to interpretation. The following cases demonstrate textualist arguments and their tools.

Words and definitions: *Christensen v. Hennepin Transportation*, 215 Minn. 394, 10 N.W.2d 406 (1943); *State v. Bolsinger*, 221 Minn. 154, 21 N.W.2d 480 (1946)

Context: *Kolledge v. F. and L. Appliances, Inc.* 248 Minn. 357, 80 N.W.2d 62 (1956)

Rules of grammar: *Welscher v. Myhre*, 231 Minn. 33, 42 N.W.2d 311 (1950); *Gale v. Commissioner of Taxation*, 228 Minn. 345, 37 N.W.2d 711 (1949); Sutherland Statutory Construction, sec. 49.35.

Punctuation: *State Department of Highways v. Ponthan*, 290 Minn. 58, 186 N.W.2d 180 (1971).

(b) Language-related canons of construction.

Besides the text of the laws itself, the textualist judge makes use of canons of construction. Some of the language-related canons are codified in chapter 645 and were discussed above. Others are not codified, but are useful for drafters to know:

Noscitur a sociis (associated words). The meaning of doubtful words may be determined by their reference to associated words.

Readings: Sutherland Statutory Construction, sec. 47.16; *State v. Suess* 236 Minn. 174 52 N.W.2d 409 (1952).

Ejusdem generis. General words following a listing of specific words are interpreted to be limited to the same sort of words specifically listed. This canon is codified at section 645.08.

Readings: Sutherland Statutory Construction, sec. 47.17 to 47.22; *State v. Walsh* 43 Minn. 444 45 N.W. 721 (1890); but see also *Olson v. Griffith Wheel Company*, 218 Minn. 48, 15 N.W.2d 511 (1944).

Last antecedent. When a series of words of general meaning is followed by words of limitation--grammatically, a relative clause or phrase--their limitation will apply to the last antecedent on the list. For instance, in a statute providing "Licensees may hunt moose, deer, geese, and ducks which are not on the endangered species list, the words "which are not on the endangered species list" will apply only to *ducks*, the last antecedent on the list.

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another.

Readings: Sutherland Statutory Construction, sec. 47.24; *Northern Pacific Ry. Co. v. Duluth*, 243 Minn. 84, 67 N.W.2d 635 (1954).

(c) The value of canons of construction.

No canon of construction gives a guarantee of how a statute will be read. To see how the canons can be used to counter one another, read Karl L. Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are To Be Construed," 3 *Vanderbilt Law Review* 395, 401-406 (1950).

(d) Archaeological or intentionalist approach.

A judge who focuses on "legislative intent" rather than words uses materials beyond the statute itself to determine the statute's meaning. These materials are collectively called *extrinsic aids* to interpretation.

Much has been written recently about the validity of this approach, and especially about whether judges are right or wrong to use legislative history in construing statutes. Some criticisms of legislative history focus on federal materials, which can be manipulated to insert evidence of intent more readily than Minnesota legislative materials can. The essential criticism, though, is that evidence of legislative intent nearly always shows various intents, leaving judges free to choose the intent that most nearly matches their own.

Readings on legislative history:

Mayton, William T. "Law Among the Pleonasms: The Futility and Aconstitutionality of Legislative History in Statutory Interpretation," *Emory Law Journal*, v. 41, number 1, Winter 1992, pp. 113-158.

Slawson, David W. "Legislative History and the Need to Bring Statutory Interpretation under the Rule of Law," *Stanford Law Review*, v. 44 number 2, pp. 383-427 Jan 1992.

"Why Learned Hand Would Never Consult Legislative History Today," *Harvard Law Review*, v. 105, number 5, pp. 1005-1024 March 1992.

(e) Extrinsic aids in Minnesota.

Minnesota sets statutory limits on the use of extrinsic aids in determining the legislative intent of a law. The permissible types of extrinsic aids are discussed below:

Legislative history.

- (1) *Tape recordings and written minutes of committee proceedings* may not be used as evidence of intent according to Senate Rule 65 and House Rule 6.6. But for a contrary example of their use see *In the Matter of State Farm Mutual Automobile Insurance Co.*, 392 N.W.2d 558 (Minn. App. 1986).
- (2) *Journals of either house* can be used as evidence. See Minnesota Statutes, section 599.12; see *Randall Jacques v. Pike Power Co.*, 172 Minn. 306, 215 N.W. 221 (1927) (determining which of two enrolled bills the legislature actually passed); see *State ex rel. Foster v. Naftalin*, 246 Minn. 181 74 N.W.2d 249 (1956) (determining that the two houses had never agreed to the exact text of a bill).
- (3) *Committee reports*, which are contained in the journals, can be used as evidence. For legislative rules governing the reports, see Senate Rule 61 and House Rule 6.7. See also *Christgau v. Woodlawn Cemetery Assn.*, 208 Minn. 263, 293 N.W. 619 (1940) (use of a committee report to show the purpose of a change in wording).
- (4) *Rules of the House and Senate and joint rules* are evidence. See *Loper v. State*, 82 Minn. 71, 84 N.W. 650 (1900) (making use of a legislative rule requiring that when a section is amended, the whole section must be printed).
- (5) *Comparison of new law with old*. See Minnesota Statutes, sec. 645.16.
- (6) *Comparison of new law with the common law* can provide evidence of legislative intent when the subject area is based on the common law. See *State v. Arnold*, 182 Minn. 313, 235 N.W. 373 (1931).

Legislative construction of statutes.

One source of legislative construction is the reports of legislative commissions. These reports often recommend the passage of legislation and serve as the groundwork on which the legislation is built. They can be used as evidence of legislative intent. See *Barlau v. Minneapolis Moline Power Implement Co.* 214 Minn. 564 at 575, 9 N.W.2d 6 (1943).

Another source of legislative construction is revision or recodification of existing law. The legislature's choice of arrangement, and its choice of things left out as well of things included, are evidence of its intentions. See Minnesota Statutes, sec. 645.39; see also *Garberg v. Hennepin County*, 294 Minn. 445, 202 N.W.2d 637 (1972).

Executive construction of statutes.

Certain actions of the executive branch of government can be used to determine legislative intent. Among these are the interpretation of executive orders on which legislation is based; the governor's objections to a law that has been vetoed (entered in the legislative journals); the governor's "state of the state message" or any message given to call a special session, since these become the background of legislation passed at the session; and the opinions of the attorney general. Attorney general's opinions are not binding on the court but have persuasive weight when their interpretations have gone unchallenged for many years. See *State v. Hartmann*, 261 Minn. 314, 112 N.W.2d 340 (1961).

Administrative construction of statutes.

Interpretations by administrative agencies are not binding on the courts. The courts give them weight if they are of long standing. Even so, courts are likely to discount an agency interpretation that expands the agency's own jurisdiction. See *Minnesota Microwave v. Public Service Commission*, 291 Minn. 241, 246; 190

Prior judicial construction.

When a law has been construed, that construction influences a later court's interpretation, but does not control it completely. See Minnesota Statutes, sec. 645.17, *Cashman v. Hedberg*, 215 Minn. 463, 10 N.W.2d 388 (1943).

Construction of statutes in pari materia.

"In pari materia" means "on the same subject." Minnesota courts, however, have required that statutes be not only about the same subject, but also directed toward the same purpose in order to be considered in pari materia. See *In re Karger's Estate*, 253 Minn. 542, 93 N.W.2d 137 (1958).

The basic rule of construction with regard to statutes in pari materia is to construe the statutes in a consistent fashion, so as to harmonize one with the other and gain a uniform result. *Minneapolis Eastern Ry. Co. v. Minneapolis*, 247 Minn. 413, 77 N.W.2d 425 (1956); *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 153 N.W.2d 209 (1967). Where there is a conflict between clauses, the statute enacted later controls, as this is considered to be the more current expression of legislative intent. *State v. Coolidge*, 282 N.W.2d 511, (Minn. 1979). While statutes passed during the same legislative session are given special weight with regard to their construction, *Halverson v. Elsborg*, 202 Minn. 232, 277 N.W. 535 (1938), statutes with the same subject and purpose are considered to have been enacted with the same legislative intent despite having been enacted at different legislative sessions. *Christgau v. Woodlawn Cemetery Assn.*, 208 Minn. 263, 293 N.W. 619 (1940).

Construction of statutes adopted by reference.

Minnesota Statutes, sec. 645.31, says that when a statute adopts another law by reference, it "also adopts by reference any subsequent amendments of such other law, unless there is clear legislative intention to the contrary." Unfortunately, some jurists regard the adoption of future amendments as an unconstitutional delegation of legislative authority. The troublesome questions are: (1) When are future amendments really adopted? and (2) When may they legitimately be adopted?

Relevant cases on this subject are *Wallace v. Commissioner of Taxation*, 289 Minn. 220, 184 N.W.2d 588 (1971) and *Minnesota Recipients Alliance v. Noot*, 313 N.W.2d 584 (1981). The issue is also treated in *Minnesota Energy and Economic Development Authority v. Printy*, 315 N.W.2d 319 (Minn. 1984). The practical result of these cases is that drafters should be wary of incorporating by reference future amendments to federal law.

Sections 11.1 and 11.5 of this manual presents forms of reference designed explicitly to exclude or to include future amendments.

Construction of Uniform Laws.

Uniform laws are those proposed by the National Conference of Commissioners on Uniform State Laws for the purpose of standardizing state law on a particular subject. Because they are intended to be standard and uniform, they need to be construed to promote that purpose, and Minnesota Statutes, section 645.22, codifies this idea. Another state's construction of a uniform law is therefore available to a Minnesota court. See *Layne-Minnesota Co. v. Regents of the University of Minnesota*, 266 Minn. 284, 123 N.W.2d 371 (1963).

(f) Interpretive approach.

Judges who use the interpretive approach treat the statute as if it had been recently enacted. They ask whether the language and structure of the law suggest how it should apply to modern conditions.

Readings on the interpretive approach:

Commonwealth v. Maxwell, 114 A. 825 (1921) (determined that the word "persons" in a jury selection law included women, even though at the time of the statute's passage women were excluded from the vote and so from jury duty).

2.7 Conclusion

Drafters can control some things about the way their drafts will be read. They can try to avoid ambiguity always. When language is vague or over-general, they can question whether more specific wording is appropriate. They can test a draft for clarity by reading it from the viewpoint of a person hostile to the statute. The draft is probably clear if friendly and hostile audiences interpret it the same way.

Even so, drafters cannot control everything: they cannot control judges and they cannot control the future. Trying to tie the hands of judges leads to overwriting, archaic expression, and headaches for the drafter and the reader. (On this subject, see George Gopen, "The State of Legal Writing: Res Ipsa Loquitur," *U. of Michigan Law Review* 86 (1987): 333-80.) The drafter should accept that interpretation of statutes can produce surprises.

(This section draws heavily on an information brief by Lisa Larson of House Research, "Contested Statutes," October 1990.)



Laws and Rules about Bills

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- (s) University of Minnesota

3.1 Generally

Certain fundamental rules in the Minnesota Constitution, Minnesota Statutes, the permanent rules of the House, the permanent rules of the Senate, and the joint rules of the Senate and House of Representatives regulate the form and substantive content of every bill. A drafter should be familiar with the following constitutional provisions, statutes, and legislative rules.

3.2 Provisions Governing the Form of a Bill

(a) Approval of Bill Form by Revisor

"No bill shall be introduced until it has been examined and approved by the Revisor of Statutes as to form and compliance with the Joint Rules of the House and Senate and the Rules of the House. Approval as to form shall be endorsed on the bill by the Revisor of Statutes." House Rule 5.01.

The Revisor of Statutes endorses approval by initials on the four jacketed copies of a bill prepared for introduction in the House.

(b) Compliance with Rules of Legislature

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

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

(c) Title of Bill

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

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

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

For a discussion of how to draft bill titles see section 4.2 of this manual.

(d) Enacting Clause

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

(e) Bills Should Amend Minnesota Statutes.

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

A bill for the amendment of a statute shall contain the full text of the section or subdivision to be amended as it appears in the latest edition of Minnesota Stat-

utes unless it has been amended at a later session, in which event it shall contain the full text as amended." Joint Rule 2.01.

(f) Forms of Reference

"Bills shall refer to Minnesota Statutes as follows:

'Minnesota Statutes, Section

Bills shall refer to the session laws as follows:

'Laws, Chapter, Section" Joint Rule 2.01.

"Wherever in Minnesota Statutes or any legislative act a reference is made to a subdivision without stating the section of which the subdivision referred to is a part, the reference is to the subdivision of the section in which the reference is made." Minn. Stat. sec. 645.46.

"Wherever in the Minnesota Statutes or any legislative act a reference is made to a paragraph without stating the section and subdivision of which the paragraph referred to is a part, the reference is to the paragraph of the subdivision in which the reference is made." Minn. Stat. sec. 645.47.

"Wherever in the Minnesota Statutes or any legislative act a reference is made to several sections and the section numbers given in the reference are connected by the word "to," the reference includes both the sections whose numbers are given and all intervening sections." Minn. Stat. sec. 645.48.

(g) Showing New Language

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

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

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

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

(h) Removing Old Language

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

(i) Numbering Sections and Subdivisions

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

(j) Headnotes

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

"The headnotes of the sections of any edition of the Minnesota Statutes printed in boldface type are mere catchwords to indicate the contents of the section and are not any part of the statute." Minn. Stat. sec. 3C.08, subd. 3.

(k) Use of Numbers

"All numbers in titles shall be expressed in figures. All numbers of section or chapter of law shall be in figures. In the body of a bill numbers in excess of ten shall be in figures, except for a special reason they may be written, but when written they shall not be followed by numbers or parentheses." Joint Rule 2.01.

3.3 Provisions Affecting the Contents of a Bill

(a) Statutes Governing Interpretation of Statutes

Every drafter should review the statutory provisions regarding the construction of statutes. They are set out in Minnesota Statutes, chapter 645, and discussed in chapter 2 of this manual.

(b) Effective Dates

645.02 [EFFECTIVE DATE AND TIME OF LAWS.]

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

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

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

(c) Measuring Time

645.071 [STANDARD OF TIME.]

Every mention of, or reference to, any hour or time in any law is to be construed with reference to and in accordance with the standard time or advanced standard time provided by federal law. No department of the state government and no county, city or town shall employ any other time or adopt any ordinance or order providing for the use of any other time than the federal standard time or advanced standard time.

645.14 [TIME; COMPUTATION OF MONTHS.]

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

645.15 [COMPUTATION OF TIME.]

Where the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, the time, except as otherwise provided in sections 645.13 and 645.14, shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

(d) General Definitions Applying to the Statutes

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

The definitions provided in chapter 645 include the following:

645.44 [PARTICULAR WORDS AND PHRASES.]

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

Subd. 1a. [APPELLATE COURTS.] "Appellate courts" means the supreme court and the Court of Appeals.

Subd. 1b. [CHAIR.] "Chair" includes chairman, chairwoman, and chairperson.

Subd. 2. [COURT ADMINISTRATOR.] When used in reference to court procedure, "court administrator" means the court administrator of the court in which the action or proceeding is pending, and "court administrator's office" means that court administrator's office.

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

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

Subd. 5. [HOLIDAYS.] "Holiday" includes New Year's Day, January 1; Martin Luther King's Birthday, the third Monday in January; Washington's and Lincoln's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Christopher Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25; provided, when New Year's Day, January 1; or Independence Day, July 4; or Veterans Day, November 11; or Christmas Day, December 25; falls on Sunday, the following day shall be a holiday and, provided, when New Year's Day, January 1; or Independence Day, July 4; or Veterans Day, November 11; or Christmas Day, December 25; falls on Saturday, the preceding day shall be a holiday. No public business shall be

transacted on any holiday, except in cases of necessity and except in cases of public business transacted by the legislature, nor shall any civil process be served thereon. However, for the executive branch of the state of Minnesota, "holiday" also includes the Friday after Thanksgiving but does not include Christopher Columbus Day. Other branches of state government and political subdivisions shall have the option of determining whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. Where it is determined that Columbus Day or the Friday after Thanksgiving is not a holiday, public business may be conducted thereon.

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

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

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

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

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

Subd. 8a. [PUBLIC WATERS.] "Public waters" means public waters as defined in section 103G.005, subdivision 15, and includes "public waters wetlands" as defined in section 103G.005, subdivision 18.

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

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

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

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

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

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

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

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

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

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

645.45 [DEFINITIONS, CONTINUED.]

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

- (1) "Abode," means domicile;
- (2) "Action," any proceeding in any court of this state;
- (3) "Adult," an individual 18 years of age or over;
- (4) "As now provided by law," a reference to the laws in force at the time the law containing the phrase was finally enacted;
- (5) "As provided by law," a reference to the laws in force at the particular time the law containing the phrase is applied;
- (6) "Attorney at law," an individual admitted to practice law by a court of record of this state;
- (7) "Attorney of record," an attorney at law who is entered on the docket or record of a court as appearing for or representing a party in a legal proceeding;
- (8) "Child" or "children" includes children by birth or adoption;
- (9) "Day" comprises the time from midnight to the next midnight;
- (10) "Fiscal year," the year by or for which accounts are reckoned;
- (11) "Hereafter," a reference to the time after the time when the law containing such word takes effect;
- (12) "Heretofore," a reference to the time previous to the time when the law containing such word takes effect;
- (13) "Judicial sale," a sale conducted by an officer or person authorized for the purpose by some competent tribunal;

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

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

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

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

(18) "Notary," a notary public;

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

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

645.451 [DEFINITIONS, CONTINUED.]

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

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

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

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

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

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

645.46 [REFERENCE TO SUBDIVISION.]

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

645.47 [REFERENCE TO PARAGRAPH.]

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

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

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

(e) Minnesota Bill of Rights

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

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

"No bill of attainder, ex post facto law, or any law impairing the obligation of contracts shall be passed, and no conviction shall work corruption of blood or forfeiture of estate." Minn. Const. art. I. sec. 11.

Bills of attainder are legislative acts which inflict punishment upon certain persons or classes of persons without judicial trial or judicial determination of guilt. An example might be an act which legislatively determines that a named corporation is violating the insurance laws or the environmental protection laws of the state and therefore will not be allowed to do business in the state.

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

The prohibition of laws that impair contracts does not operate predictably. There are many instances in which a state law may change the effect of a contract. Insurance contracts, employment contracts, sale agreements, rental agreements, pension plans, bond agreements, and many other important contractual arrangements run for long periods of time and involve important social issues. If a contract was lawful at the time of its formation, the state cannot arbitrarily change the relationship of the parties, impose new obligations on one or the other of the parties, or abrogate the agreement. Nevertheless, reasonable regulation of commercial activities is almost always upheld by courts.

(2) Freedom of Religion

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

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

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

(f) Right to Due Process in Civil Matters

"No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted." Minn. Const. art. I, sec. 2.

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

(g) Equal Protection of Law

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

(h) Prohibition of Special Laws

"In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated." Minn. Const. art. XII, sec. 1.

(i) Separation of Powers

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

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

The governor with the advice and consent of the senate ... may appoint notaries public and other officers provided by law.... He shall fill any vacancy that may occur in the offices of secretary of state, treasurer, auditor, attorney general and the other state and district offices...." Minn. Const. art. V, sec. 3.

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

"The legislature may provide by law for retirement of all judges and for the extension of the term of any judge who becomes eligible for retirement within three years after expiration of the term for which he is selected. The legislature may also provide for the retirement, removal or other discipline of any judge who

is disabled, incompetent or guilty of conduct prejudicial to the administration of justice." Minn. Const. art. VI, sec. 9.

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

"Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. If, after reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the governor's objections, to the other house, which shall likewise reconsider it. If approved by two-thirds of that house it becomes a law and shall be deposited in the office of the secretary of state. In such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered in the journal of each house. Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

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

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

(j) Restrictions on Internal Improvements

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

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

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

(b) to repel invasion or suppress insurrection;

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

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

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

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

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

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

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

(j) as otherwise authorized in this constitution.

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

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

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

"The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided." Minn. Const. art. XI, sec. 2.

(l) Debt Limits

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

"As authorized by law certificates of indebtedness may be issued during a biennium, commencing on July 1 in each odd-numbered year and ending on and including June 30 in the next odd-numbered year, in anticipation of the collection of taxes levied for and other revenues appropriated to any fund of the state for expenditure during that biennium." Minn. Const. art. XI, sec. 6.

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

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

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

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

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

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

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

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

(m) Public Purpose Doctrine

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

(n) Power of Taxation

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

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

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

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

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

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

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

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

royalty, or excise taxes within the meaning of this amendment." Minn. Const. art. X, sec. 6.

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

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

(o) Appropriations

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

3.23 [APPROPRIATIONS.]

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

Every appropriation stated to be an "annual appropriation," "payable annually," "appropriated annually," or "annually appropriated," and every appropriation described by equivalent terms or language is a standing appropriation as defined in this section.

3.24 [STANDING APPROPRIATION REPEALED.]

Every provision of law constituting a standing appropriation of money from the general fund, or derived from revenue of the state, or in any way justifying the continuous payment of money from the treasury of the state, is repealed, except:

- (1) a provision for a tax levy or fees or receipts for a purpose and set apart in a special fund; and
- (2) the miscellaneous receipts of state educational, charitable, and penal institutions, and the state agricultural society.

Acts containing provisions for standing appropriations shall remain unaffected by this section and section 3.23, except as to the appropriations.

16A.28 [TREATMENT OF UNUSED APPROPRIATIONS.]

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

that the remainder is returned to the fund from which the appropriation was made.

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

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

Subd. 4. [CANCELED SEPTEMBER 1.] On September 1 all allotments and encumbrances for the last fiscal year shall be canceled unless an agency head certifies to the commissioner that there is an encumbrance for services rendered or goods ordered in the last fiscal year. The commissioner may: reinstate the part of the cancellation needed to meet the certified encumbrance or charge the certified encumbrance against the current year's appropriation.

Subd. 5. [EXCEPTIONS.] Except as otherwise expressly provided by law, subdivisions 1 to 4 apply to every appropriation of a stated sum for a specified purpose or purposes heretofore or hereafter made, but do not, unless expressly provided by law, apply to any fund or balance of a fund derived wholly or partly from special taxes, fees, earnings, fines, federal grants, or other sources that are by law appropriated for special purposes by standing, continuing, or revolving appropriations.

(p) Administrative Rulemaking

"Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.001 to 14.69, and only pursuant to authority delegated by law and in full compliance with its duties and obligations. If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules. Except as provided in section 14.06, sections 14.001 to 14.69 shall not be authority for an agency to adopt, amend, suspend, or repeal rules." Minn. Stat. sec. 14.05, subd. 1.

"Agency' means any state officer, board, commission, bureau, division, department, or tribunal, other than a judicial branch court and the tax court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. 'Agency' also means the capitol area architectural and planning board." Minn. Stat. sec. 14.02, subd. 2.

"Rule' means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Minn. Stat. sec. 14.02, subd. 4.

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

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

disposition of the lands, or income accruing in any way before the sale or disposition thereof, shall be credited to the permanent school fund...." Minn. Const. art. XI, sec. 8.

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

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

(r) Eminent Domain

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

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

(s) University of Minnesota

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

"The government of this University shall be vested in a Board of twelve Regents, who shall be elected by the Legislature...." Laws 1851, ch. 3, sec. 4.

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



4.1 Generally**4.2 Title**

- (a) **General Requirements**
- (b) **The One Subject Rule**
- (c) **Expression in the Title**
- (d) **Drafting Format**
 - (1) **Opening Phrase**
 - (2) **The General Subject**
 - (3) **The Objects or Specific Subjects**
 - (4) **A List of Existing Sections Amended**
 - (5) **A Statement of the Chapter or Chapters Affected By
New Law in the Bill**
 - (6) **A List of Existing Sections Repealed**

4.3 Enacting Clause**4.4 Short Title - Purpose or Policy**

- (a) **Citation or Short Title**
- (b) **Statement of Purpose or Policy**

4.5 Definitions**4.6 Basic Provisions**

- (a) **Sections Amending Existing Law**
 - (1) **Order and Format**
 - (2) **Amending Subdivisions**
 - (3) **Changes in Headnotes**
 - (4) **Repeal or Amend**
- (b) **Sections Proposing New Law**
 - (1) **Location**
 - (2) **Format**
 - (3) **Headnotes**
 - (4) **Coding**

(5) Dividing Bills and Sections

(6) Articles

(7) Headings

4.7 Miscellaneous Special Provisions

(a) Interpretation Clauses

(b) Severability or Nonseverability Clause

(c) Saving or Nonsaving Clause

(d) Repealers

(e) Instructions to the Revisor

(f) Appropriations

(1) The Budget Process

(2) Ordinary Appropriations

(3) Open Appropriations

(4) Standing Appropriations

(5) Open and Standing Appropriations

(6) Open Appropriations of Dedicated Receipts

(7) Examples

(8) Omnibus Appropriation Bills

(g) Effective Date

(1) For General Laws

(2) For Special Laws

(3) For Tax Laws

4.8 Advisory Bills

4.9 Examples

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

A drafter should draft a bill so that its substance and form are constitutional. Sometimes, constitutionality is a debatable matter but the drafter should be able to advise the requester of any constitutional problem.

A drafter should draft a bill with knowledge of its legal context and the probable relationship of the old law with the new provision.

A drafter should draft a bill or rule with knowledge of the constitutional, statutory, and common law principles on the construction of statutes.

A drafter should select all appropriate sections to amend or repeal and place new sections (by proper coding) in order to preserve the fabric of statutory law.

4.1 Generally

A bill is the most common legislative vehicle. It is the only form which carries the words "an act" in its title and uses the enacting clause that is prescribed by the Constitution. The exact form of a bill varies according to its purpose. The purpose may be any one or combination of the following:

- (a) to create new law
- (b) to amend existing law
- (c) to repeal existing law
- (d) to propose an amendment to Minnesota's Constitution.

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

Bills usually follow this outline:

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

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

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

4.2 Title

(a) General Requirements

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

In view of these provisions, the drafter has three objectives in drafting a title:

- (1) the title must contain only the one subject of the bill;
- (2) the title must express the contents of the bill (the bill may not contain anything which is not expressed in the title); and
- (3) the title should be clear and brief.

(b) The One Subject Rule

*****THE TITLE MUST EXPRESS THE ONE SUBJECT OF THE BILL.**

The one subject rule is intended to prevent logrolling and riders. Despite the seeming simplicity of this rule, it can be very difficult to comply with. One reason is that legislation may treat a subject comprehensively and cover a wide range of material. Another reason is that the legislative process exerts pressure to compromise by combining legislation.

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

- (1) redraft the title to make it clearly broad enough to cover all subjects in the bill; or
- (2) redraft the bill into two or more bills.

The former course is normally preferred by legislators because of the difficulty of shepherding a second bill through the legislative process. Drafters are sometimes required by a member to ignore the one subject rule and to draft a bill combining what, to the drafter, are clearly two subjects.

(c) Expression in the Title

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

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

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

(d) Drafting Format

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

(1) Opening Phrase.

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

(2) The General Subject.

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

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

(3) The Objects or Parts of the Subject.

These phrases begin with a participle other than "relating to." It may be:

"augmenting"
"adding"
"authorizing"
"empowering"
"providing"
"creating"
"abolishing"
"limiting"
"restricting"

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

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

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

(4) A List of Existing Sections Amended.

When a section or subdivision of Minnesota Statutes is amended, that section or subdivision must be recited in the title. The format is: "amending Minnesota Statutes 1992, section 12.34."

If only a subdivision is amended, the section and subdivision are designated. An example is: "amending Minnesota Statutes 1992, section 12.34, subdivision 4."

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

(5) A Statement of the Chapter or Chapters Affected by New Law in the Bill.

If a new statutory section is included in the bill, the chapter of Minnesota Statutes in which the section is proposed to be coded must be recited in the title. The format is: "proposing coding for new law in Minnesota Statutes, chapter 123." Unlike the recitations in the title of sections amended or repealed, the reference to Minnesota Statutes does not state the date of the edition of the statutes because the proposed coding is prospective and does not refer to existing law. The proposed coding is not binding but is usually used when the next edition of Minnesota Statutes is prepared.

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

The list of sections amended and repealed, gives notice to those interested in particular parts of the statutes that provisions in those parts are affected by the bill. The recitations are also used as an index of statutory sections affected by bills.

(6) A List of Existing Sections Repealed.

Sections or subdivisions repealed are listed like the amended sections. If a series of consecutive sections is repealed, they may be cited by the first and last numbers of the series. For example "repealing Minnesota Statutes 1992, sections 123.45 to 123.77."

For examples relating to titles, see pages 54 to 55.

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

4.3 Enacting Clause

An enacting clause is required in every bill. Its style is fixed by article IV, section 22 of the Minnesota Constitution. Its wording is:

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

Only bills have enacting clauses. See chapter 6 for the various forms of "resolving clauses" used in resolutions.

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

4.4 Short Title - Purpose or Policy

(a) Citation or Short Title

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

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

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

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

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

A short title of this kind may or may not have proposed statutory coding.

(b) Statement of Purpose or Policy

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

One wordy example of a statement of policy is found in Minnesota Statutes 1984, section 32A.02. The section prohibits unfair trade practices in the dairy industry.

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

168B.01 [LEGISLATIVE FINDINGS; PURPOSE.]

Abandoned motor vehicles constitute a hazard to the health and welfare of the people of the state in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. Abandoned motor vehicles and

other scrap metals also constitute a blight on the landscape of the state and therefore a detriment to the environment. The abandonment and retirement of motor vehicles and other scrap metals constitutes a waste of a valuable source of useful metal. It is therefore in the public interest that the present accumulation of abandoned motor vehicles and other scrap metals be eliminated, that future abandonment of motor vehicles and other scrap metals be prevented, that the expansion of existing scrap recycling facilities be developed and that other acceptable and economically useful methods for the disposal of abandoned motor vehicles and other forms of scrap metal be developed.

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

Section 1. [FINDINGS AND PURPOSE.]

The legislature finds and declares that the state is presently confronted with a grave economic emergency in that the state will not receive revenue sufficient to meet its legal duty to avoid a deficit while still upholding its responsibility to protect the health, safety, and welfare of its citizens. The legislature further finds that for the state to continue to be a viable governmental entity it is vital that significant and immediate reductions in state expenditures be made and that mechanisms to increase state revenues be immediately adopted.

In recognition of the economic plight facing citizens of the state of Minnesota and other states, the legislature also finds and declares that legislation designed to correct this economic emergency must not create undue economic or social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemployment, or jeopardize the financial integrity of state government.

Therefore, the legislature finds and declares that the most effective means to serve all of these important goals and solve the present economic emergency is to enact the following combination of provisions for reductions in state expenditures and increases in state revenues.

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

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

In a footnote, the court stated:

In challenges to statutes under the equal protection clause, we accept legislative expressions regarding the purposes of the legislation as the actual purposes unless our review of the legislative history and the statutory scheme convinces us that they "could not have been a goal of the legislation." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n. 7, 101 S.Ct. 715, 723 n. 7, 66 L.Ed.2d 659 (1981) (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n. 16, 95 S.Ct. 1225, 1233 n. 16, 43 L.Ed.2d 514 (1975)). Here, a review of the legislative history and the statutory scheme confirms that the purposes stated in the Act's preamble are its actual purposes.

In its Preamble, the Act states that Minnesota "is presently confronted with a grave economic emergency" and that "legislation designed to correct this

economic emergency must not create undue economic or social dislocations, place an oppressive tax burden on the state's citizens and corporate community, cause massive expenditure reductions which would eliminate basic public services, cause further extensive unemployment, or jeopardize the financial integrity of state government." [338 N.W. 2d at 571 n 14.]

When a policy statement is included in a bill, the drafter should be careful not to put a substantive provision with it. The substantive provision may be lost in the verbiage and will be hard to find and edit for publication.

*** MINIMIZE POLICY STATEMENTS.**

4.5 Definitions

A definition section is frequently used to:

- (1) define unfamiliar words or phrases;
- (2) indicate that, for the purpose of the bill, a term has a different or more limited meaning than the meaning by which the term is usually understood; or
- (3) reduce the length of a bill by eliminating repetition of a long title of, for example, a board, commission, or agency.

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

If more than one term is defined, each term should be set out separately:

- 1 Section 1. [123.45] [DEFINITIONS.]
- 2 Subdivision 1. [APPLICATION.] The definitions in this section apply to
- 3 sections 1 to 20.
- 4 Subd. 2. [ENGINEERING.] "Engineering" means....
- 5 Subd. 3. [PRACTICE OF ENGINEERING.] "Practice of engineering" excludes....
- 6 Subd. 4. [BOARD.] "Board" means the board of architecture, engineering,
- 7 land surveying, and landscape architecture.

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

(1) Start each subdivision with the subdivision number; write the term you are defining as a headnote.

Start the defining sentence with the term you are defining, in quotation marks.

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

(2) The definition should be the same part of speech as the word being defined.

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

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

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

(3) Usually, alphabetize your definitions word by word.

It is better not to use initials, but if you must, make their meanings easy to find: alphabetize under the abbreviation, not the expanded form. Example: Efficiency, EIS, EPA. A reader who is trying to learn what LPG is should not have to look through all the L's to find "Liquefied petroleum gas."

Sometimes, when a series of unfamiliar terms have interlocking definitions, it is appropriate to begin the list of definitions with the terms that introduce the reader to the subject, disregarding alphabetical order.

(4) Don't define terms needlessly.

English words used in their ordinary senses don't need definitions. "Temporary sign" does not need the explanation that it is a sign intended to be displayed for a short time.

Certain terms are already defined in Minnesota Statutes, chapter 645, to apply to all of Minnesota Statutes. The terms defined in chapter 645 should not be redefined, unless some different meaning is intended. If a variant definition is intended, then the bill draft should specifically state that it is an exception to the general definition.

If a definition in Minnesota Statutes, other than one in chapter 645, is acceptable for use in the new law, the drafter should either incorporate the definition by reference or repeat the entire definition.

(5) Don't do violence to the ordinary meaning of words.

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

(6) Watch your sense of categories as well as your grammar.

For example, don't write: 'Senility' means an individual with a physical disability and mental weakness brought on by old age. Senility is a condition, not a person. Write "Senility means a physical disability and mental weakness associated with old age."

(7) Try not to define words in terms of other words also being defined.

This rule is sometimes impossible to keep; it may call for too much repetition. But remember that most readers will not read your work from beginning to end and won't want to be forced to look up a second definition in order to understand the first.

(8) Don't write substantive requirements into your definitions.

Here is an example of a definition that is too substantive: 'Lockup facility' means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners not more than 90 days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards.

This definition should end at "90 days." The rest of the material should appear in the body of the bill.

**** MINIMIZE DEFINITIONS.**

4.6 Basic Provisions

(a) Sections that Amend Existing Law

(1) Order and Format.

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

A section of a bill that amends existing law begins with an introductory phrase stating which section or subdivision of Minnesota Statutes or session laws is being amended. After the introductory phrase, the existing law is set forth in the same form as in the latest edition of Minnesota Statutes. For example:

1 Sec. 42. Minnesota Statutes 1992, section 15A.082, is amended to read:
2 15A.082 [COMPENSATION COUNCIL.]
3 Subdivision 1. [CREATION.] A compensation council is created to assist the
4 legislature in each even-numbered year

The statutory text must appear exactly in the form in which it appears in Minnesota Statutes. However, capital letters replace boldface type for headnotes. The centered editorial headings are not shown when amending existing statutes.

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

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

See the examples on pages 56 to 65.

(2) Amending Subdivisions.

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

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

1 Sec. 51. Minnesota Statutes 1992, section 16A.04, subdivision 1, is
2 amended to read:

3 Subdivision 1. [BUDGET, CASH FLOW.] The department of finance shall
4 prepare a biennial budget and a ~~ten~~ four year ~~cash receipts and~~

5 Sec. 52. Minnesota Statutes 1992, section 16A.04, subdivision 4, is
6 amended to read:

7 Subd. 4. [RULES.] The ~~department commissioner~~ of finance may make rules
8 ~~and regulations~~ governing the powers, duties, and

When a subdivision is added to a section, the subdivision is inserted in a logical order between or following the existing subdivisions. If the new subdivision must be added between existing subdivisions, it is numbered "1a," "1b," or the like.

1 Sec. 53. Minnesota Statutes 1992, section 16A.04, is amended by adding a
2 subdivision to read:

3 Subd. 4a. [ADDITIONAL DUTIES.] The commissioner shall also

Try to avoid renumbering the existing subdivisions, since cross-references to them may be affected. The other subdivisions of the section should not be shown in the bill unless they are also amended, or unless the new subdivision cannot be written to make sense on its own. In those exceptional cases the section must be amended by reproducing it and showing the new subdivision in its proper context with the new subdivision numbers and all new language underlined.

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

Examples relating to subdivisions appear on pages 58 to 60.

(3) Changes in Headnotes.

If necessary, changes are made in the existing headnotes of a section or subdivision to reflect amendments to the text. Striking and underlining are used to show these changes. Entirely new headnotes to a section or subdivision, however, are not underlined. A section headnote is not shown or changed if it will not otherwise be part of the draft (i.e., when not all subdivisions of a section are changed).

(4) Repeal or Amend?

When making major amendments to existing law, a drafter may be presented with a choice: since so much of the former law is being changed, would it be better to just repeal the old law and enact a new one rather than amending the old law?

Use a new law if the intent is that the law be wholly new. Amend the existing law if the intent is to change something that already exists. The choice should not be based on the convenience of the drafter. If changes are complex it is usually easier for the drafter to repeal and replace a law than to amend it. But to a reader, a new law and an amended old law that have the same substantive effect may have an entirely different appearance. The preference is to amend rather than repeal and replace.

(b) Sections Proposing New Law

(1) Location.

Many drafts consist both of amendments to existing sections and entirely new sections. When this occurs, the sections of new law with their proposed coding are inserted into the draft in numerical order among the amended sections. The result is that a new section may be followed by an amended section that is followed by another new section. By drafting this way all changes in the statutes are shown in the order they will occur when published in Minnesota Statutes.

(2) Format.

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

1 Sec. 14. [293.21] [REFUND OF TAX ERRONEOUSLY COLLECTED.]
2 The commissioner of revenue shall refund any tax erroneously paid or
3 collected and shall reimburse the general fund for the expenses of
4 implementing this chapter.

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

All new law (but not the bill's section number, proposed coding, and headnote) is underlined. Any subdivision in a section has the "Subdivision" or "Subd." and its number, but not the subdivision headnote, underlined.

(3) Headnotes.

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

The bill drafter must draft headnotes for each section, using all capital letters enclosed in brackets and ending with a period. Headnotes may also be put in subdivisions. Headnotes for sections tend to be longer and usually are phrases. The headnotes for subdivisions are usually one to three catchwords.

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

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

Don't depend too much on the context to complete a headnote's meaning. In subdivision headnotes you can control context somewhat, but you have no idea what other headnotes will be near your section headnote, so be very specific. Don't

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

(7) Headings.

A second method of dividing a bill is the use of centered headings for groups of sections. The use of group headings is the equivalent of the use of editor's headings in the Minnesota Statutes. For examples of editor's headings in the statutes, see Minnesota Statutes, chapter 325G. The heading is a centered and capitalized word or group of words. For example, if a bill were divided using headings, a heading might appear as:

1

CAMPAIGN FINANCING

When a group heading is used, section numbering is continuous throughout the bill. That is, the first section after the heading does not start over with "Section 1" as occurs when article divisions are used. The use of a group heading does not affect the bill format in any other way.

Neither articles nor group divisions are necessarily carried forward into the statutes although they are considered for use as editorial headings if appropriate. The drafter should divide a bill to facilitate understanding when necessary. Use of either type of division is rare.

Examples showing forms for new law appear on pages 66 to 71.

4.7 Miscellaneous Special Provisions

Following the primary drafting of new or amendatory law, various other provisions must usually be added. These sections have common features. They are temporary sections needed to implement or coordinate with existing law. The sections are not coded and are not intended to be included in Minnesota Statutes. They may be technical provisions such as repealers or the effective date of the act.

(a) Interpretation Clause

All statutes are supposed to be construed to accomplish the intention of the legislature and secure their most beneficial operation. The statement of this principle is set forth in general permanent Minnesota law (see Minnesota Statutes, section 645.16). In view of this, a statement directing that a section be "liberally interpreted" or otherwise instructing courts or administrators to have a constructive attitude, is redundant. The section should not be inserted unless specifically required by the requester.

Uniform acts usually carry a provision which provides for interpretation so as to "make uniform the laws with respect to the subject of the act." This is also redundant, Minnesota Statutes, section 645.22.

Legislation should never contain directives to the courts indicating policy to be followed by the courts upon the presentation of specific factual situations.

**** OMIT INTERPRETATION CLAUSES.**

(b) Severability or Nonseverability Clause

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

**** OMIT SEVERABILITY CLAUSES.**

(c) Saving or Nonsaving Clause

A saving clause is a section that is occasionally inserted into a bill to preserve from destruction rights, remedies, or privileges which might otherwise be destroyed by the bill, particularly by repeals or amendments. Minnesota Statutes, section 645.35, provides generally for rights and interests that may be affected by a change in the law.

There are instances when the intent of the proposed bill repealing or amending certain laws is to strike down pending actions or rights. This gives rise to the possible use of a "nonsaving clause," in effect, the reverse of a saving clause. In this regard, a statement that "Minnesota Statutes, section 645.35, does not apply to section 12" may be appropriate but the bill's intended treatment of the affected actions or rights should be clear and explicit.

**** OMIT SAVINGS CLAUSES.**

(d) Repealers

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

1 Sec. 10. [REPEALER.]
2 Minnesota Statutes 1992, sections 51.02; 51.04, subdivisions 1, 3, and 5;
3 and 51.06, are repealed.

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

The drafter of a bill that contains a repealer should check each reference to the repealed sections or subdivisions elsewhere in the statutes and make appropriate changes in them. The cross-references can be found in Table IV of Minnesota Statutes.

A bill drafter should repeal sections only by reference to Minnesota Statutes or session laws.

A general repealer providing that "all laws in conflict with section 1 are repealed" or similar words usually has no or, at best, very obscure legal effect.

A general repealer is sometimes used when the drafter knows there are laws to be repealed but does not know what they are. A drafter should be very reluctant to choose this illusory way out of a problem. The problem may be due to difficulty in finding all the special laws affected. Table I of Minnesota Statutes can assist; all affected laws should be found and repealed and a general repealer avoided.

**** AVOID GENERAL REPEALERS.**

When you want a law to cease to operate at a future date, use the term "expires." When a coded law expires, the editors will remove it from Minnesota Statutes:

"This section expires January 1, 1995."

- 1 Sec. 10. [EXPIRATION.]
2 Sections 1 to 9 expire January 1, 1995.

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

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

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

Examples of repeals appear on page 73.

(e) Instructions to the Revisor

Bills sometimes include a provision that instructs the revisor to change statutes in a specified way. The most common of these provisions is an instruction to change an agency's name or an official's title to a new name or title, such as changing "workmen's compensation" to "workers' compensation." An instruction to the revisor is used primarily to reduce the bulk of a bill necessary just to achieve a name change.

The revisor's office asks for caution when drafting instructional provisions into bills. In some cases a term the office is directed to change has a variety of uses, not all of which were intended to be changed. If a term has a variety of uses, a drafter can instruct the revisor to make the change "when appropriate" or may specify the context in which the change should be made. For example:

"In the next edition of Minnesota Statutes, the revisor shall substitute the term 'local tax rate' for 'tax capacity rate' wherever it refers to the rate of tax applied to the tax capacity of property within a local unit of government or to the sum of the rates of tax of local governments."

In other cases, the term directed to be changed will appear in other forms besides the one in the instruction. Some of these variants are plurals, possessives, and abbreviations. On some occasions it is difficult to determine whether or not the instruction intended all variants of the words to be changed or just the specific words. In drafting an instruction to change a word or phrase including all variants of the word, the drafter could instruct the revisor to also change similar words or phrases. For example:

"The revisor of statutes shall change the terms 'fraternal beneficiary association,' 'association,' or similar terms to 'fraternal benefit society,' 'society,' or similar terms wherever they appear in Minnesota Statutes and Minnesota Rules in connection with those entities regulated under Minnesota Statutes, chapter 64B."

Sometimes instructions are requested which accomplish a substantive and not just a name or title change, such as instructions to reduce all income tax brackets by five percent. An instruction of this type is extremely difficult to implement because of the interrelationship of statutory sections.

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

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

Examples of instructions to the revisor can be found on pages 74 to 76.

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

(f) Appropriations

(1) The Budget Process.

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

There are, however, numerous requests for the appropriation of money for special projects or programs not included in the omnibus appropriation bills. Many other bills have appropriation provisions that will, in the legislative process, be finally passed as part of an omnibus appropriations bill. All of these must be drawn so they will work if passed separately, as occasionally happens. In most instances, the appropriation will be only one section of a longer bill establishing, for instance, a new program or agency. It is placed near the end of the bill and followed only by any repealer and effective date provisions.

(2) Ordinary Appropriations.

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

1 Sec. 10. [APPROPRIATION.]
2 \$100,000 is appropriated from the general fund to the commissioner of
3 administration to administer sections 1 to 9, to be available until June 30,
4 1987.

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

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

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

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

Do not say "\$..... is hereby appropriated" or "The sum of \$..... is appropriated." "Hereby" and "the sum of" are surplusage.

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

The appropriation should name the official, board, or agency that has statutory power to spend money. Appropriations are ordinarily made to the commissioner of a named department, not to the department itself. This is customary in order to emphasize the responsibility for the expenditure of the money. If an appropriation is made either to a department or, worse, to an official subordinate to the commissioner, a possibility of confusion or conflict within a department is created. If the appropriation is to a board or agency, the legal name of the board or agency must be used. Sometimes an agency will informally adopt a name different from that used to create it in the statutes. If this occurs, use the name in the statute.

Describe the purpose of the appropriation in a short phrase. Do not give the appropriation an account name. That is the business of the commissioner of finance. If the purpose is more fully described elsewhere in the bill, and you wish to refer the appropriation to it, you may use "for the purposes of section 10." As an alternative, a drafter should consider reference to a common name for the funded program, or to prior existing coded statutory sections (if any) that describe the program.

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

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

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

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

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

When the allocation by fiscal year is shown, but the author wants the full amount to be available in either year if necessary, the following sentence may be used:

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

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

If the bill is made effective the day following final enactment, the appropriation will lapse on the next June 30, under section 16A.28, unless an anti-lapse provision is added.

Appropriations for permanent improvements, including the acquisition of real property, are available until expended, under section 16A.28.

(3) Open Appropriations.

Do not create an open or "sum sufficient" appropriation of "the amount necessary for this purpose" if it can be avoided. This kind of provision makes budgeting difficult. Give a specific dollar amount for the next fiscal year or for the balance of the biennium.

**** AVOID OPEN APPROPRIATIONS.**

(4) Standing Appropriations.

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

**** AVOID STANDING APPROPRIATIONS.**

(5) Open and Standing Appropriations.

Open and standing appropriations, which say that "the amount necessary for this purpose is annually appropriated from the general fund," are used almost exclusively for appropriations to pay aids and credits to individuals and local governments for income tax and property tax relief. The appropriation for each aid or credit is usually codified in Minnesota Statutes and the amount that will be spent is subjected to various conditions. These amendments are normally included in the omnibus tax bill.

(6) Open Appropriations of Dedicated Receipts.

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

- (a) special revenue accounts, if the revenue is simply restricted to expenditure for a specific purpose;
- (b) enterprise accounts, if the state is acting like a private business;
- (c) internal service accounts, if goods or services are provided by one state agency to another;
- (d) trust accounts; and

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

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

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

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

(7) Examples.

Examples of various appropriation sections, including open appropriations of dedicated receipts, can be found on pages 77 to 79.

(8) Omnibus Appropriation Bills.

The drafting of omnibus appropriation bills is discussed in section 5.1 of this manual.

(g) Effective Date

(1) For General Laws.

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

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

Avoid references to specific dates or the use of phrases like "on the date of enactment" in any section of a bill except the effective date section. Instead, use "on the effective date of sections" Be sure the section or sections have one single effective date.

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

An immediate effective date may be useful for authority to make administrative rules at a time before the program to which they relate begins to operate.

**** AVOID IMMEDIATE EFFECTIVE DATES.**

(2) For Special Laws.

Special laws, laws of local rather than general application, become effective in accordance with Minnesota Statutes, sections 645.02 to 645.024.

When a special law requires local approval, the law becomes effective when the requirements of Minnesota Statutes, section 645.021, subdivision 3, providing for the filing of certificates of approval with the secretary of state are met. When a special law does not require local approval, it becomes effective like a law of gen-

eral application. The use of local approval provisions is described in section 5.4 of this manual.

(3) For Tax laws.

Property tax laws should be made effective beginning with a certain year's tax levy (payable the following year).

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

Certain laws, such as income tax laws, can be made effective retroactively.

(h) State Parks, Additions and Deletions

The boundaries of state parks are set by laws that are compiled in Minnesota Statutes in a special way. Each of these laws includes descriptions, one or more, of land added to or removed from various parks. Although the land descriptions are not included in Minnesota Statutes, a citation to each change is included in the history note that follows the provision that establishes the park. The bills also have an unusual feature. The land description is preceded by a bracketed reference to the section and subdivision of Minnesota Statutes that establishes the park and the name of the park in brackets. A similar procedure is used for state monuments, reserves and waysides. An example quoting part of Laws 1984, chapter 599, section 1, appears on page 70.

4.8 Advisory Bills

House Rule 5.3 provides that a member may introduce an advisory bill proposing some matter for consideration by a standing committee. Any advisory bill that is introduced is referred to a committee. It may be considered there but no other action can be taken on it except referral for consideration to another committee. Forms for an advisory bill are available from the chief clerk. The form is simple and is technically intended for completion by the representative sponsoring it.

On the form, the title is restricted to twelve words. It does not use the multiple phrases separated by semicolons as used for bills. The title is usually a single phrase or sentence describing the general content of the proposal. Following the title is a paragraph which describes in detail the operative provisions of the advisory bill. An advisory bill is often like a bill drafting request but sent to a committee.

A copy of a completed advisory bill is shown on page 81.

4.9 Examples

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EXAMPLES - TITLES (Usual order of parts)

Opening boilerplate:	A bill for an act
General subject:	relating to education;
Objects or parts of the subject:	authorizing school districts to provide houses for teachers;
Penalties:	providing penalties;
Appropriations:	appropriating money;
Amendments: most recent statutes most recent supplement session laws	amending Minnesota Statutes 1992, section 123.45; Minnesota Statutes 1993 Supplement, section 234.56; Laws 1985, chapter 56, section 7;
New law: less than a chapter a whole chapter	proposing coding for new law in Minnesota Statutes, chapter 323; [OR] as Minnesota Statutes, chapter 429;
Repealers: most recent statutes most recent supplement session laws	repealing Minnesota Statutes 1992, section 525.67; Minnesota Statutes 1993 Supplement, section 634.57; Laws 1985, chapter 88, section 3.

EXAMPLES - TITLES (References to affected law)

General title, only one section affected:

1 relating to; amending [or repealing] Minnesota Statutes 1992,
2 section 12.34.

General title, only one subdivision affected:

1 relating to; amending [or repealing] Minnesota Statutes 1992,
2 section 456.78, subdivision 3.

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

1 relating to; amending Minnesota Statutes 1992, section 78.91, by
2 adding a subdivision.

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

1 relating to; amending [or repealing] Minnesota Statutes 1992,
2 sections 12.34; 12.36; 217.38; and 325.40.

Amended since publication of statutes:

1 relating to; amending [or repealing] Minnesota Statutes 1992,
2 section 234.56, as amended.

Subdivision added since the cited publication:

1 relating to; amending [or repealing] Minnesota Statutes 1992,
2 section 123.45, subdivision 6, as added.

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

Section amended and published in the supplement:

1 relating to; amending [or repealing] Minnesota Statutes 1993
2 Supplement, section 123.45.

Amendment since publication of supplement:

1 relating to; amending [or repealing] Minnesota Statutes 1993
2 Supplement, section 123.45, as amended.

Amendment to a law not coded:

1 relating to; amending [or repealing] Laws 1945, chapter 123,
2 section 1.

Amendment to a law not coded that has been amended:

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

New law proposed (existing chapter):

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

New law proposed (new chapter):

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

Entire chapter amended (rare):

1 relating to; amending Minnesota Statutes 1992, chapter 123.

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

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

Note that the change of the section headnote is shown by striking and underlining. The addition to the headnote is shown by underlining. Entirely new headnotes for sections are not underlined.

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

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

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

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

1 A bill for an act
2 relating to certain counties; requiring the filing of
3 certain surveys with; amending Minnesota Statutes
4 1993 Supplement, section 389.08.
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
6 Section 1. Minnesota Statutes 1993 Supplement, section
7 389.08, is amended to read:
8 389.08 [COUNTY SURVEYORS; FILING OF SURVEYS IN CERTAIN
9 COUNTIES.]
10 In any county ~~in which the office of~~ where there is a county
11 surveyor is ~~a full-time position~~ and the surveyor ~~has~~ maintains
12 an office on a full-time basis in a building....

EXAMPLE - NEW LAW (Uncoded without subdivisions)

1 A bill for an act
2 relating to independent school district No. 466;
3 permitting the sale of certain land.
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
5 Section 1. [LAND SALE AUTHORIZED.]
6 Independent school district No. 466 may sell and execute a
7 deed of conveyance for any presently unused school property
8 notwithstanding its possible later use for school purposes.
9 Sec. 2. [EFFECTIVE DATE.]
10 Pursuant to Minnesota Statutes, section 645.023, subdivision
11 1, paragraph (a), section 1 is effective without local approval
12 on the day following final enactment.

This local law is made effective without local approval.

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

1 Subd. 3. [85.012] [Subd. 16.] [FLANDRAU STATE PARK.] The
2 following area is added to Flandrau State Park:
3 Outlot 303 to the city of New Ulm and that part of Highland
4 Avenue adjacent to said Outlot 303.
5 Subd. 4. [85.012] [Subd. 18.] [FORT SNELLING STATE PARK.]
6 The following area is deleted from Fort Snelling State Park:
7 That part of government lots 1, 2, and 3 of section 7 lying
8 northerly and westerly of the new channel of the Minnesota
9 River; that part of government lot 1 of section 18 lying
10 northerly of the new channel of the Minnesota River; all in
11 township 27 north, range 23 west.
12 Subd. 5. [85.012] [Subd. 30.] [JAY COOKE STATE PARK.] The
13 following area is deleted from Jay Cooke State Park:
14 That part of the unplatted portion of government lot 1 of
15 section 8, township 48 north, range 16 west, lying northerly and
16 easterly of the former Lake Superior and Mississippi Railroad
17 Company Fond Du Lac Branch right-of-way, southerly of the former
18 Burlington Northern Inc.'s St. Paul to Duluth Branch
19 right-of-way and easterly of the right-of-way of Minnesota
20 Highway 210.

This unusual format is used for descriptions of land in state parks and monuments.

EXAMPLE - NEW LAW (Uncoded with subdivisions)

A bill for an act

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

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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

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

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

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

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

18 Sec. 3. [ALLOCATION OF REVENUES.]

19 Revenues received from the taxes authorized by section 1,
20 subdivision 2, and section 2 must be used to pay for activities
21

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

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

This local act has the usual local approval provision.

EXAMPLE - INSTRUCTION TO REVISOR

1 Sec. 14. [INSTRUCTION TO REVISOR.]
2 The revisor of statutes shall change the words "workmen's
3 compensation" wherever they appear in Minnesota Statutes to
4 "workers' compensation" in Minnesota Statutes 1984 and
5 subsequent editions of the statutes.

Instructions to the revisor should be restricted to substitutions that do not require choices of policy. A check should be made as to whether there are any variants on the change which are to be included in the instruction.

Name changes can be accomplished in the next complete publication of Minnesota Statutes but not in an intervening Supplement.

EXAMPLE - INSTRUCTION TO REVISOR (Renumbering statutes)

1 Sec. 50. [INSTRUCTION TO REVISOR.]
2 The revisor of statutes shall renumber each section of
3 Minnesota Statutes specified in column A with the number set
4 forth in column B. The revisor shall also make necessary
5 cross-reference changes consistent with the renumbering.

	<u>Column A</u>	<u>Column B</u>
6	<u>15.041</u>	<u>14.01</u>
7	<u>15.0411, Subd. 2</u>	
8	<u>(third and fourth</u>	
9	<u>sentences)</u>	<u>14.02</u>
10	<u>15.0411, Subd. 2</u>	
11	<u>(except the third and</u>	
12	<u>fourth sentences)</u>	<u>14.03</u>
13	<u>15.0412, Subds. 1, 1a,</u>	
14	<u>2, 2a, 3, 4a, 4b</u>	<u>14.04, Subds. 1 to 7</u>
15	<u>15.0412, Subds. 4, 4c,</u>	
16	<u>4d, 4e, 4f, 4g</u>	<u>14.05, Subds. 1 to 6</u>
17	<u>15.0412, Subd. 4h</u>	<u>14.06</u>
18	<u>15.0412, Subd. 5</u>	<u>14.07</u>
19	<u>15.0412, Subd. 6</u>	<u>14.08</u>
20	<u>15.0412, Subd. 7</u>	<u>14.09</u>
21	<u>15.0412, Subd. 8</u>	<u>14.10</u>
22	<u>15.0412, Subd. 9</u>	<u>14.11</u>
23	<u>15.0412, Subd. 10</u>	<u>14.12</u>
24	<u>15.0413, Subds. 1, 2</u>	<u>14.13</u>
25	<u>15.0413, Subds. 3, 3a, 3b</u>	<u>14.14</u>
26	<u>15.0415</u>	<u>14.15</u>
27	<u>15.0416</u>	<u>14.16</u>
28	<u>15.0417</u>	<u>14.17</u>
29	<u>15.0418</u>	<u>14.18</u>
30	<u>15.0419</u>	<u>14.19</u>
31	<u>15.0421</u>	<u>14.20</u>
32	<u>15.0422</u>	<u>14.21</u>
33	<u>15.0424</u>	<u>14.22</u>
34	<u>15.0425</u>	<u>14.23</u>
35	<u>15.0426</u>	<u>14.24</u>
36	<u>15.052</u>	<u>14.25</u>
37		

EXAMPLE - INSTRUCTION TO REVISOR (Cross-reference changes)

1	Sec. 55. [REVISOR'S INSTRUCTION.]		
2	In each section of Minnesota Statutes referred to in column		
3	A. the revisor of statutes shall delete the reference in column		
4	B and insert the reference in column C. The references in column		
5	C may be changed by the revisor to the section of Minnesota		
6	Statutes in which the bill sections are compiled.		
7			
8	<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
9	<u>3.855, Subd. 3</u>	<u>43.064</u>	<u>Section 18, Subd. 4</u>
10	<u>3.855, Subd. 3</u>	<u>43.113</u>	<u>Section 18, Subd. 2</u>
11	<u>12.24, Subd. 2</u>	<u>43.327</u>	<u>Section 18</u>
12	<u>15.06, Subd. 8</u>	<u>43.09, Subd. 2a</u>	<u>Section 8, Subd. 2</u>
13	<u>15.61, Subd. 2</u>	<u>43.30</u>	<u>Section 11</u>
14	<u>15A.13</u>	<u>43.127, Subd. 6</u>	<u>Section 18, Subd. 3</u>
15	<u>16A.752, Subd. 1</u>	<u>43.18</u>	<u>Section 13</u>
16	<u>21.51, Subd. 6</u>	<u>43.01</u>	<u>Section 1</u>
17	<u>79.095</u>	<u>43.067</u>	<u>Section 17, Subd. 1</u>
18	<u>121.21, Subd. 11</u>	<u>43.45</u>	<u>Section 23</u>
19	<u>136.25</u>	<u>43.45</u>	<u>Section 23</u>
20	<u>136.62, Subd. 6</u>	<u>43.45</u>	<u>Section 23</u>
21	<u>179.66, Subd. 1</u>	<u>43.127</u>	<u>Section 18, Subd. 3</u>
22	<u>179.74, Subd. 1</u>	<u>43.01, Subd. 11</u>	<u>Section 2, Subd. 5</u>
23	<u>179.74, Subd. 4</u>	<u>43.126</u>	<u>Section 17, Subd. 4</u>
24	<u>179.74, Subd. 4</u>	<u>43.326</u>	<u>Section 18, Subd. 3</u>
25	<u>179.741, Subd. 2</u>	<u>43.064</u>	<u>Section 18, Subd. 4</u>

EXAMPLES - APPROPRIATION PROVISIONS

1. Regular Biennial (odd-numbered year session)

1 Sec. 10. [APPROPRIATION.]
2 \$50,000 is appropriated from the general fund to the
3 commissioner of administration to administer sections 1 to 9 to
4 be available until June 30, 1987.

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

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

3. Permanent Improvement

1 Section 1. [APPROPRIATION.]
2 \$100,000 is appropriated from the general fund to the
3 commissioner of natural resources to pay the state's share of
4 the costs of repair and reconstruction of King's Mill Dam on the
5 Cannon River in Rice county. The sum is available until
6 expended.

4. Annual Standing

1 Sec. 6. [APPROPRIATION.]
2 \$20,000 is appropriated annually from the general fund to
3 the commissioner of agriculture to pay travel expenses of
4 employees of the department.

EXAMPLES - APPROPRIATION PROVISIONS, Cont.

5. Standing Appropriation of Receipts

1 Sec. 16. [123.45] [APPROPRIATION; RECEIPTS.]
2 All fees and penalties collected by the board under sections
3 1 to 15 are appropriated to the board to administer sections 1
4 to 15.

6. Open Appropriation of Dedicated Receipts

1 Sec. 16. [123.45] [APPROPRIATION; SPECIAL ACCOUNT.]
2 All fees and penalties collected by the board under sections
3 1 to 15 shall be deposited in the state treasury and credited to
4 a special account. Money in the account is appropriated to the
5 board to administer sections 1 to 15.

7. Antilapse Provision

1 This appropriation is available until expended.

8. Multiple Appropriations

1	Sec. 76. [APPROPRIATIONS.]		
2	<u>Subdivision 1. \$1,085,000 is appropriated from the general</u>		
3	<u>fund to the agencies and for the purposes indicated. to be</u>		
4	<u>available for the fiscal year ending June 30 in the years</u>		
5	<u>indicated. The unencumbered balance remaining in the first year</u>		
6	<u>does not cancel but is available for the second year.</u>		
7		1984	1985
8	Subd. 2. WASTE MANAGEMENT BOARD		
9	(a) For technical and research		
10	assistance to generators of hazardous		
11	waste	\$30,000	\$120,000
12	(b) For waste reduction grants to		
13	generators of hazardous waste		150,000
14	(c) For development of collection		
15	and transportation services for		
16	hazardous wastes as follows:		
17	(1) Grants related to collection		
18	services	10,000	190,000
19	(2) Grants related to processing		
20	development	50,000	150,000
21	(d) For feasibility study of		
22	insurance for liability of mixed		
23	municipal solid waste disposal		
24	facilities	10,000	20,000
25	(e) For administration and rules	20,000	80,000
26	The approved complement of the		
27	waste management board is increased		
28	by four positions.		
29	Subd. 3. POLLUTION CONTROL AGENCY		
30	(a) For adoption and enforcement		
31	of rules	30,000	60,000
32	(b) For payment to the metropolitan		
33	council, to be spent for the organized		
34	collection of mixed municipal solid		
35	waste	20,000	30,000
36	The approved complement of the		
37	pollution control agency is increased		
38	by two positions.		
39	Subd. 4. COMMISSIONER OF REVENUE		
40	For administering the metropolitan		
41	landfill fee collection and rules	5,000	35,000
42	The approved complement of the		
43	department of revenue is increased		
44	by one position.		
45	Subd. 5. COMMISSIONER OF HEALTH		
46	For public water supply monitoring		75,000

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

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

Each column has only one dollar sign.

When material of this kind appears in an omnibus appropriations bill, the text is not underlined.

EXAMPLES - EFFECTIVE DATE PROVISIONS

1. General

1 Sec. 10. [EFFECTIVE DATE.]
2 Sections 1 to 9 are effective the day following final
3 enactment.
4 Sec. 10. [EFFECTIVE DATE.]
5 Sections 1 to 9 are effective September 1, 1993.
6 Sec. 10. [EFFECTIVE DATE.]
7 Sections 1 to 9 apply to proceedings instituted after June
8 30, 1993.

2. Multiple Effective Dates

1 Sec. 10. [EFFECTIVE DATES.]
2 Sections 1, 3, 4, 5, and 9 are effective the day following
3 final enactment. Section 2 is effective January 1, 1994.

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

3. Income Tax Act

1 Sec. 10. [EFFECTIVE DATE.]
2 This act is effective for taxable years beginning after
3 December 31, 1993.

4. Property Tax Act

1 Sec. 10. [EFFECTIVE DATE.]
2 This act is effective for taxes levied in 1993 and
3 thereafter and payable in 1994 and thereafter.

5. Special Laws

See discussion in section 5.4 and forms in chapter 5 of this manual.

6. Retroactive Effective Date

- | | |
|---|---|
| 1 | Sec. 10. [EFFECTIVE DATE.] |
| 2 | <u>Sections 1 to 8 are effective retroactively to July 1, 1990.</u> |

EXAMPLE - HOUSE ADVISORY BILL

- | | |
|---|--|
| 1 | A proposal to study motor vehicle driving safety. |
| 2 | |
| 3 | The committee on general legislation shall study problems of |
| 4 | motor vehicle driving safety, consulting appropriate experts and |
| 5 | authorities on both health and criminal law. |

Particular Subjects

5.1 Omnibus Appropriation Bills Design

- (a) Appropriation Required for Spending
- (b) Omnibus Bills Described
- (c) Omnibus Bills are Committee Bills
- (d) Drafting for Omnibus Bills: Six Essentials
- (e) The Education Aids Bill
- (f) Item Veto of an Omnibus Bill
- (g) Broader Title than Other Bills
- (h) Minnesota Cases on Appropriations Issues

5.2 Bonding

- (a) General Considerations
- (b) Method of Drafting Bonding Bills
- (c) Specific Problem Areas
- (d) Terminology in Conversation

5.3 Crimes and the Courts

- (a) Substantive Law of Crimes
- (b) Law of Criminal Procedure
- (c) State Components of Criminal Justice System
- (d) Local Components of Criminal Justice System
- (e) Courts' Role in Criminal Justice System
- (f) Summary of Statutes and Rules

5.4 Special Laws

- (a) Prohibition
- (b) Local Laws
- (c) Specific Problem Areas
- (d) Laws Relating to Specific Courts

5.5 Taxes

- (a) Constitutional Considerations
- (b) Cross-references to Federal Laws

(c) **Effective Dates**

5.6 Organization of State Government

- (a) **General Considerations**
- (b) **Basic Provisions for a New Agency**
- (c) **Alteration of Existing Agencies**
- (d) **Incumbents**

5.7 Organization of Counties, Cities, and Metropolitan Government

- (a) **Counties**
- (b) **Cities**
- (c) **Towns**
- (d) **Metropolitan Government**
- (e) **Other Local Government Units**

5.8 Retirement and Pension Laws

- (a) **Existing Major Plans**
- (b) **Existing Minor Plans**
- (c) **Problem of "Omitted Buy Back"**

5.9 Religious Issues Including Use of Public Funds for Religious Institutions

- (a) **Generally**
- (b) **Restrictions on Legislation under the First Amendment**
- (c) **Sectarian or Parochial Schooling under the First Amendment**
- (d) **Religion in Schools under the First Amendment**
- (e) **Other First Amendment Issues**
- (f) **Religious Issues under the Minnesota Constitution**

5.10 Administrative Procedures

- (a) **Statutory Law**
- (b) **Grants of Authority**
- (c) **Exemptions**
- (d) **Repeals**
- (e) **Amendments**

5.11 Examples

5.1 Omnibus Appropriation Bills

(a) Appropriation Defined; Why Important; Key Laws

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

Minnesota Statutes, chapter 16A, sets out most of the statutes on the state budget and appropriation system.

An act containing an appropriation is effective the next July 1 unless a different effective date is stated in the act. Minnesota Statutes, section 645.02.

(b) Omnibus Bills Described

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

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

- (1) The odd-year bills named for their principal subjects (sometimes each house has a separate name) and a citation to a recent example of each are:
 - (a) *State government (house), economic and state affairs (senate)*, including legislative and judicial branch appropriations; Laws 1991, chapter 345;
 - (b) *Human Resources (house), Health and human services (senate)*; Laws 1991, chapter 292;
 - (c) *Higher education*; Laws 1991, chapter 356;
 - (d) *Economic development, infrastructure, and regulation (house), agriculture, transportation, and regulation (senate)*; Laws 1991, chapter 233;
 - (e) *Environment and natural resources*; Laws 1991, chapter 254.
- (2) The even-year bills with a recent citation are:
 - (a) *The supplemental appropriations bill*, supplementing the appropriations made in the omnibus bills of the odd year; Laws 1992, chapter 513; and
 - (b) *The building bill*, including bonding authority to pay for big building projects; Laws 1992, chapter 558.

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

Omnibus appropriation bills always end up in a conference committee.

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

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

Any omnibus bill has many examples of riders attached to appropriation items.

(c) Omnibus Bills as Committee Bills

Some omnibus bills are committee bills: they are put together by units of the house appropriations and senate finance committees in meetings extending over several weeks. After they are finalized by the full committee, they are introduced by the chair on behalf of the committee and given priority for floor consideration. Omnibus bills are subject to much change as the bills are being put together. Other omnibus bills, particularly in the house in recent years, are assembled in

the same way as committee bills but for procedural reasons are amended on to an existing bill rather than introduced as a committee bill.

(d) Drafting for Omnibus Bills: Six Essentials

The best way to discover the drafting style and form of omnibus bills is to review the cited bills or other recent omnibus bills. See also the examples on pages 122 to 131.

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

(1) Amount.

The amount should be stated in figures, rounded to the nearest thousand dollars.

(2) Fiscal year of appropriation.

The year should be stated in figures. State accounts are kept by fiscal year so appropriations should not be made for a biennium. To have the effect of appropriating for the biennium either an appropriation should be made for each year of a biennium or for the first year of a biennium but expressly available through the second year of the biennium. Appropriations in sessions in odd-numbered years may be made for the current year and for either or both years of the next biennium, but not beyond. Appropriations in even-numbered year sessions may be made for either or both years of the current biennium, but not beyond.

(3) Words of appropriation.

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

(4) Source.

A source for the appropriated funds must be stated if a source other than the state's general fund is intended. If the general fund is the intended source, "general fund" may but need not be expressly stated.

(5) Recipient.

A recipient, ordinarily other than a private entity or a subdivision of government, should be named. In recent practice, the recipient has more frequently been an official, rather than an agency, in keeping with the practice of assigning individual official responsibility for duties imposed by law.

(6) Purpose.

A purpose for the appropriation should be clearly and precisely stated.

Consult section 4.7 and the examples related to it for drafting appropriation language for special situations.

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

(e) The Education Revenue Bill

The bill appropriating money for educational revenue for school districts and containing new and amendatory law on school district programs is a hybrid. Like an omnibus bill, it is lengthy, has many appropriation items, and is assembled in pieces by special units of committees. Its format is similar to other bills except that it is subdivided by subjects into articles due to its length. Also, unlike some omnibus bills, the education revenue bill is not strictly a committee bill: its bulk is amended onto an introduced bill. To extend the contrast: it is put together by

units of the education committees, not the money committees, though the appropriations and finance committees review it. Finally, it ordinarily does not contain the strings of riders or conditions that often accompany appropriations in an omnibus bill.

Despite its formal differences from the omnibus bills, the education revenue bill is in substance and in the way it is processed more similar to, than different from, the omnibus bills. The major education revenue bill is considered in the odd-numbered year, and a supplemental bill is considered in the even-numbered year. See, for example, Laws 1991, chapter 265, and Laws 1992, chapter 499. Like the omnibus bills, the education revenue bills' differences are inevitably resolved by conference committee.

(f) Claims Bill

In recent years, the legislature annually has passed a bill appropriating money for certain claims against the state. See Laws 1992, chapter 541. The claims bill has become less significant since the state has limited its tort immunity and in so doing allowed some lawsuits against the state.

(g) Item Veto of an Omnibus Bill

The Minnesota Constitution provides that "if a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill." Article IV, section 23. In the only reported Supreme Court case in Minnesota on the subject, the governor's attempts to item-veto specific dollar amounts used as estimates to base actual appropriations on, were held ineffective. *Inter Faculty Organization v. Carlson* 478 N.W.2d 192 (1991).

(h) Broader Title than Other Bills

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

(i) Minnesota Cases on Appropriations Issues

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

(1) *A state obligation to a political subdivision is of no force without an appropriation. State ex rel. Chase v. Preus*, 147 Minn. 125 at 127, 179 N.W. 725 (1920). *County of Beltrami v. Marshall*, 271 Minn. 115, 135 N.W.2d 749 (1965).

(2) *An official may obligate the state contingent upon an appropriation, but the legislature can avoid the obligation by not making the appropriation; more surely, by specifically excluding the obligation from appropriations. Butler v. Hatfield*, 277 Minn. 314, 152 N.W.2d 484 (1967); *United States Fire Insurance Co. v. Minnesota State Zoological Board*, 307 N.W.2d 490 (1981).

(3) *A provision of an omnibus appropriation bill even though uncoded can be as permanent as coded statutes, and in the circumstances of the case can repeal a coded statute by implication. State v. City of Duluth*, 238 Minn. 128, 56 N.W.2d 416 (1952).

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

(4) *Must the state spend more than the legislature appropriated to upgrade a program to meet a constitutional standard?* Discussed in *Welsch v. Likins*, 550 F.2d 1122 (1977).

(5) *A state agency was justified under the circumstances of the case in freezing payment levels to medical assistance vendors when the appropriation for them was reduced by 12 percent from one year to the next.* *La Crescent Constant Care Center Inc. v. State Department of Public Welfare*, 301 Minn. 229, 222 N.W.2d 87 (1974).

5.2 Bonding

(a) General Considerations

Acts to provide for issuance of bonds by the state or its subdivisions have special drafting and practical problems.

Article XI of the Minnesota Constitution regulates state finances and is largely concerned with public debt. A limited list of proper purposes for public debt appears in article XI, section 5. Debt for the state highway system is separately treated in article XIV.

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

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

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

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

More recent court decisions have upheld government financing of terminal port facilities, *Visina v. Freeman*, 252 Minn. 177, 89 N.W.2d 635 (1958); water pollution control facilities, *Minnesota Pollution Control Agency v. Hatfield*, 294 Minn. 260, 200 N.W.2d 572 (1972); low and moderate-income housing, *Minnesota Housing Finance Agency v. Hatfield*, 297 Minn. 155, 210 N.W.2d 298 (1973); and a multipurpose sports facility, *Lifteau v. Metropolitan Sports Facilities Comm'n.*, 270 N.W.2d 749 (Minn. 1978).

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

Perhaps the best statement of the law regarding the determination of public purpose is in the *Visina* decision. In that case the court set forth the following principles as controlling in cases of this type: (1) the state or its municipal subdivisions or agencies may expend public money only for a public purpose; (2) a "public purpose" is an activity that will serve as a benefit to the community as a body and which, at the same time, is directly related to the functions of government; (3) a legislative declaration of public purpose is not always controlling; in the final analysis, the courts must make the determination; and (4) the mere fact that

some private interests may derive an incidental benefit from the activity does not deprive the activity of its public nature if its primary purpose is public; on the other hand, if the primary object is to promote some private end, the expenditure is illegal, although it may incidentally also serve some public purpose. *Visina* 252 Minn. at 184, 89 N.W.2d at 643.

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

The major difference between the statute under consideration in the instant case and that upheld in *Thomas* is that we now are called upon to consider provisions for construction of housing for families or individuals with moderate incomes as well as for those with low incomes. This distinction is more a product of the changing conditions, however, than of a change in the "public" nature of the activity. This concept of evolving public uses was recognized in *State ex rel. Twin City B. & I. Co. v. Houghton*, 144 Minn. 1, 174 N.W. 885 (1919), 144 Minn. 13, 16; 176 N.W. 159, 161, (1920):

The notion of what is public use changes from time to time. Public use expands with the new needs created by the advance of civilization and the modern tendency of the people to crowd into large cities. Such a taking as here proposed could not possibly have been thought a taking for public use at the time of the adoption of our Constitution when the state was practically a wilderness without a single city worthy of the name. "The term 'public use' is flexible, and cannot be limited to the public use known at the time of the forming of the Constitution." *Stewart v. Great Northern Ry. Co.*, 65 Minn. 515, 68 N.W. 208, 33 L.R.A. 427. What constitutes a public use at the time it is sought to exercise the power of eminent domain is the test. The Constitution is as it was when adopted, but, when it employs terms which change in definition as conditions change, it refers to them in the sense in which they are meant when the protection of the Constitution is sought. [*Minnesota Housing Finance Agency*, 297 Minn. at 168, 210 N.W.2d at 306. Accord, *Housing & Redevelopment Authority of St. Paul v. Greenman*, 255 Minn. 396, 96 N.W.2d 673 (1959).]

When, as the trial court found, the cost of housing has risen so that even moderate-income families find themselves priced out of the housing market, it would seem that the instant case falls fully within the public purpose found in *Thomas*.

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

If it is anticipated that a new program that requires public debt will be challenged in court, a policy statement or legislative findings or both may be useful in defense. For example, section 462A.02 of the Housing Finance Agency Law of 1971, which was cited extensively by the *Lifteau* court. It states the rationale for the housing law as follows:

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

investment to produce without public assistance a sufficient supply of decent, safe and sanitary residential dwellings at prices and rentals which persons and families of low and moderate income can afford, there exists within the state of Minnesota a serious shortage of decent, safe and sanitary housing at prices or rentals within the means of persons and families of low and moderate income.

[T]his shortage of housing ... is inimical to the safety, health, morals and welfare of the residents of the state and to the sound growth and development of its communities. [Minn. Stat. sec. 462A.02.]

The section also includes additional legislative findings about housing conditions in Minnesota.

Statements of policies or legislative findings are not necessary or desirable for bills in which the propriety of governmental involvement is certain.

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

"In determining whether an act of the state constitutes a performance of a governmental function or a public purpose which will justify expenditure of public money, a legislative declaration of public purpose is not always controlling. The determination of what is and what is not a public purpose, or performance of a governmental function, initially is for the legislature but in the final analysis must rest with the courts." *Visina*, 252 Minn. at 184, 89 N.W.2d at 643.

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

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

Bond issues by subdivisions of the state are governed by various general laws. Minnesota Statutes, chapter 475 is basic. Chapters 472, 472A, and 474 have important purposes. There are also many special local laws.

(b) Method of Drafting Bonding Bills

The basic consideration in all bond drafting is, "Will anybody buy the bonds?" Bond issues are usually managed and sold or resold by investment bankers. The bankers are advised by their lawyers about the legality of the bonds and, to some extent, about the practical ability of the issuer to pay them. It is often helpful for the drafter to consult a bond lawyer at an early stage. The revisor of statutes often refers drafts of bond legislation to a bond lawyer for advice prior to delivery of the bill to the requesting legislator.

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

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

Second, the procedure required to issue the bonds must be clear. This includes clarity as to any requirement for public hearings and a vote by local electors. If a necessary step is omitted the issuance could be invalid. Bond legislation should

make clear all the necessary steps to issue the bonds. This often includes stated cross-references to other laws with which there must be compliance. Often the entire process is identified by reference to other laws. For example:

1	Sec. 9. [BOND SALE; DEBT SERVICE.]
2	<u>To provide the money appropriated by this act from the bond</u>
3	<u>proceeds fund the commissioner of finance upon request of the</u>
4	<u>governor shall sell and issue bonds of the state in an amount up</u>
5	<u>to \$14,615,000 in the manner, upon the terms, and with the</u>
6	<u>effect prescribed by Minnesota Statutes, sections 16A.631 to</u>
7	<u>16A.675 and by the Minnesota Constitution, article XI, sections</u>
8	<u>4 to 7.</u>

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

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

Fourth, the method by which the bonds will be paid must be clear. Preferably, it should be clear that the governmental unit issuing the bonds is obliged to pay the debt service on the bonds before any of its other debts are paid. It should also be clear that the governmental unit either has sufficient revenue to pay the debt service or an easy means at its disposal to raise additional revenue to do so.

An example of a typical bonding bill which demonstrates these considerations is found on pages 132 to 135.

(c) Specific Problem Areas

New political subdivisions are sometimes created to accomplish a limited purpose and are given bonding authority to accomplish that purpose. A weakness of some new subdivisions is a lack of financial resources, usually taxing authority, to discharge their purpose. When creating a new subdivision with bonding authority, the drafter should try to follow the pattern of a successful existing subdivision.

New political subdivisions are sometimes created to avoid bonding limitations on existing units of government.

Conventional local government bodies are regular issuers of bonds and often desire to vary one or more of the procedures or restrictions provided by general law. A volume of session laws may have a variety of laws changing the conditions for particular bonds of particular local government bodies. Waivers of debt limits or popular vote requirements are frequent.

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

Mastery of this specialized part of public law may require more time than most drafters can give it. Consultation with available sources of information can

make it manageable. Minnesota last defaulted on state bonds about 130 years ago. The state needed 110 years to recover the best credit rating and lost it again after about five more. Although institutional obstacles now exist to make unlikely a default like that after the railroad boom of the 1850's, careful drafting remains fundamental to avoid long and short term ill effects.

(d) Terminology in Conversation.

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

5.3 Crimes and the Courts

In order to draft legislation in the criminal justice area, the drafter should develop an overview of Minnesota criminal, correctional, and related bodies of law and become familiar with the agencies of the criminal justice system. In addition, the drafter should be aware that many executive branch agencies have units with separate criminal justice functions; for example, the Department of Human Services and the Department of Revenue.

In attempting to generate legislative solutions to crime control problems, the drafter will often discover that identification of applicable statutory or administrative law is merely a starting place. The drafter will have to be able to trace the processing of criminal offenders through a maze of laws, rules, agencies, and programs before attempting to come up with a legislative solution to a crime control problem.

(a) Substantive Law of Crimes

Minnesota's substantive law of crimes is found in Minnesota Statutes, chapter 609, the Criminal Code of 1963. The code is a comprehensive revision of substantive criminal law. Most legislation in the area of crimes involves amendment to the criminal code.

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

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

The fate of the drunken driver is governed by a maze of civil and criminal provisions:

CITE SECTION	DESCRIPTION LAW
169.121	DWI (driving while intoxicated)
169.123	Implied consent laws
169.1211	Alcohol-related driving by commercial vehicle drivers
169.1215	Out-of-service orders
169.129	Aggravated violations
169.90	Aiding and abetting
169.901	Employment of intemperate drivers
219.566	Intoxication of employees on trains or boats
192A.555	Drunken or reckless driving under Uniform Code of Military Justice
84.91	Operation of snowmobiles and all-terrain vehicles under the influence of alcohol or controlled substances
84.911	Chemical testing (the snowmobile/ATV implied consent statute)
84.928, subdivision 3	Operating an ATV while under the influence of alcohol or controlled substances
86B.331	Operating motorboats while under the influence of alcohol or other drugs or with a physical or mental disability
86B.335	Testing for alcohol and controlled substances (motorboat implied consent law)
97B.065	Hunting while under the influence of alcohol or a controlled substance
97B.066	Chemical testing (hunting)
360.0752	Aircraft operators under the influence of alcohol or a controlled substance
360.0753	Testing procedures (aircraft implied consent law)
340A.502 and 340A.503	Sales of liquor to intoxicated persons; persons under the age of 21 years
171.171	Drivers' license suspensions for illegal purchase of alcoholic beverages
609.21	Criminal vehicular operation
634.15 and 634.16	Admission of evidence

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

When a juvenile is alleged to have violated a criminal law, the juvenile court may refer the juvenile to criminal court under the reference law found in section 260.125. Reference to a regular criminal court may be made if the court finds that: (1) there is probable cause to believe the child committed the offense alleged by the delinquency petition; and (2) the prosecuting authority has demonstrated by clear and convincing evidence that the juvenile is not suitable for treatment or that public safety is not served by the law relating to juvenile courts. A prima facie case that the public safety is not served or that the juvenile is not suitable to treatment can be established through use of the juvenile's age at the time of the offense, presently charged offense, and prior record.

(b) Law of Criminal Procedure

McCarr, *Minnesota Practice, Criminal Law and Procedure*, 2d edition, volume 7, section 1, states: "Criminal practice and procedure in Minnesota is governed by the United States Constitution and the Minnesota Constitution, enactments of the Minnesota Legislature, decisions of the United States and Minnesota Supreme Courts, and of the Minnesota Court of Appeals and the Rules of Criminal Procedure. Criminal practice is also affected by the Minnesota Rules of Evidence."

The enabling legislation for the Rules of Criminal Procedure is Minnesota Statutes, section 480.059. An advisory committee appointed by the Supreme Court and composed of attorneys and judges drafted the rules.

Laws 1974, chapter 390, amended the enabling legislation to provide that except for certain designated statutes the new rules would supersede conflicting statutory law.

Minnesota Statutes, section 480.059, subdivision 8, provides: "This section shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto."

The practical result of subdivision 8 is to create a "leapfrog" effect with both the legislature and the supreme court involved in amendment of criminal procedural law, the latest amendment in time to the statute or rule governing. See McCarr, *Minnesota Practice, Criminal Law and Procedure*, 2d edition, volume 7, section 1.6, for a discussion of whether a statute or rule will govern if there is a conflict. The Minnesota Supreme Court has held that rules take precedence over statutes. *State v. Keith*, 325 N.W.2d 641 (1982).

If requested to draft legislation relating to criminal procedure, the drafter should first locate the governing statute or rule. Pursuant to section 480.059, subdivision 7, the Supreme Court has published a list of statutes which have been modified or superseded by the Rules of Criminal Procedure. The list appears in an appendix to the Rules of Criminal Procedure. Some statutes have been completely superseded while some statutes have only been superseded "to the extent inconsistent." The drafter can locate statutes by use of the statutory index found in Minnesota Statutes and locate rules by using the index to the Rules of Criminal Procedure found in Minnesota Statutes, volume 9.

Second, upon location of a statute or rule, the drafter should consult the list of superseded statutes.

Third, if the drafter finds that a statute has been completely superseded by a rule, the obsolete statute may be repealed and a bill for a new statute drafted indicating that the new statute is intended to supersede the rule. If the drafter finds a statute has been only superseded in part by a rule, the statute may be amended but care should be taken to preserve the unsuperseded part of the statute to the

extent that to do so is consistent with the amendment. Of course, the drafter must always take into account the applicable rule and might find it advisable, for purposes of clarity and notice, to make reference to the rule.

(c) State Components of Criminal Justice System

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

(1) Department of Public Safety.

(a) Bureau of Criminal Apprehension (BCA). The bureau's chief criminal justice function is to assist local enforcement agencies in investigations of major crimes including illegal sale or possession of prohibited drugs, homicide, and organized crime. In addition, the bureau is involved in collecting criminal statistics, peace officer training, scientific analysis of evidence, and maintaining a criminal justice information system. The bureau also annually publishes a crime report which describes changes in the volume and rate of reported crimes for Minnesota in the year of issuance. See Minnesota Statutes, chapter 299C, especially section 299C.03. The bureau's services include the following elements.

(i) Criminal Justice Information System (CJIS), a computerized data communications system which indexes criminal justice information relating to crimes.

(ii) BCA Forensic Science Laboratory which provides services in the following areas: microanalysis of trace evidence, firearms and toolmarks, serial number restoration, questioned documents, forensic photography, forensic toxicology, latent fingerprints, drug identification, alcohol analysis of blood and urine, arson analysis, and breath testing.

(iii) The Investigative Division provides investigative services in such areas as narcotics trafficking, surveillance, homicide, child abuse, financial and white collar crimes, and other crimes against persons and property.

(iv) The Training and Development Section conducts specialized training for law enforcement offices throughout the state in subjects such as narcotics, child abuse and exploitation, criminal investigations, evidence collection, arson, and supervision and management.

(b) Division of Highway Patrol. The highway patrol's criminal justice functions include enforcement of traffic laws on state trunk highways and the serving of warrants. Patrol officers may make arrests for public offenses committed in their presence anywhere in the state. See Minnesota Statutes, chapter 299D.

(2) Office of the Attorney General.

The Criminal Division of the attorney general's office prosecutes criminal cases upon the request of the governor or any county attorney. The division also handles criminal appeals and is involved with the prosecution of organized and white collar crimes. The environmental crimes team (E-team) investigates and prosecutes polluters. See Minnesota Constitution, article V, and Minnesota Statutes, chapter 8.

(3) County Attorneys' Council.

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

(4) Department of Corrections.

A sentence of a person to imprisonment for more than one year results in commitment to the commissioner of corrections. See Minnesota Statutes, section 609.105. In addition, the juvenile court in its discretion may commit children adjudicated delinquent under Minnesota Statutes, chapter 260, the Juvenile Courts Act, to the commissioner. See Minnesota Statutes, section 260.185. The mission of the department is to protect society and to attempt to rehabilitate offenders.

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

The office of adult release in the Department of Corrections is responsible for granting parole and work release and for revoking parole, work release, and supervised release. The drafter should consult Minnesota Rules, chapter 2940, for the duties of the office of adult release.

The Department of Corrections also administers many programs relating to offender rehabilitation and victim services. In the area of victim services, there are victim crisis centers and programs for battered women and victims of sexual assault. Matters relating to victim services, programs, and rights are codified in Minnesota Statutes, chapter 611A.

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

(5) Ombudsman for Corrections.

The ombudsman investigates complaints made about the actions of state and local agencies involved with corrections. The ombudsman has considerable investigative powers and can act as an inmate's advocate. The ombudsman serves an oversight function with respect to the correctional process in Minnesota. See Minnesota Statutes, sections 611A.72 to 611A.75.

(6) Board of Pardons.

The board consists of the governor, the chief justice of the Supreme Court, and the attorney general. The board may grant absolute pardons and conditional pardons, and commute the sentence of any person convicted of a criminal offense against the laws of the state of Minnesota. The board can also grant a pardon extraordinary to a previously convicted person who has been discharged from the sentence imposed and has been law abiding for a reasonable period of time after the discharge. A pardon extraordinary has the effect of setting aside and nullifying a conviction and purging an individual's record. The commissioner of the Department of Corrections or the commissioner's designee is secretary to the board. See Minnesota Statutes, chapter 638, and Minnesota Rules, chapter 6600.

(7) Crime Victim and Witness Advisory Council.

The council, among other duties, provides information, training, and technical assistance to state and local victim witness service agencies and advocates necessary changes in the way victims are treated by the criminal justice system. See Minnesota Statutes, section 611A.71.

(8) Crime Victims Reparations Board.

The board pays reparations to victims of crime. The payments are limited to persons who have suffered personal injury. See Minnesota Statutes, chapter 298B.

(9) Minnesota public defender; district public defenders.

The state public defender provides representation to indigents in criminal appeals to the Court of Appeals and Supreme Court. The state public defender also represents inmates in correctional disciplinary hearings. District public defenders provide representation to indigents at all stages of the criminal justice process up to and including trial. See Minnesota Statutes, sections 611.22 to 611.25.

(10) Minnesota Board of Peace Officer Standards and Training.

The board regulates Minnesota's peace officer training and licensure requirements. The board also establishes standards of professional conduct for the law enforcement profession. See Minnesota Statutes, chapters 214 and 367, and sections 626.84 to 626.855, and Minnesota Rules, parts 6700.0100 to 6700.2704.

(11) Minnesota Sentencing Guidelines Commission.

Minnesota Statutes, sections 244.01 to 244.18, establishes a sentencing guidelines commission composed of members of the judiciary, other members of the criminal justice system, and the public. See Minnesota Statutes, section 244.09, subdivision 1. In 1978, the commission was assigned the task of promulgating sentencing guidelines for offenders which would be advisory to the district court and subject to review by the Supreme Court. See Minnesota Statutes, section 244.09, subdivision 5.

The commission developed guidelines based upon an appropriate combination of offender and offense characteristics. The commission's report was submitted to the 1980 legislature and the guidelines became effective May 1, 1980. See Minnesota Statutes, section 244.09, subdivision 12.

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

Persons convicted of felonies are sentenced to fixed sentences. In place of sentencing a convicted offender to an indeterminate term ranging from zero to five years, for example, a court will now sentence a person to a fixed term of years.

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

Minnesota Statutes, section 244.09, subdivision 11, provides that major modifications of the guidelines must be submitted to the legislature by January 1 of any year in which the commission wants to make the change. Unless the legislature provides by law otherwise, the change to the guidelines would become effective August 1 of that year.

The commission monitors and modifies the guidelines and evaluates their effectiveness.

Minnesota Statutes, section 244.101, establishes a new felony sentencing system effective for offenses committed on or after August 1, 1993, under which an offender receives a two-part sentence consisting of a specified minimum term of imprisonment and a specified maximum supervised release term that is one-half of the minimum term of imprisonment. "Good time reduction" of sentence is no longer available.

(d) Local Components of the Criminal Justice System

At the state level of the criminal justice system, the agencies generally are found in the executive branch of government. At the local level of the criminal justice system, the criminal justice functions are divided and decentralized due to the historical evolution of the various agencies.

In drafting criminal legislation that will affect a class of offenders, for example, the drafter should be sensitive to the nuances of the relationships between the local agencies. The drafter should be aware of separation of powers problems; local fiscal restraints; differential perception of goals by the various agencies; and intangible elements derived from the political environment.

Local agencies are listed below along with a brief description of their criminal justice functions and the statutes relevant to their activities.

(1) Police Services.

Agencies that provide police services are generally a part of local government.

(a) County sheriff. A county sheriff has the duty to preserve the peace of the county and generally to enforce criminal laws outside the municipalities that have police departments. The sheriff may contract with units of local government to provide police service. In larger municipalities, the law enforcement duties of the sheriff are limited. See Minnesota Statutes, chapter 387, and section 436.05.

(b) Local police.

(i) Home rule charter cities. The organization of a charter city police department is governed by the city's charter and ordinances implementing the charter. See Minnesota Statutes, chapter 410.

(ii) Statutory cities. Any city which has not adopted a home rule charter is governed by a uniform code of statutes defining the organization and powers of the city. Most statutory cities have established police departments by ordinance pursuant to the city council's statutorily specified general welfare power.

In addition, the mayor and council are authorized to act as peace officers under certain circumstances specified by statute. See Minnesota Statutes, sections 412.016, 412.101, and 412.221, subdivision 32.

(iii) Towns. Towns may form law enforcement agencies and appoint law enforcement officers. The positions may be filled by peace officers or part-time peace officers. See Minnesota Statutes, section 367.401.

(c) University of Minnesota peace officers. The University of Minnesota has considerable governmental autonomy. The university has its own peace officers on its campuses in the Twin Cities, Duluth, Morris, and Crookston. University peace officers have full arrest power. See University Charter, section 9; Minnesota Constitution, article XIII, section 3; and Minnesota Statutes, section 137.12.

(2) Prosecution and Defense Services.

Prosecution services have exhibited the most organizational stability of any criminal justice system component in recent years. The county attorneys' council is perhaps the most innovative recent development in the area of prosecution services. Public defender services have changed considerably in recent years and vary depending upon the needs of each judicial district.

(a) Prosecuting attorneys. Generally, the county attorney prosecutes felonies and, if there is no municipal prosecuting attorney, gross misdemeanors and misdemeanors. Municipal prosecuting attorneys prosecute violations of state law which are gross misdemeanors, misdemeanors, and violations of municipal charter provisions, ordinances, and rules. For DWI prosecutions, the attorney in the jurisdiction in which the violation occurred who is responsible for misdemeanor prosecutions is also responsible for gross misdemeanor prosecutions. See Minnesota Statutes, section 169.121, subdivision 3.

(b) Public defender system. Minnesota is divided into ten judicial districts. The state board of public defense appoints a chief district public defender for each district who must administer public defender services in the district consistent with standards adopted by the board. See Minnesota Statutes, section 611.26. The

district public defenders provide representation from time of arrest through trial. The state board of public defense appoints the state public defender who provides appellate representations for persons who are unable to financially obtain counsel. See Minnesota Statutes, sections 611.23 to 611.25.

(e) Courts' Role in the Criminal Justice System

The judicial branch of government plays a central role in law enforcement. Judicial involvement in the criminal justice system is comprehensive and complex; it begins with the issuance of arrest and search warrants and proceeds through preliminary criminal proceedings, trial, sentencing, and appeal, including postconviction appeal.

An overview of the courts' role in the criminal justice system requires a coordinated reading of the statutes, Rules of Criminal Procedure, and case law. The judiciary, under the principle of comity, defers to procedural law enacted by the legislature, but it also has asserted its inherent rulemaking authority with respect to procedural law. For a judicial analysis of the Rules of Criminal Procedure in relation to the court's rulemaking authority with respect to its appellate jurisdiction, see *State v. Wingo*, 266 N.W.2d 508 (1978) and *State v. Keith*, 325 N.W.2d 641 (1982).

Criminal jurisdiction in the courts is as follows:

(1) Supreme Court.

The Supreme Court has jurisdiction of criminal appeals in cases in which the defendant has been convicted of murder in the first degree. The Court of Appeals has jurisdiction of all other criminal appeals, but the Supreme Court may review any decision of the Court of Appeals.

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

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

(2) Court of Appeals.

The Court of Appeals has criminal jurisdiction in all criminal appeals except when the defendant has been convicted of murder in the first degree. See Minnesota Statutes 480A.06, subdivision 1. The Supreme Court may grant further review of any decision of the Court of Appeals under certain circumstances. See Minnesota Statutes, section 480A.10, subdivision 1, and Supreme Court, *supra*. Rule 28 of the Rules of Criminal Procedure governs criminal appeals to the Court of Appeals.

(3) District Court.

The district court has original criminal jurisdiction in all criminal matters.

(f) Summary of Statutes and Rules

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

Substantive Law of Crimes

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

Statutes Governing Criminal Procedures

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

Court Rules Governing Criminal Procedure

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

Statutes and Court Rules Governing Evidentiary Matters

Rules of Evidence

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

Statutes and Court Rules Governing Juvenile Justice Matters

Rules of Procedure for Juvenile Court

Chapter 260	Juvenile Court Act
Chapter 636	Juvenile Offenders

Statutes and Administrative Rules Governing Corrections

Statutes

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

Administrative Rules

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

Criminal Justice Agencies

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

Miscellaneous Administrative Rules Pertinent to Criminal Justice

Board of Pardons

Chapter 6600	Procedural Rules Board of Peace Officer Standards and Training
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Chapter 6700	Training and Licensing Rules Minnesota Board of Pharmacy
Chapter 6800	Rules of the Minnesota Board of Pharmacy Bureau of Criminal Apprehension
Chapter 7500	Explosives and Blasting Agents
Chapter 7501	Preliminary Screening Breath Test Devices
Chapter 7502	Training for Intoxication Testing
Chapter 7503	Incidents for License Revocation Crime Victim Reparation Board
Chapter 7505	Hearing Procedures

A Bibliographic Research Guide

The person who drafts in the criminal justice area should be aware of available research material. This brief bibliography is designed to direct and enhance basic criminal justice research.

Substantive Criminal Law

LaFave, Wayne R. and Austin W. Scott, Jr. *Substantive Criminal Law*, 2 Vols. St. Paul: West Publishing Co., 1986.

Minnesota District Judges Association. *Minnesota Practice, Jury Instruction Guides Criminal*, 3rd Edition, Vols. 10 and 10A. St. Paul: West Publishing Co., 1990.

McCarr, Henry W. *Minnesota Practice, Criminal Law and Procedure*, Vol. 9. St. Paul: West Publishing Co., 1990.

Criminal Procedure

LaFave, Wayne R. and Jerold H. Israel, *Criminal Procedure*, 2 Vols. St. Paul: West Publishing Co., 1984.

McCarr, Henry W. *Minnesota Practice, Criminal Law and Procedure*, Vols. 7 and 8. St. Paul: West Publishing Co., 1984.

Sonsteng, John O. and Robert Scott, *Minnesota Practice, Juvenile Law and Practice*, Vols. 12 and 13. St. Paul: West Publishing Co., 1985.

Stenberg, Julie, ed., *Minnesota Judges Criminal Benchbook*, Minnesota Supreme Court Judicial Planning Committee, 1990.

Federal Criminal Code and Rules, 1991 Revised Edition. St. Paul: West Publishing Co.

Sentencing

Knapp, Kay A., *Minnesota Sentencing Guidelines and Commentary Annotated*. St. Paul: CLE Press, 1985.

Federal Sentencing Guidelines Manual, 1992 Edition. St. Paul: West Publishing Co.

Hutchinson, Thomas W. and David Yeller, *Federal Sentencing Law and Practice*. St. Paul: West Publishing Co., 1989.

Research Publications

The House Research Department has published briefs and reports relating to criminal justice that the drafter will find valuable as a research resource.

Overview of the Child Abuse Reporting Act by Deborah K. McKnight (Information Brief), 1988.

Reference of Juveniles to Adult Court by Emily Shapiro (Policy Brief), 1989.

Comparison of the 1985 and 1990 DWI Surveys by Jim Cleary, Emily Shapiro, and John Williams (Research Report), 1992.

Minnesota Juvenile Residential Facilities: A Description by Mary Jane Lehnertz (Information Brief), 1992.

Prenatal Exposure to Controlled Substances by Emily Shapiro and Deborah McKnight (Information Brief), 1991.

Minnesota's DWI Law: Recent Constitutional Law Developments by Emily Shapiro (Case Brief), 1991.

Crime Victims Legislation in Minnesota: An Overview by Emily Shapiro (Information Brief), 1991.

The National Institute of Justice (NIJ) is a federal agency in criminal justice research. The May/June 1992 *National Institute of Justice Catalog* describes its publications as:

The bimonthly *Catalog* contains information on criminal justice publications and other materials available from NIJ's information clearinghouse, the National Criminal Justice Reference Service (NCJRS), and other sources. The *Journal* presents articles on research and development programs of the National Institute of Justice, as well as topics of interest from other Department of Justice agencies.

The *National Institute of Justice Catalog* is sent free to all registered users of the National Institute of Justice/NCJRS. To become a registered user, write National Institute of Justice/NCJRS User Services, Box 6000, Rockville, MD 20850, or call 800-851-3420.

5.4 Special Laws

(a) Prohibition

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

Article XII, section 1, states:

In all cases when a general law can be made applicable, a special law shall not be enacted except as provided in section 2. Whether a general law could have been made applicable in any case shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law authorizing the laying out, opening, altering, vacating or maintaining of roads, highways, streets or alleys; remitting fines, penalties or forfeitures; changing the names of persons, places, lakes or rivers; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights on minors; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; granting divorces; exempting property from taxation or regulating the rate of interest on money; creating private corporations, or amending, renewing, or extending the charters thereof; granting to any private corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever or authorizing public taxation for a private purpose. The inhibitions of local or special laws in this section shall not prevent the passage of general laws on any of the subjects enumerated.

The public policy against special legislation also appears in the prohibition of bills of attainder, article I, section 11, and the requirement that taxes be uniform on the same class of objects, article X, section 1.

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

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

A law which does not apply to everyone will be deemed "special" only if it applies to a particular member of a class, or if the classification made is arbitrary and not germane to the purpose of the law. As one court stated:

The classification must be based upon "substantial distinctions"--those which make one class really different from another. The distinction must be based "on some natural reason,--some reason suggested by necessity, by some difference in the situation and circumstances of the subjects placed in the different classes, suggesting the necessity of different legislation with respect to them." [*Visina v. Freeman*, 252 Minn. 177, 197, 89 N.W.2d 635, 651 (1958).]

A law remains "general," then, even when it divides the subjects of its operation into classes and applies different rules to different classes as long as the classification made is a proper one and the law applies to every member of the class. Even one alone may constitute a class. The fewer there are in a class, however, the more closely will courts scrutinize an act to see if its classification constitutes an evasion of the Constitution. *Minneapolis Gas Company v. L. P. Zimmerman*, 253 Minn. 164, 91 N.W.2d 642 (1958).

Even after strict scrutiny a statute will not be held invalid as "special" legislation unless it appears very clearly that the basis of classification is purely arbitrary. *Arens v. Village of Rogers*, 240 Minn. 386, 61 N.W.2d 508, appeal dismissed 347 U.S. 949 (1954).

The following types of statutes have been voided because they constituted "special" legislation with arbitrary classifications:

(1) A statute related to bridges in counties with populations between 28,000 and 28,500. *State v. Mower County*, 185 Minn. 390, 241 N.W. 60 (1932);

(2) A statute related to liquor stores in cities of the fourth class situated in a county having between 100 and 110 congressional townships and having a population of 13,000 to 15,000. *State ex rel. Paff v. Kelley*, 235 Minn. 350, 50 N.W.2d, 703 (1952); and

(3) A statute providing for a county examiner of townships in counties having a population of over 100,000 and an area of more than 5,000 square miles. *State v. Wasgatt*, 114 Minn. 78, 130 N.W. 76 (1911).

Statutes which have been upheld when challenged as special legislation included the following types of classes:

(1) Unorganized territories having assessed valuation over \$3 million and area greater than 3,500 square miles (authorizing issuance of school bonds). *Board of Education for the Unorganized Territory of St. Louis County v. Borgen*, 193 Minn. 525, 259 N.W. 67, (1935);

(2) Any two contiguous cities of the first class (authorizing creation of Metropolitan Airports Commission). *Monaghan v. Armatage*, 218 Minn. 108, 15 N.W.2d 241, appeal dismissed 323 U.S. 681 (1945);

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

(4) Cities with population over 450,000 (authorizing 1 1/2 mill tax levy for recreational programs). *Leighton v. City of Minneapolis*, 222 Minn. 523, 25 N.W.2d 267 (1946); and

(5) Boroughs of not more than 10,000 population (liquor store regulation). *Arens v. Village of Rogers*, 240 Minn. 386, 61 N.W.2d 508, appeal dismissed 347 U.S. 949 (1954).

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

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

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

(b) Local Laws

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

Article XII, section 2, of the Constitution reads:

Every law which upon its effective date applies to a single local government unit or to a group of such units in a single county or a number of contiguous counties is a special law and shall name the unit or, in the latter case, the counties to which it applies. The legislature may enact special laws relating to local government units, but a special law, unless otherwise provided by general law, shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such majority as the legislature may direct. Any special law may be modified or superseded by a later home rule charter or amendment applicable to the same local government unit, but this does not prevent the adoption of subsequent laws on the same subject. The legislature may repeal any existing special or local law, but shall not amend, extend or modify any of the same except as provided in this section.

Minnesota Statutes, sections 645.023 and 645.024, were enacted pursuant to the above constitutional provision. They read:

645.023 [SPECIAL LAWS; ENACTMENT WITHOUT LOCAL APPROVAL; EFFECTIVE DATE.]

Subdivision 1. A special law enacted pursuant to the provisions of the Constitution, article XII, section 2, shall become effective without the approval of any affected local government unit or group of such units in a single county or a number of contiguous counties if the law is in any of the following classes:

(a) A law which enables one or more local government units to exercise authority not granted by general law.

(b) A law which brings a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a

general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.

(c) A law which applies to a single unit or a group of units with a population of more than 1,000,000 people.

Subd. 2. A special law as to which local approval is not required shall become effective on August 1 next following its final enactment, unless a different date is specified in the special law.

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

645.024 [SPECIAL LAWS; LOCAL APPROVAL AS A REQUIREMENT OF THE ACT.]

Section 645.023 does not apply to a special law which by its own terms becomes effective upon the approval of one or more affected local government units, expressed through the voters or the governing body and by such majority as the special law may direct.

These sections require local approval except in defined situations. Although the sections govern when a bill for a local law is silent on the subject, the status of the bill is clearer if either local approval is explicitly required or explicitly not required. In the latter case, a reference to the part of section 645.023 that allows the law to take effect without local approval is appropriate. For example, "Under Minnesota Statutes, section 645.023, subdivision 1, clause (a), this section takes effect without local approval."

Also, the legislature has informally requested that drafts of local law bills routinely incorporate some kind of local approval section. The policy is, therefore, to draft each bill for a local law with a local approval section unless the requester specifically asks that the local approval section be omitted.

A local approval section activates the provisions of Minnesota Statutes, section 645.021.

645.021 [SPECIAL LAWS; LOCAL APPROVAL, CERTIFICATES.]

Subdivision 1. A special law as defined in the Minnesota Constitution, article XII, section 2, shall name the local government unit to which it applies. If a special law applies to a group of local government units in a single county or in a number of contiguous counties, it shall be sufficient if the law names the county or counties where the affected units are situated.

Subd. 2. A special law shall not be effective without approval of the local government unit or units affected, except as provided in section 645.023. Approval shall be by resolution adopted by a majority vote of all members of the governing body of the unit unless another method of approval is specified by the particular special law.

Subd. 3. The chief clerical officer of a local government unit shall, as soon as the unit has approved a special law, file with the secretary of state a certificate stating the essential facts necessary to valid approval, including a copy of the resolution of approval or, if submitted to the voters, the number of votes cast for and against approval at the election. The form of the certificate shall be prescribed by the attorney general and copies shall be furnished by the secretary of state. If a local government unit fails to file a certificate of approval before the first day of the next regular session of the legislature, the law is deemed to be disapproved by such unit unless otherwise provided in the special law.

Subd. 4. Laws 1959, chapter 368, does not apply to any special law heretofore enacted, whether or not it has been approved by the local government unit affected, but such unit shall file with the secretary of state a certificate of approval for such law as required in subdivision 3.

Minnesota Statutes, section 645.02 provides, in part, for the effective date for local laws. It reads:

A special law required to be approved by the local government unit affected before it goes into effect becomes effective as to the approving unit the day following the day on which the certificate of approval prescribed by section 645.021 is filed with the secretary of state, unless a later date is specified in the act. When approval of such a special law is required by two or more local government units before it may become effective, the day after the day when the last of the required certificates is filed is the effective date, unless a later date is specified in the act.

Thus, if the bill for a local law is silent, the above provision governs to make it effective on the day following the date on which the certificate of local approval is filed with the secretary of state. However, for the sake of clarity, it is usual to put an effective date in a bill for a local law which is consistent with section 645.02, subdivision 2. A bill may provide a different effective date for a local law if one is needed.

Examples useful in drafting local laws appear on pages 140 to 144.

(c) Specific Problem Areas

A county boundary may not be changed or county seat transferred until approved in each county affected by a majority of the voters voting on the question. Minn. Const. art. XII, sec. 3.

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

Special care should be taken in amending laws applicable to local government units that were enacted prior to the adoption of what is now article XII, section 2 of the Minnesota Constitution. Prior to the time of the adoption of section 2, local government units could not be named by reason of the prohibition against special legislation, and local laws were enacted in the form of a general act (Example: "Any city of the third class having a population of more than 14,000 and less than 15,000 according to the 1950 federal census", etc). In amending local laws enacted in the form of a general law, be sure that the law being amended initially applies to the local government unit now being named. In the illustration quoted, the city to which it initially applied may have grown, and in the 1980's its population may be greater than 15,000. In an amendment, the quoted language should be stricken and the name of the city inserted. For an example, see Laws 1982, chapter 506. If the drafter cannot determine with certainty the local government unit to which the initial law applied, it should not be amended; but, rather, a new special law naming the unit to which it applies should be drafted.

Article XII, section 2, requires that the local special law name the unit affected and that, if several units are affected, they be in the same or contiguous counties. The contiguous counties requirement is sometimes overlooked but the constitutional requirement admits no exceptions, and if it is overlooked, the intended laws will not survive a challenge.

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

*****BE SURE THAT THE LOCAL GOVERNMENT UNITS AFFECTED BY AN ACT ARE IN CONTIGUOUS COUNTIES.**

(d) Laws Relating to Specific Courts

A law relating to a specific court is a special law under authority of article VI (the judicial article), of the Constitution and not under the authority of article XII. A court is not a local government unit and a law affecting the court cannot be made effective upon approval by that court as the "local government unit."

Furthermore, no bill prepared pursuant to the authority of the judicial article of the Minnesota Constitution can depend on the approval of the county board of supervisors, city council, or other governmental unit. A bill under the authority of the judicial article should not be prepared with local approval required unless the requester insists.

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

5.5 Taxes

(a) Constitutional Considerations

The inherent power of the legislature to tax is very broad and is subject only to constitutional limitations. *In re Petition of S.R.A., Inc.*, 213 Minn. 487, 7 N.W.2d 484 (1942). Article X of the Minnesota Constitution contains several special limitations on the power to tax.

First, taxes must be levied for a public purpose. See section 5.2 (m) of this manual for a discussion of the public purpose doctrine.

Second, taxes must be uniform upon the same class of subjects. This clause has been held to be no more restrictive than the equal protection clause of the United States Constitution. *Contos v. Herbst*, 278 N.W.2d 732 (Minn. 1979); *Rio Vista Non-Profit Housing Corp. v. Ramsey County*, 335 N.W.2d 242 (1983). The legislature has considerable discretion in determining classifications for tax purposes. *Little Earth of United Tribes, Inc. v. Hennepin County*, 384 N.W.2d 435 (1986). Since the legislature has broad discretion in determining classes, a classification will be sustained unless clearly arbitrary and without reasonable basis. *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W.2d 538 (1974); *In re Cold Spring Granite Co.*, 271 Minn. 460, 136 N.W.2d 782 (1965); *Matter of McCannel*, 301 N.W.2 910 (1980). A classification which has a reasonable basis does not violate the equal protection clause merely because its administration results in some inequality. *Guilliams v. Commissioner of Revenue*, 299 N.W.2 138 (1980). Classification of real property by use for ad valorem tax purposes has been specifically sustained. *Apartment Operators Assn. v. City of Minneapolis*, 191 Minn. 365, 254 N.W.2d 443 (1934). The assessment of homestead property at graduated rates has been specifically sustained. *Lund v. Hennepin County*, 403 N.W.2d 617 (1987). If property is in the same class, however, the same ratios must be applied to all property in that class. *Minnegasco, Inc. v. County of Carver*, 447 N.W.2d 878 (1989).

When preparing a bill in the area of taxation of minerals, the drafter should review sections 3 and 6 of article X of the Minnesota Constitution and the cases construing these provisions. These sections contain very specific limitations on the legislative power to tax mining operations. The allocation of funds from an occupation tax on iron ore is specifically prescribed in section 3. See section 3.3 (n) of this manual for the text of these and other constitutional provisions.

State taxation of interstate business causes intermittent litigation and, as in all legislation, the drafter should review a taxation draft to assure that it complies with the due process requirements of the state and federal constitutions.

(b) References to Federal Laws

A drafter will often be asked to make reference to or tie Minnesota laws into the federal Internal Revenue Code. Where possible, avoid tying Minnesota tax laws into an open-ended reference to an Internal Revenue Code section. The link may be a delegation of state legislative functions to the Congress, which is impermissible. *Wallace v. Commissioner*, 289 Minn. 220, 184 N.W.2d 588 (1971). Instead, refer to the Internal Revenue Code section as amended through a certain year or a specific previous date. The reference may then be updated periodically to incorporate later amendments made to the federal provision.

A draft may incorporate future federal amendments if the state provisions are auxiliary and seek to achieve uniformity with federal programs. *Wallace v. Commissioner; Minnesota Recipients Alliance v. Noot*, 313 N.W.2d 584 (1981). Even if the program is not auxiliary to federal law, the incorporation of federal law in rules has been upheld if "good reasons" exist for coordination. *Minnesota Energy and Economic Development Authority v. Printy*, 351 N.W.2d 319 (1984). See also Minnesota Statutes, section 645.31, subdivision 2.

(c) Effective Dates

Every tax bill, with the exception of a few administrative bills, needs an effective date which fits with the existing tax system. Most income tax laws should be effective for taxable years beginning after a certain date, generally December 31. If provisions of federal income tax law are being adopted, the drafter should consider conforming the effective date of the Minnesota provision to the effective date of the federal provision. Most property tax laws should be effective for taxes levied in one specific year, payable the next year, and afterward. Most sales tax laws should be effective for sales made after a specific date. Most estate tax laws should be effective for estates of decedents dying after a specific date.

5.6 Organization of State Government

(a) General Considerations

A bill that creates a new board, commission, or department to administer a new program or to regulate an occupational group should be drafted with several general considerations in mind.

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

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

Third, the drafter must be familiar with the statutory elements common to all agencies. Among the common elements are provisions for naming the agency, administrative rulemaking, budgeting, and employment and compensation of employees. The drafter must ensure that the agency will fit within these common provisions or that suitable exceptions to them are stated.

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

(b) Basic Provisions for a New Agency

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

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

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

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

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

(5) Consider whether any aspects of Minnesota Statutes, chapters 14, 15, 16A, 16B, 43A, 179, and 179A should apply. If a state agency is created, these chapters apply unless a statement is made to the contrary.

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

(7) State the duties or responsibilities of the agency. A drafter should specifically avoid splitting up the duties into a number of separate sections in the bill.

(8) State the powers of the agency. A drafter should ensure that there is some relationship between the powers granted and the duties stated elsewhere in the bill. For example, if the agency is established to study a problem, the drafter should consider whether the agency should have the power to issue subpoenas.

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

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

(10) If several compartmentalized functions will exist within the agency, the drafter may wish to consider whether separate divisions within the agency should be specified by law.

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

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

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

(14) If the agency will be heavily involved with regulating the activities of individuals, it may be best to set out the outlines of its procedures or the limitations on its authority. These matters should not be left solely to administrative rulemaking. Bills establishing licensing boards should be consistent with Minnesota Statutes, section 116J.70, and chapter 214.

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

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

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

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

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

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

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

(c) Alteration of Existing Agencies

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

First, as discussed in paragraph (b), there may be a surprising amount of interrelationship between the sections establishing an agency. When making a single change to one section of the statutes related to an agency, the drafter should examine surrounding material to ensure that changes to other sections are not necessitated by the requested change. The drafter may have to look at a whole chapter or several chapters of the statutes, depending on which agency and which aspect of that agency's function is being changed. As stated in paragraph (a), Minnesota Statutes, section 15.039, addresses the transfer of powers among agencies.

Second, a drafter should ensure that proper references are made to the agency's statutory name and to its statutory head. Guessing whether an agency is a commission, board, or agency or whether it is headed by a director, commissioner, or supervisor can lead to unfortunate results.

Third, a frequent change to multiple member boards and commissions is to add or subtract members. When the existing members have staggered terms, careful drafting is required to clearly indicate what disposition is to be made of existing members' terms or to coordinate new members' terms with the staggered expiration of existing members' terms. The length of terms can be determined by checking the statutes, but the administrative rules may also have to be examined to determine the exact expiration date of each member's term.

Fourth, care should be taken when dealing with changes regarding the appointment and confirmation of officials. Specifically, provisions calling for "appointment by the governor subject to subsequent Senate confirmation," "appointment by the governor upon the consent of the Senate," and "nomination by the governor and appointment upon Senate confirmation" have widely disparate ef-

fects upon the governmental process. A drafter should know which type is intended by the requester and not use them interchangeably. Minnesota Statutes, section 15.066, should be consulted.

(d) Incumbents

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

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

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

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

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

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

5.7 Organization of Counties, Cities, and Metropolitan Government

(a) Counties

All the area of the state is included in counties. Most were formed in the nineteenth century. Changes in their territory are now rare, although Minnesota Statutes, chapter 370 provides for transfers of territory and establishment of new counties. A change in a boundary or the location of a county seat may be made only with approval of the affected voters. Minn. Const., art. XII, sec. 3.

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

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

The general law in chapters 370 to 402 is comprehensive and changes slowly, but the ample general law does not inhibit frequent passage of special laws for counties. Individual counties often find it easier to meet special problems by special laws than by seeking to amend the general laws that affect all counties. Special laws to allow specific counties to merge offices under special conditions are common. Ramsey county has adopted a home-rule charter.

(b) Cities

City governments fall into two classes, statutory cities and home rule charter cities.

Statutory cities were formerly called villages and are organized under Minnesota Statutes, chapter 412. Several optional forms of organization for each city's government are permitted under chapter 412.

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

410.015 [DEFINITIONS RELATING TO CITIES.]

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

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

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

Many cities were organized under special laws. Some of the special laws were repealed by section 412.018 which expressed an intention to have cities organized under the statutory city law or under a home rule charter. The old special laws were sometimes called "the city charter" and their variety was confusing. The desire to simplify produced section 412.018 and related legislation. The effort has not been entirely successful. "Statutory city" is a longer term than "village." More serious, the meaning of "city" in a particular context is ambiguous without recourse to the history of the section or other language in it.

The entire series of chapters 410 to 477A applies to various kinds of cities, but the particular application of each law must be ascertained from its own terms. The development of city laws is parallel to that of county laws. Each session of the legislature produces many laws relating to individual cities.

Most cities have city councils for governing bodies. Most, but not all, have mayors. Their primary concerns are police and fire protection, street maintenance, health, sewers, and public safety in general. Minnesota cities have lost most of their former involvement with welfare and education.

(c) Towns

Towns are often called "townships." The latter term is ambiguous since it may also refer to a township in the United States survey. Towns are the appropriate form of rural local government where there is substantial settlement. Large parts of northern Minnesota are not organized into towns.

The basic authority in a town is the town meeting. The town board is the routine town administration. The activity of a town is in direct proportion to its population. Occasionally a town quietly becomes defunct. A town may also become quite urban with enormous town meetings.

Towns have an economical set of laws for their government in chapters 365 to 368. They are also referred to in many other laws. Individual towns seek special legislation and each session produces a number of special local laws for them. When drafting a local law for a town, the provision for local approval should refer to "the town board" or "the town meeting" since either may be "the governing body" referred to in article XII, section 2 of the Constitution. Usually the town board is given the responsibility of approving a local law.

The general town laws, like those of counties and cities, evolve slowly. The most urgent responsibility of towns is maintenance of town roads but they possess

numerous other powers. The exercise of many of the other powers is needed in urbanized territory but urbanization is usually followed by incorporation of the territory as a city. However, the transition is not inevitable and towns can be found operating in the full range of demographic possibilities from wilderness to city.

(d) Metropolitan Government

The situation in Minnesota of the Twin Cities has produced a unique set of laws for their metropolitan government. Many of the metropolitan government laws are collected in chapter 473. Several commissions have authority over parks, transit, sewer and waste control, airports, and other subjects. The commissions are usually subject to supervision by the metropolitan council. The establishment of this system was made easier by the adoption of Minnesota Statutes, section 645.023, which made approval by the hundreds of preexisting local governments unnecessary. See section 5.4 (b) of this manual. The relationship of the metropolitan council and the commissions to the other local government units and the public at large is not settled and is likely to have extensive further development.

The governor appoints the metropolitan council and, with important exceptions, the council appoints the various commissions. The council and the commissions do not readily fall into the familiar categories of state agency or political subdivision although both terms have been used for them. The courts have consistently upheld their powers.

A bill that affects the metropolitan council or a metropolitan commission customarily names the counties where it applies, usually Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington, in accordance with the Minnesota Constitution, article XII, section 2. The Minnesota Supreme Court has characterized the metropolitan council as "a political subdivision." *City of New Brighton v. Metropolitan Council*, 306 Minn 425, 428, 237 N.W.2d 620, 623 (1975). The commissions have not been so characterized, *Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749, 757 (Minn. 1978), and a "political subdivision" is not necessarily a "local government unit." Caution suggests that naming the counties will preclude objections based on article XII, section 2.

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

(e) Other Local Government Units

Other units exist with various powers. Examples are transit authorities, port authorities, water authorities, regional commissions, and so forth. They attempt to deal with new or specialized demands placed upon local governments. In general, they combine powers of local entities for limited purposes. Special units may become more common in Minnesota as they already have in more urbanized states. This may put a drafter into an uncharted area of Minnesota law where the experience of other states may be of benefit.

5.8 Retirement and Pension Laws

(a) Existing Major Plans

Minnesota has several major retirement and pension plans and a number of minor and special plans, mainly local police and fire funds operating wholly or partially under local laws or trust funds remaining after consolidation of a local fund. Before attempting any drafting in this area, a drafter must be familiar with at least the principal retirement and pension programs. These are as follows:

(1) The Minnesota State Retirement System (MSRS), found in Minnesota Statutes, chapter 352, includes basically all state employees who are in the classified service as well as some unclassified employees.

(2) The Public Employees Retirement Association (PERA), found in Minnesota Statutes, chapter 353, includes all employees of municipalities or political subdivisions.

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

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

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

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

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

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

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

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

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

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

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

Another chapter of Minnesota Statutes, chapter 356, contains a variety of largely administrative provisions which relate to all or most of the retirement and pension plans provided elsewhere. If one of the specific pension plans is modified, this chapter should be checked to assure that no conflict is created.

(b) Existing Minor Plans

A drafter will also be often called upon to draft a law relating to local police or salaried firefighter's retirement associations. These laws are of two principal kinds:

(1) Those plans organized and operating under one of 55 special laws. These plans are indexed in the "Local and Special Acts" table (Table I) in Minnesota Statutes. Each plan is indexed under the city, county, or other governmental unit in which the association is located.

(2) Those plans organized and operating under either Minnesota Statutes, chapters 69, 423 or 424, and 423A, but which also have some special provisions or exceptions provided by a local or special law. These special exceptions or provisions to plans operating under these chapters are also found listed under the appropriate governmental unit name in Table I of Minnesota Statutes.

It can often be extremely difficult to locate all provisions affecting a particular minor pension plan. This problem is often complicated by the necessity of deter-

mining whether a particular local or special law has received the required local government approval.

The legislature has, in recent years, attempted to reduce the number of local police and salaried firefighters retirement associations by encouraging consolidation into the PERA police and fire fund. About half of the 48 existing local funds had voted to consolidate as of mid-1992. Total consolidation, though possibly some time away, should obviate the need for local legislation. In consolidations prior to 1988, a local trust fund was left in existence solely to pay benefits to previously retired firefighters or police or their survivors. Here again the need for local legislation should abate over time.

(c) Problem of "Omitted Buy-Back"

One instance of a drafting problem which often arises in the retirement and pension law area is that of "omitted buy-back." Throughout the years, various laws have allowed many individuals or groups of public employees to buy back credit for years of service when they either did not contribute to a retirement program or took a refund of contributions. The opportunity provided to buy back under each law existed only for a limited time and often the law authorizing the buy-back has been subsequently repealed or expired by its own limitations.

A buy-back law generally involves one or a limited group of individuals. The law must be general in form and must not include the names of any persons affected. The legislature has, from time to time, discouraged proposals to permit a buy-back for a specific individual. However, there is no absolute prohibition and drafting requests for individual buy-back authority are not uncommon.

In drafting a bill to authorize a buy-back of prior service credit, the drafter must determine:

- (1) Identity of the employee(s);
- (2) Present fund membership, if any, and past fund membership, if different;
- (3) Present employer and whether there was a different employer during the period for which buy-back is sought; and
- (4) The statutory reference to the repealed or expired law under which authority for the buy-back formerly existed. (If the reference is to Minnesota Statutes, it will be necessary to include the year of a particular edition in the citation--contrary to general drafting rules.)

The first three items should be obtained from the legislator requesting the bill draft. More complete information on all items can probably be best obtained by contacting the appropriate retirement association.

Before drafting a bill, a drafter should ensure that no buy-back rights presently exist. This occasionally does occur. This information can be given to the legislator making the bill request and the problem remedied without legislation.

The legislation authorizing the buy-back should be carefully checked to ensure that buy-back rights are not to be extended to others similarly situated but not intended by the requester, unless this result is actually intended.

For examples of various buy-back legislation, see the examples on pages 145 and 146.

5.9 Religious Issues Including Use of Public Funds for Religious Institutions

Both the federal and state constitutions deal with freedom of religion and establishment of religion.

The federal constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." U.S. Const.

amend. I. This amendment is applicable to the states through the Fourteenth Amendment.

The state constitution provides the following:

The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries. [Minn. Const., art. I, sec. 16.]

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

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

In addition to the large body of federal cases on church-state relations, in *Americans United Inc. v. Independent School District No. 622*, 288 Minn. 196, 213, 179 N.W.2d 146, 155 (1970), the Minnesota Supreme Court stated "...that the limitations contained in the Minnesota Constitution are substantially more restrictive than those imposed by U.S. Const. Amend. 1." Although upholding the use of public funds to transport parochial school students to and from school, the court noted that "A more effective argument can be made for holding that the use of public funds for transporting sectarian students 'supports' a parochial school than can be advanced for holding that such use is for the 'establishment of religion.'" 288 Minn. at 201, 179 N.W. 2d at 149. The same reasoning would apply, of course, to the provision of other types of aid to sectarian schools or students. The court itself has not yet defined other ways in which the Minnesota constitutional provisions dealing with religion might be more restrictive than the federal provisions, and it has not effectively overturned the grant of any type of aid to nonpublic schools on the basis of the Minnesota Constitution, but the drafter should be aware of the possibility.

In addition to the *Americans United* case, one other Minnesota case provides some assistance in interpreting the Minnesota constitutional provisions on religion. In *Minnesota Higher Education Facilities Authority v. Hawke*, 305 Minn. 97, 232 N.W.2d 106 (1975), the Minnesota Supreme Court held that the issuance of tax exempt revenue bonds by the higher education facilities authority to refinance the indebtedness of private religious affiliated colleges for construction of facilities used exclusively for secular education did not violate section 2 of article XIII of the Minnesota Constitution which proscribes the use of public money for the support of schools wherein the distinctive doctrines, creeds, or tenets of any particular Christian or other religious sect are promulgated or taught. The decision turned largely on the definition of public money as money raised by taxes and on

the fact that the relevant statute declared that the bonds did not constitute a debt of the state.

5.10 Administrative Procedures

(a) Statutory Law

Minnesota Statutes, chapter 14 includes the Administrative Procedure Act as well as statutory provisions relating to the office of administrative hearings and the revisor of statutes. Minnesota Statutes, sections 3.841 to 3.845 relate to the legislative commission to review administrative rules. Minnesota Statutes, section 3.846 governs the publication of notice of certain exempt rules. Minnesota Statutes, chapter 214, and section 16A.128 govern the power of agencies to set fees. Minnesota Statutes, chapter 645 applies to the interpretation of rules.

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

(b) Grants of Rulemaking Authority

If an agency being given rulemaking authority does not come within chapter 14's nonapplicability provision, section 14.03, if it meets the definition of "agency" in section 14.02, subdivision 2, and the authority being granted is authority to adopt a "rule," as that term is defined in sections 14.02, subdivision 4, and 14.03, subdivision 3, then a drafter need not specify that the rule must be adopted pursuant to chapter 14.

If there is a doubt about whether these requirements have been met, then it may be wise to specifically require the rule to be "adopted under the rulemaking provisions of chapter 14."

Pay special attention to effective date provisions when drafting grants of rulemaking authority. Consider making these grants effective the day following final enactment, especially if the legislature has also established in law a specific date by which these rules must be adopted. This will give the agency as much time as is possible to comply with the legislative directive.

(c) Exemptions

Legislative drafters are sometimes asked to draft exemptions from the Administrative Procedure Act. These exemptions are frequently drafted as exemptions "from chapter 14" or "from sections 14.01 to 14.69." While in some cases it may be appropriate to draft an exemption as broadly as this, a narrower exemption may avoid an unintended result.

The following checklist may aid drafters in setting the limits of an exemption:

- (1) Is it an exemption from only the rulemaking provisions of chapter 14?
- (2) Should these exempt rules have the force and effect of law? If so, consider the provisions of sections 3.846 and 14.38, subdivisions 5 to 9.
- (3) Should the legislative commission to review administrative rules have authority to review the exempt rules?

(d) Repeals

It may be necessary to legislatively overrule decisions made by administrative agencies and embodied in rules. Some of the more common methods used by drafters are the explicit repeal of the particular rule and the implicit repeal by enactment of preemptive or irreconcilable statutory language or the repeal of the authorizing statute. Explicit repeal of the rule is the preferred alternative because

the scope of the repeal is clear on its face, and it ensures that the rule is removed from Minnesota Rules.

Repeal of a rule does not preclude an agency from adopting a subsequent rule, identical or otherwise, on the same subject. To prevent the agency from adopting a subsequent rule, the drafter should specifically limit the agency's rulemaking power perhaps by repealing the statute that authorizes the rulemaking. If this alternative is chosen, make sure the agency does not possess additional statutory authority to adopt similar rules. The most common example of such additional authority would be the general grant of rulemaking authority commonly possessed by large agencies.

(e) Amendments

If a drafter is asked to change a policy embodied in an administrative rule, he or she may use several methods to accomplish this task. The preferred method is to specify in the statute the change to be made and require the agency to adopt it under the APA. An alternative would be to require the agency to adopt the change but exempt it from the rulemaking provisions of chapter 14. In this case, it would be wise to require the agency to comply with the requirements of section 14.38, subdivision 7. Examples of these methods are included at the end of the chapter.

The drafter could also draft statutory language that preempts the rule. This alternative is undesirable because the text of the rule remains unchanged and that text may mislead persons unfamiliar with the statutory action. Some additional procedures must then be included in the statute to ensure that the text of the rule is changed. If the change is to be done editorially and its exact wording does not appear in the law, the law may give too much discretion in how the rule text should be amended. Preemption is cumbersome and confusing at best and may easily be ineffective.

Preferred alternatives for ordering changes to rules are as follows:

(1) Subject to the APA

1	Sec. ... [RULE CHANGE.]
2	<u>The commissioner shall amend Minnesota Rules, part</u>
3	<u>5432.0050, subpart 1, so that provisional licenses issued under</u>
4	<u>that part are valid for five years and are issued only to</u>
5	<u>qualified applicants. The amendment must be adopted pursuant to</u>
6	<u>sections 14.21 to 14.28.</u>

(The sections of the APA referred to are the sections establishing the procedure applicable to noncontroversial rules.)

(2) Exempt from the APA

1 Sec. ... [RULE CHANGE.]

2 The commissioner shall amend Minnesota Rules, part

3 5432.0050, subpart 1; so that provisional licenses under that

4 part are valid for five years and are issued only to qualified

5 applicants. The amendment is not subject to the rulemaking

6 provisions of chapter 14, but the commissioner must comply with

7 section 14.38, subdivision 7, in adopting the amendment.

5.11 Examples

Omnibus Appropriations Bill

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EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Bill subdivisions)

1	AGENCY AND PURPOSE	APPROPRIATIONS	
		1994	1995
2			
3	Sec. 2. THE LEGISLATURE		
4	Subdivision 1. House of		
5	Representatives	7,100,000	8,000,000
6	Subd. 2. Senate	5,155,350	5,539,910
7	Subd. 3. Legislative		
8	Coordinating Commission		
9	(a) Legislative Reference Library	258,910	244,460
10	(b) Revisor of Statutes	1,098,401	1,442,317
11	(c) Office of Legislative Research		
12	Science and Technology Project	47,250	47,250

Note that section 2 is divided into subdivisions and the subdivisions are divided into paragraphs just as in a bill for permanent law.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Appropriations from sources other than general fund; deficiencies; extension of special authority; procedural rider)

1	Sec. 2. [COMMISSIONS.]		
2	Subd. 6. Mississippi River		
3	Parkway Commission	10,000	10,000
4	For 1992 - \$3,000		
5	This appropriation is from the trunk		
6	highway fund.		
7	Sec. 3. SUPREME COURT		
8	Subdivision 1. General Operations		
9	and Management	1,821,426	1,897,857
10	Subd. 2. Supreme Court		
11	Contingent	28,750	3,750
12	If the appropriation for either year		
13	is insufficient, the appropriation for		
14	the other year is available.		
15	Subd. 3. Judges' Retirement	690,000	710,000
16	To be disbursed by the executive		
17	director of the Minnesota state		
18	retirement system, subject to the		
19	provisions of Laws 1975, chapter 418.		

In section 2, subdivision 6, note the provision that the appropriation is from the trunk highway fund. This is an exception to the general rule that appropriations are from the general fund.

In section 2, subdivision 6, note the deficiency or supplementary appropriation for 1992.

In section 3, subdivision 2, note the special authority to use either appropriation in either year.

In section 3, subdivision 3, note the special restriction, called a "rider," on the appropriation.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Substantive rider)

1	Sec. 6. BOARD ON JUDICIAL STANDARDS	105,000	104,000
2	Approved Complement - 2		
3	The board on judicial standards shall		
4	annually review the compliance of each		
5	district, county, municipal, or		
6	probate judge with Minnesota Statutes,		
7	section 546.27. The board shall notify		
8	the commissioner of finance of each		
9	judge not in compliance. If the board		
10	finds that a judge has compelling		
11	reasons for noncompliance, it may		
12	decide not to issue the notice.		
13	When the commissioner is notified that		
14	a judge is not in compliance, the		
15	commissioner shall not pay the judge's		
16	salary.		
17	The board may cancel a notice of		
18	noncompliance if it finds that a judge		
19	has returned his status to compliance,		
20	but in no event shall a judge be paid		
21	a salary for the period in which the		
22	notification of noncompliance is in		
23	effect.		
24	Sec. 7. CONTINGENT ACCOUNTS		
25	Subdivision 1. The appropriations in		
26	this section may be spent with the		
27	approval of the governor after		
28	consultation with the legislative		
29	advisory commission pursuant to		
30	section 3.30.		
31	Subd. 2. General	3,387,000	4,681,000
32	Of this appropriation, \$255,468 in the		
33	second year is available for the		
34	Minnesota environmental education		
35	board. \$175,000 each year is available		
36	for the resource recovery		
37	grants-in-aid program in the pollution		
38	control agency.		
39	Subd. 3. Game and Fish	50,000	50,000
40	This appropriation is from the game		
41	and fish fund.		

In the rider in section 6, note the substantive law. This should be avoided. It reads like permanent law but it is attached to an appropriation which is temporary. To avoid any implication that the rider is permanent law, on line 5 of the form, before *the*, should be added "For the fiscal biennium ending June 30, 1995,".

In section 7, subdivision 1, note the procedural rider on the expenditure of funds. This kind of provision is clearly attached to the appropriation and is clearly not permanent substantive law.

**EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Approved complement;
procedural rider)**

1	Sec. 16. ATTORNEY GENERAL		
2		1994	1995
3	Approved Complement -	191	187
4	General	186	184
5	Federal	5	3
6	Subdivision 1. General Operations		
7	and Management	4,945,782	4,875,792
8	Subd. 2. Special Contingent	25,000	25,000
9	This appropriation is not available to		
10	pay the costs of special, legal,		
11	accounting, and investigative		
12	personnel retained in cases arising		
13	under Minnesota Statutes, section		
14	501.12, filed after January 31, 1981,		
15	unless the attorney general decides in		
16	a case that all the beneficiaries are		
17	not adequately represented, or that it		
18	is likely that the purpose of the		
19	trust may be frustrated without state		
20	intervention and that the state has a		
21	substantial interest in carrying out		

In section 16, note the provision for "Approved Complement" which controls by law the number of personnel positions on the department's payroll. The provision is common in departmental budgets.

In subdivision 2 is a procedural rider which restricts the expenditure of funds.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Program budgeting)

1	Sec. 26. NATURAL RESOURCES		
2	General Operations and		
3	Management	51,194,500	51,174,100
4	Of this appropriation, \$33,775,200 for		
5	the first year and \$33,741,000 for the		
6	second year are from the general fund;		
7	\$1,330,000 each year is from the		
8	special revenue fund; and \$16,089,300		
9	for the first year and \$16,103,100 for		
10	the second year are from the game and		
11	fish fund, including \$526,600 the		
12	first year and \$533,400 the second		
13	year pursuant to Minnesota Statutes,		
14	section 296.421, subdivision 4.		
15	The amounts that may be spent from		
16	this appropriation for each program		
17	are as follows:		
18	Administrative Management		
19	Services	4,272,100	4,272,100
20	\$252,900 each year is for the		
21	environmental education board.		
22	Of this appropriation, \$171,400 each		
23	year is appropriated from the game and		
24	fish fund for the purchase of legal		
25	services from or through the attorney		
26	general on behalf of game and fish		
27	activities.		
28	Youth Conservation Corps	325,000	325,000
29	The department shall ensure that		
30	youths in all parts of the state have		
31	an equal opportunity for employment.		
32	The youth conservation corps shall		
33	provide service for the various		
34	department disciplines including		
35	parks, forestry, and stream		
36	improvement. \$100,000 in fiscal 1994		
37	and \$100,000 in fiscal 1995 shall be		
38	used for planting, timber stand		
39	improvement, and forest development on		
40	state-owned lands, other than		
41	trust-fund lands, for forestry		
42	purposes.		

In section 26, note that the general appropriation is composed of various programs followed by a listing of the programs and the amounts to be spent on each during each year of the biennium.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Project budgeting)

1	Sec. 33. NATURAL RESOURCES ACCELERATION		
2	Subdivision 1. Legislative		
3	Commission on Minnesota Resources	180,000	180,000
4	Together with any sums received as		
5	grants-in-aid from federal sources and		
6	any sums granted by private sources to		
7	carry out the purposes of the		
8	commission. Federal and private funds		
9	do not cancel but remain available		
10	until spent.		
11	Subd. 2. Department of Agriculture	50,255	50,000
12	Framework water plan - phase II. For		
13	the department role in phase II of the		
14	framework water and related land		
15	resources planning effort. The water		
16	resources council, or board if		
17	created, shall coordinate the work		
18	programs and reports of all agencies		
19	involved.		
20	Subd. 3. Department of		
21	Economic Development	21,786	20,000
22	Framework water plan - phase II. For		
23	the department role in phase II of the		
24	framework water and related land		
25	resources planning effort. The water		
26	resources council, or board if		
27	created, shall coordinate the work		
28	programs and reports of all agencies		
29	involved.		
30	Subd. 4. Energy Agency	106,927	105,000
31	Framework water plan - phase II. For		
32	the agency role in phase II of the		
33	framework water and related land		
34	resources planning effort. The water		
35	resources council, or board if		
36	created, shall coordinate the work		
37	programs and reports of all agencies		
38	involved. The water management		
39	information system must be developed		
40	consistent and compatible with the		
41	Minnesota land management information		
42	system.		

In section 33, subdivisions 2, 3, and 4, are projects that are specially budgeted.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (New permanent law)

1 Sec. 66. [4.191] [PLANNING PROGRAMS.]
2 Before beginning a study, research, or planning program, a
3 state agency or department shall file with the state planning
4 agency on a form prescribed by the agency, a description of the
5 proposed project, including title, purpose, staff assigned,
6 consultants to be used, cost, completion date, and other
7 information prescribed by the agency as appropriate. The agency
8 shall develop rules to exclude from the filing requirement
9 projects that the agency determines are of minor significance.
10 When the study is completed, a copy shall be filed with the
11 state planning agency. The state planning agency shall review
12 the planning programs of state departments and agencies and
13 submit to the legislature by November 15 of each year a report
14 of findings and recommendations.

Note the tentative coding. This indicates the intention to place the provision in the Minnesota Statutes. This is the proper form for a new permanent provision.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Temporary substantive law)

1 Sec. 61. [DETAILS.]
2 During fiscal years 1993 and 1994, the staffs of the senate
3 finance committee and the house appropriations committee shall
4 provide detailed information wherever available to requesting
5 agencies or to the commissioner of finance on the activities and
6 objects of expenditures that go into the appropriation totals.
7 This section is repealed July 1, 1995.

In section 61, note that the language has no proposed coding and has a repeal date. It is clear that this is a temporary provision not intended to be coded.

EXAMPLE - OMNIBUS APPROPRIATIONS BILL (Amendment to existing law)

1 Sec. 69. Minnesota Statutes 1992, section 10.30, is amended
2 to read:

3 10.30 [EMPLOYEES' COMPENSATION REVOLVING FUND,
4 REIMBURSEMENT.]

5 In all cases where any state department owes the employees'
6 compensation revolving fund, created by sections 176.591,
7 176.601, and 176.611, for claims paid its employees, and no
8 direct appropriation is made therefor, such department shall
9 reimburse the revolving fund from the ~~funds available to it for~~
10 ~~supplies and expense~~ money appropriated for operation of the
11 department.

In section 69, note the ordinary language in the introductory sentence stating that the provision amends existing law. This is the preferred method of drafting an amendment to permanent law in an appropriations bill.

EXAMPLE - BONDING AUTHORIZATION, Cont.

1 buildings must be constructed near the county nursing home, and
2 administered together with the nursing home as part of an
3 overall program for the care of aged and infirm persons.

4 Subd. 2. (ELIGIBILITY REQUIREMENTS.) The county may by
5 ordinance adopt regulations establishing age, health, and income
6 eligibility requirements for the rental of the apartments. The
7 regulations may provide different rental terms and conditions
8 for persons of different ages, health conditions, and incomes,
9 but the rentals charged for all the apartments shall be fixed so
10 that the total amount of the rentals is sufficient to pay the
11 principal of and interest on all bonds issued by the county to
12 finance the acquisition and betterment of the apartment
13 buildings, and, together with any money appropriated by the
14 county in its budget for the purpose, sufficient to pay all
15 costs of operation and maintenance of the apartments.

16 Subd. 3. (ISSUANCE OF BONDS.) The county board of
17 commissioners may by resolution authorize the issuance of
18 revenue bonds to finance the acquisition and betterment of the
19 apartment buildings, and shall pledge and appropriate the
20 revenues to be derived from their operation to pay the principal
21 of and interest on the bonds when due and to create and maintain
22 reserves for that purpose, as a first and prior lien on all the
23 revenues, or as a lien on the revenues subordinate to the
24 current payment of a fixed amount or percentage or all costs of

In subdivision 2, note the provision that rentals must be sufficient to pay the debt service. Subdivisions 4 and 5 provide additional assurances of the payment of the bonds. Subdivision 6 provides the assurance of how operating costs will be paid which keeps the rentals free to pay the debt service.

EXAMPLE - BONDING AUTHORIZATION, Cont.

1 the operation and maintenance of the facilities. Except as
2 provided in sections 1 to 3, the bonds shall be issued in
3 accordance with Minnesota Statutes, chapter 475, and the
4 interest on them shall be exempt from taxation by the state and
5 all political subdivisions.

6 Subd. 4. [REVENUES PLEDGED.] The revenues may be pledged and
7 appropriated for the use and benefit of bondholders generally,
8 or may be pledged by the execution of an indenture or other
9 appropriate instrument to a trustee for the bondholders, and the
10 site and facilities, or any part of them, may be mortgaged to
11 the trustee to secure the payment of the principal of and
12 interest on the bonds when due. The county board of
13 commissioners may make and enter into any and all covenants with
14 the bondholders or trustees which are determined by it to be
15 necessary and proper to assure the marketability of the bonds,
16 the completion of the facilities, the segregation of the
17 revenues and any other funds pledged, and the sufficiency of
18 funds for the prompt and full payment of all bonds and interest.
19 The bonds shall be deemed to be payable wholly from the income
20 of a revenue producing convenience within the meaning of section
21 475.58.

22 Subd. 5. [PLEDGE OF FULL FAITH.] The county board of
23 commissioners may also pledge the full faith and credit and
24 taxing powers of the county to the payment of not more than

In subdivision 3, note the general authorization of the issuance of bonds and the authorization in subdivision 5 for the specific amount for which the full faith and credit of the county may be pledged. These subdivisions also set out the necessary procedures for issuance of the bonds including references to the general bonding law.

EXAMPLE - BONDING AUTHORIZATION, Cont.

1 \$1,500,000 principal amount of the bonds and the interest on
2 them when due. In that event the board shall adopt an initial
3 resolution stating the amount, purpose, and, in general, the
4 security to be provided for the bonds, and publish it once each
5 week for two consecutive weeks in the official newspaper. The
6 bonds may be issued without the submission of the question of
7 their issuance to the electors unless within ten days after the
8 second publication of the resolution a petition requesting an
9 election signed by more than ten percent of the qualified
10 electors voting in the county at the last general election is
11 filed with the county auditor. If a petition is filed, no bonds
12 shall be issued under this subdivision unless authorized by a
13 majority of the electors voting on the question.

14 Subd. 6. [TAX LEVY.] The county board of commissioners may
15 levy ad valorem taxes on all taxable property in the county to
16 pay the costs of operation and maintenance of the apartments,
17 and covenant and agree to levy ad valorem taxes, if needed, over
18 the period during which any bonds issued pursuant to subdivision
19 3 are outstanding. The amount and rate of the taxes shall be
20 subject to statutory limits on county tax levies for general
21 fund purposes.

22 Sec. 3. [EFFECTIVE DATE.]

23 Sections 1 and 2 are effective on the day following final
24 enactment pursuant to Minnesota Statutes, section 645.023,
25 subdivision 1, clause (a).

Section 3 provides that the act, a grant of authority, goes into effect without approval by the county to which the authority is granted.

EXAMPLE - SPECIAL LAW (Typical bill, Cont.)

1 must be paid to the county treasurer on the first day of the
2 quarter next following the quarter for which the report is
3 filed.

4 Sec. 4. [FAILURE TO REPORT AND PAY TAX.]

5 If an operator fails to file the report required by section
6 3, subdivision 1, or files an erroneous report, the county
7 auditor shall determine the amount of the tax due and notify the
8 person by certified mail of the amount of the tax. The operator
9 may, within 30 days from the date of mailing of the notice, file
10 a written statement of the objections to the amount of the taxes
11 due. The statement of objections is a petition under Minnesota
12 Statutes, chapter 278, and sections 278.02 to 278.13 apply to
13 it.

14 Sec. 5. [PROHIBITION.]

15 No person shall remove any gravel from any gravel pit unless
16 taxes due under this act have been paid or objections have been
17 filed as provided in section 4. A violation of this section is a
18 misdemeanor.

19 Sec. 6. [USE OF REVENUE.]

20 Subdivision 1. [DEPOSIT.] All occupation taxes collected
21 under this act shall be deposited in the county treasury and
22 credited as follows:

23 (a) ninety percent to the county road and bridge fund; and.

24 (b) ten percent to a reserve fund for the restoration of
25 abandoned gravel pits which shall be created in the county
26 treasury.

27 Subd. 2. [EXPENDITURE.] All occupation taxes deposited and
28 credited to the county road and bridge fund or the reserve fund
29 shall be spent by the county only to maintain, construct, or
30 reconstruct roads traveled by trucks hauling gravel or to
31 restore abandoned gravel pits. Occupation taxes shall only be
32 expended for the restoration of abandoned gravel pits upon lands
33 to which the county holds title or upon lands forfeited to the
34 state, as trustee, for nonpayment of taxes.

EXAMPLE - SPECIAL LAW (Typical bill, Cont.)

1 Sec. 7. [APPLICABILITY TO STATE.]

2 No report shall be filed by or occupation tax paid by the
3 state or its contractors when the gravel removed is used to
4 maintain, construct, or reconstruct trunk highways.

5 Sec. 8. [EFFECTIVE DATE.]

6 The provisions of sections 1 to 7 that relate to Kittson
7 county are effective if approved by the members of the board of
8 county commissioners of Kittson county the day after compliance
9 with Minnesota Statutes, section 645.021, subdivision 3. The
10 provisions of sections 1 to 7 that relate to Marshall county are
11 effective if approved by the members of the board of county
12 commissioners of Marshall county the day after compliance with
13 Minnesota Statutes, section 645.021, subdivision 3.

EXAMPLE - LOCAL LAWS (Applicability provision)

If the bill is to apply only to one or more local governmental units, the units to which it applies must be named. Naming is required by the Minnesota Constitution, article XII, section 2 and Minnesota Statutes, section 645.021, subdivision 1. Neither the Constitution nor the statute requires the naming to be in any particular form. The naming usually occurs in the text or title of the law.

EXAMPLES - LOCAL LAWS (Approval provisions)

Local laws usually contain an approval provision.

(1) The simplest form is:

1 Sec. ... [LOCAL APPROVAL.]
2 This act takes effect the day after the governing body of
3 the city of Metropolis complies with Minnesota Statutes, section
4 645.021, subdivision 3.
5 This form makes the act take effect at 12:01 a.m. after the
6 local approval is filed with the secretary of state. Section
7 645.02 provides that every act is effective at 12:01 a.m. on the
8 day it becomes effective and that local laws are effective after
9 the approval certificate is filed. Nevertheless, it is customary
10 to include an effective date provision that parallels section
11 645.02. This serves to remind those affected to comply with the
12 statutory filing requirements.

(2) If a local law applies to two or more units, by normal operation of Minnesota Statutes, section 645.021, subdivision 1, the governing body of all of the units must approve the law before it goes into effect. However, if it is desired to have the law apply separately to each of the units which desire to come under the law, then an applicability and a local approval section should be included and drafted as follows:

1 Sec. ... [LOCAL APPROVAL.]
2 Section ... is effective in any of the cities (towns,
3 counties, school districts) the day after the approval by the
4 city council town board, county board, school board of the city,
5 town, county, school district but only for a city town, county,
6 school district whose city council town board, county board,
7 school board approved it.

(3) If it is desired that a local law be submitted for the approval of the voters (rather than the governing body) of the local government unit, the approval section should read:

1 , Sec. ... [LOCAL APPROVAL.]
2 Notwithstanding Minnesota Statutes, section 645.021,
3 subdivision 2, section ... is effective only upon its approval
4 by a majority of the voters of the city town, county, school
5 district of voting on the question at an election
6 on the question of approval of section

or, if appropriate, it may read:

1 Sec. ... [LOCAL APPROVAL.]
2 Notwithstanding Minnesota Statutes, section 645.021,
3 subdivision 2, section ... is effective only upon its approval
4 by a majority of the electors of the town of voting
5 on the question at the annual town meeting or any special town
6 meeting called for that purpose.

(4) If the request requires submission of the question to the voters in the event that the governing body refuses or neglects to approve the law within a given time, the approval section may read:

1 Sec. ... [LOCAL APPROVAL.]
2 Section ... is effective upon approval by the governing body
3 [town board] of the city [town, county, school district] of
4 If the governing body [town board] does not approve
5 this act within ... days after the day of approval of sections 1
6 to ... by the governor, and notwithstanding Minnesota Statutes,
7 section 645.021, subdivision 2, the governing body [town board]
8 shall submit the question of approval to the voters of the city
9 [town, county, school district] at the next general election
10 [town meeting] in the city [town, county, school district]. If
11 approved by a majority of the voters voting on the question,
12 this act shall become effective.

EXAMPLES - LOCAL LAWS (Approval provisions, Cont.)

Most local government units have the necessary authority to call an election. If the local government unit does not have power to call an election, the bill must provide the necessary authority and procedures. For an example, see Laws 1959, chapter 456.

Although this form has been used, its validity has been questioned. It has not been tested in court. It should be avoided unless a requester specifically asks for it.

(5) If the requester asks that the bill contain the question to be submitted to the voters, the question should be drafted to give a brief description of the subject of the bill. For example:

1	Sec. ... [BALLOT QUESTION.]
2	<u>At the election on the question of approval of section ...</u>
3	<u>the question submitted to the voters shall be:</u>
4	<u>"Shall the 1992 legislative act authorizing the city of</u>
5	<u>Gotham to provide ambulance service be approved?</u>
6	Yes
7	No"

In the ballot question describe the purpose of the act that is to be voted on.

(6) Another variant on local approval is the reverse referendum. Under this provision, a local law is effective without local approval (if making the law effective without local approval is permitted by one of the exceptions in Minnesota Statutes, section 645.023, subdivision 1), unless a petition is filed requesting that the act be submitted to the voters for local approval. A typical example would be:

1 Sec. ... [LOCAL APPROVAL.]
2 Pursuant to Minnesota Statutes, section 645.023, subdivision
3 1, clause (a)[or (b) or (c)], sections 1 to ... shall be
4 effective without local approval unless the voters of the city
5 (town, county, school district) of request a
6 referendum on approval of sections 1 to
7 The voters may request a referendum by filing a petition
8 with the governing body [town board] of the city [town, county,
9 school district] of The petition must state the
10 text of sections 1 to ... and indicate that those who signed the
11 petition are residents of the city [town, county, school
12 district] of and are 18 years of age or older. The
13 petition must be signed by a number of persons equal to ten
14 percent or more of the number of persons who cast votes for
15 governor within the city [town, county, school district of]
16 at the last election of a governor.

Although this form has been used, its validity has also been questioned. It has not been tested in court. It should be avoided unless a requester specifically asks for it.

EXAMPLES - LOCAL LAWS (Approval provisions, Cont.)

(7) A request may require a local law to contain a provision for a public hearing on the matter proposed before the governing body takes action either approving or disapproving the proposal. A hearing provision should read:

1 Sec. ... [PUBLIC HEARING REQUIRED.]
2 Before approval of this act by the governing body [town
3 board] of the city [town, county, school district] of
4, the governing body shall hold a public hearing on
5 the question. Notice of the time and place of the hearing shall
6 be published in a newspaper of general circulation in the city
7 [town, county, school district] once in each week for two
8 successive weeks prior to the hearing. The published notice
9 shall be in a form determined by the governing body [town
10 board]. The form shall be sufficient in size and prominent in
11 format in order to attract the attention of the reader. The
12 notice shall set forth the intent of the city council [town
13 board, county board, school board] to consider approval of this
14 act. The text of sections 1 to ... of this act shall be included
15 in the notice.

EXAMPLES - PENSION BUY-BACK PROVISIONS (Authorizing new members of group to "buy back")

1 Sec. ... [359.019] [RETIREMENT; PUBLIC EMPLOYEES RETIREMENT
2 ASSOCIATION; MINNESOTA MUNICIPAL UTILITIES ASSOCIATION
3 EMPLOYEES.]

4 Subdivision 1. After June 30, 1996, employees of the
5 Minnesota Municipal Utilities Association, referred to as the
6 association, shall become coordinated members of the public
7 employees retirement association unless specifically exempt
8 under section 353.01, subdivision 2b, and the association shall
9 be deemed to be a governmental subdivision for purposes of this
10 chapter.

11 Subd. 2. A person who becomes a member of the public
12 employees retirement association pursuant to subdivision 1 may
13 purchase prior service credit with respect to full time
14 employment with the association subsequent to October 19, 1995,
15 by (a) paying to the public employees retirement association
16 prior to August 1, 1996, an employee contribution in an amount
17 equal to four percent of the person's salary at the time the
18 prior service was rendered, as certified by the association,
19 plus interest at the rate of six percent per year; (b) the
20 member at the same time shall pay additionally an amount equal
21 to five and one-half percent of salary at the time the prior
22 service was rendered, plus interest at the rate of six percent
23 per year. The association may, in its sole discretion, for all
24 employees included under this section, pay the public employees
25 retirement association the obligation under (b).

Note that this provision does affect existing permanent law and so the drafting format follows the form for permanent not special laws.

Resolutions and Motions

6.1 Uses of Resolutions

6.2 Title

6.3 Preamble

6.4 Resolving Clauses

6.5 Types of Resolutions

6.6 Simple Resolutions

6.7 Concurrent Resolutions

6.8 Memorial Resolutions

6.9 Motions

6.10 Examples

6.1 Uses of Resolutions

Resolutions are vehicles by which the legislature can express policy or conduct internal legislative business. Unlike the expression of policy in a bill, resolutions do not result in law, but express policy in a nonbinding way.

6.2 Title

The title of a resolution usually consists only of the first two of the six title elements for bill titles. These are the opening phrase and the subject. Occasionally the title also contains the objects of the resolution. It does not contain a list of sections amended or repealed. The opening phrase is:

"A senate resolution;"

"A house resolution;"

"A senate concurrent resolution;"

"A house concurrent resolution;" or

"A resolution."

The subject is a succinct statement of the resolving portion of the resolution.

6.3 Preamble

A preamble states the reason, purpose, or policy of a resolution. It is the one area of resolutions where the drafting is more elaborate and extensive than for bills. Bills formerly contained preambles but their use there has disappeared. The

preamble of a resolution may often be longer and more elaborate than the resolving portion of the resolution.

Typically, a preamble consists of several clauses indented as separate paragraphs. Each clause begins with the word "WHEREAS." Each clause, except the last clause, ends with a semicolon and the word "and." For instance, "... throughout the union; and...." The last clause of a preamble must end with a semicolon and the words "NOW, THEREFORE" in full capitals and followed by a comma. For example: "... that citizens not so disadvantaged possess; NOW, THEREFORE,...." The first period in the text is after the first resolving clause.

The substance of the preamble clauses varies with the substance of the resolution but resolutions treat certain recurring topics. The drafter may, therefore, turn to the examples at the end of this chapter for assistance in finding possible language for a resolution.

The most difficult work in drafting effective resolutions is usually finding sufficient information to allow the drafting of preamble clauses. For example, if a drafter is asked to draft a congratulatory resolution for Bill Jones and is only told that "Bill Jones has been a teacher for 50 years," it is impossible to draft a suitable resolution to commend someone with that little information. The drafter should get answers to such questions as where did he teach? what subjects did he teach? did he receive any special honors? did he have any now distinguished students? did he regularly assist the students in extracurricular programs? was he known for any special or unusual teaching methods? and similar information.

Capitalization is used more freely in resolutions for emphasis and visual effect.

The preamble should be omitted for resolutions relating solely to the internal business of either or both houses of the legislature. It is surplusage for business purposes. Most resolutions, however, relate to congratulatory or other matters for which the formality of a preamble is appropriate.

6.4 Resolving Clauses

The constitutional enacting clause must not be used for resolutions. Rather, a resolving clause must be used. The exact wording of this first, or primary, resolving clause varies with the type of resolution. For simple resolutions, it is: "BE IT RESOLVED by the Senate [or House of Representatives] of the State of Minnesota:...." For concurrent resolutions, it is: "BE IT RESOLVED by the House of Representatives [or Senate] of the State of Minnesota, the Senate [or House of Representatives] concurring:...." For memorial resolutions in both the Senate and House of Representatives, it reads: "BE IT RESOLVED by the Legislature of the State of Minnesota:...."

Second or subsequent resolving clauses each begin "BE IT FURTHER RESOLVED...."

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

Each "thought" or logical grouping of ideas for the resolution must usually be stated in a separate paragraph of one or more sentences beginning with the initial, or, when appropriate, secondary resolving clause. The decision on whether to divide the resolving portion of the resolution into two or several resolving paragraphs is made in the same way as the decision to begin a new paragraph in ordinary writing. The only difference is that each paragraph begins with a primary or secondary resolving clause. An exception to this rule is that if the resolution deals with the internal business of either or both houses, then each subject provision is

a separate numbered paragraph after the initial resolving clause. Secondary resolving clauses should not be used.

Provide that a copy goes out to those who should read it. Congratulatory resolutions should contain a provision requiring an officer, (the secretary of the Senate or chief clerk of the House) to transmit an enrolled copy of the resolution to the person or institution that is the subject of the resolution. The enrollment is authenticated by the chief legislative and administrative officer in each body. Under House Rules 7.01 and 7.04 they are the speaker and chief clerk. Under Senate Rules 55 and 65 they are the president and the secretary. For examples of transmittal clauses see the end of this chapter.

6.5 Types of Resolutions

There are three distinct types of resolutions: simple resolutions, concurrent resolutions, and memorial resolutions. The boundaries between the various types are somewhat blurred. However, there are several indicia of which kind should be used. Use the appropriate kind of resolution for the task at hand.

The source of the key distinction is article IV, section 24 of the Minnesota Constitution. It provides: "Each order, resolution, or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his veto as prescribed in case of a bill." Minn. Const. art. IV, sec. 24.

Memorial resolutions are used for matters that do not "relate to the business or adjournment of the legislature" and so must be presented to the governor. For that reason the rules of each house require that the processing of a memorial resolution be the same as for bills. A memorial resolution must be passed by both houses and presented to the governor. Occasionally the governor prefers not to sign a memorial resolution and leaves his or her signature line blank or even has it removed. The most momentous use for a memorial resolution is to ratify a federal constitutional amendment or propose a federal constitutional convention. Federal law does not require the governor to concur in those actions.

Senate Rule 53, in part, provides:

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

House Rule 5.2, in part, provides: "A statement of facts being forwarded for action to a government official, agency, or body or other similar proposal is a memorial and shall be introduced in the same form as a bill and take the same course as a bill. No resolution shall authorize the expenditure of monies from any source other than the legislative expense fund."

Concurrent resolutions should be reserved for matters that "relate to the business or adjournment of the legislature" and so do not require the governor's assent.

The Minnesota Supreme Court has acknowledged that the legislature's administrative matters are not submitted to the governor. *Duxbury v. Donovan*, 272 Minn. 424, 138 N.W.2d 692 (1965). Nor do matters outside the lawmaking function have to be submitted. *Gardner v. Holm*, 241 Minn. 125, 62 N.W.2d 52 (1954). The legislature may, by law, reserve approval of its administrative activities to itself. *Gardner v. Holm*, supra.

Some resolutions that need not have been presented to the governor have, in fact, been presented, and the governor has indicated approval of them. The presentation has been by special arrangement and has given the governor an opportu-

nity, for example, to join in ratifying an amendment to the United States Constitution or in congratulations. Approval, or disapproval, of the resolution by the governor has no legal effect.

A simple resolution, passed by one house only, neither requires nor receives the approval of the other house. It is never sent to the governor for approval or veto.

6.6 Simple Resolutions

A simple resolution is proposed by a senator or representative and considered only by his or her house. The rules of procedure are relaxed. For instance, in the Senate there is usually no referral to a committee and a vote on the resolution is held without debate unless a member requests debate (Senate Rule 53). Record votes are not constitutionally required for passage and there usually are none.

The following are the usual occasions for the use of a simple resolution:

- (1) A matter pertaining to the internal operation of either the House or the Senate. For example: employment of personnel, payment of expenses, or mileage.
- (2) An expression of concern, sense, or opinion of the body relating to the action of some state agency or state department or some private situation that the body desires to affect.
- (3) Offering congratulations to or commending an individual, institution, or school for an honor or winning a competitive event.
- (4) Proclaiming a special observance day.
- (5) Commemorating the life and work of a person.

Typical examples of each are furnished on pages 153 to 166.

6.7 Concurrent Resolutions

A concurrent resolution is proposed by a senator or representative and is considered by both the Senate and House of Representatives. Like a simple resolution, the procedure it follows in the Senate and House is less elaborate than the procedure for a bill.

The following are the usual occasions for the use of a concurrent resolution:

- (1) A matter pertaining to the joint operation of the two houses. For example: the scheduling of a joint session, the setting of adjournment, or authorizing adjournment for more than three days.
- (2) A joint expression of concern, sense, or opinion of the two bodies relating to the action of some state agency or state department or some private situation that the bodies desire to affect.
- (3) Authorizing the establishment of a special joint study committee on a specific topic.
- (4) Proclaiming a special observance day.

Concurrent resolutions must not be used for the purposes for which the memorial resolution is used. Because of the easier process for concurrent resolutions, legislators sometimes request that memorial resolution matter be put in concurrent resolution form. These attempts are usually rejected by the chair.

Typical examples of each are furnished on pages 167 to 170.

6.8 Memorial Resolutions

A memorial resolution is introduced by a senator or representative and considered by both houses. The process of consideration is the same as for a bill. It is not, however, a bill, and nothing adopted by resolution is a law.

A memorial resolution is used in three usual situations:

- (1) A formal petition or remonstrance to the President, Congress, a national officer, a sister state, or a foreign government requesting either to take certain action or to refrain from taking certain action.
- (2) A request to Congress, pursuant to article V of the United States Constitution, that a constitutional convention be held to propose amendments to the United States Constitution.
- (3) The ratification of an amendment to the United States Constitution that has been proposed by Congress.

Memorial resolutions are not used to propose amendments to Minnesota's Constitution. Instead, a bill is used. The use of a bill to propose amendments to Minnesota's Constitution is discussed and a form is provided in chapter 4.

Copies of each type of memorial resolution are found on pages 171 to 174.

6.9 Motions

A motion is a proposal by a member of deliberative body that the body take certain action. For example, a member may move that a report be adopted, an amendment be adopted, a bill be given its third reading, and myriad other possibilities. Motions to amend a bill or resolution are covered in the chapter on amendments. Most other motions are oral. Since it is the intent of this manual to detail drafting method and not parliamentary procedure, the many oral motions are not discussed here.

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

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

This same format should be used on any motion to amend the rules. An example to use is found on page 176.

6.10 Examples

Simple Resolutions

- Internal operation of the Senate, p. 153**
- Internal operation of the House, p. 154**
- Congratulations to an athletic team, p. 157**
- Athletic honor naming team members, p. 158**
- Nonathletic team congratulations, p. 159**
- Congratulations for a personal honor, p. 160**
- Congratulations for a state honor, p. 161**
- Proclaiming a special observance day, p. 162**
- Expression of condolence, p. 163**
- Eulogizing a person's life, p. 164**

Presentation Resolutions (simple resolutions in presentation format)

- Congratulations to students, p. 166**

Concurrent Resolutions

- Establishing a study commission, p. 167**
- Joint operation of House and Senate, p. 168**
- Joint convention of both houses, p. 169**
- Adjournment of legislature, p. 170**

Memorial Resolutions

- Memorializing the President and Congress to take certain action, p. 171**
- Applying for a constitutional convention, p. 172**
- Requesting Congress to propose an amendment to the Constitution, p. 173**
- Ratifying an amendment to the United States Constitution, p. 174**
- Joint Resolution (Eulogizing a person's life), p. 175**
- Motion (House form), p. 176**

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

1 WHEREAS, from 1949 through 1953, was elected
2 to and served as Speaker of the House of Representatives; and
3 WHEREAS, was principally responsible for the
4 1967 tax reform bill which provided for the state sales tax; and
5 WHEREAS, he was the principal author of many other laws that
6 benefited the people of the State of Minnesota and of Steele
7 County; and
8 WHEREAS, after retirement from the Legislature, he continued
9 to work for the betterment of the people of the State of
10 Minnesota; and
11 WHEREAS, died on April 5, 1984; NOW,
12 THEREFORE,
13 BE IT RESOLVED by the House of Representatives of the State
14 of Minnesota that it commends to the people of the State of
15 Minnesota the record of as a life, work, and
16 spirit worth emulation. It extends its condolences to his wife,
17, to his son and daughter, to his godson, to his sister and
18 two brothers, and to all the people of Steele County who knew
19 him.
20 BE IT FURTHER RESOLVED that the Chief Clerk of the House of
21 Representatives is directed to prepare an enrolled copy of this
22 resolution, to be authenticated by his signature and that of the
23 Speaker, and transmit it to

EXAMPLE - CONCURRENT RESOLUTION (Establishing a study commission)

1 A senate concurrent resolution
2 establishing a commission on
3 WHEREAS, the Legislature is concerned about
4 ; NOW, THEREFORE,
5 BE IT RESOLVED by the Senate of the State of Minnesota, the
6 House of Representatives concurring therein:
7 (1) A commission on is established. The
8 commission shall be composed of
9
10 The members shall be appointed by.....
11 (2) The commission report to the Legislature on its first
12 day in session in 19.. recommendations on:
13 (a)
14 (b)
15 (c)
16 (d)
17 (3) The expenses of the commission shall be divided equally
18 between the Senate and the House of Representatives and paid
19 from the Legislative expense funds of the Senate and House of
20 Representatives following approval of a budget for that purpose
21 by the Committee on Rules and Administration of the Senate and
22 the Committee on Rules and Legislative Administration of the
23 House of Representatives.

Note the simplified form used in this draft. Different provisions are divided into separate paragraphs and each paragraph is numbered. The use of "BE IT FURTHER RESOLVED" is removed as surplusage. The preamble gives direction to the study committee.

EXAMPLE - CONCURRENT RESOLUTION (Joint operation of House and Senate)

1 A senate concurrent resolution
2 relating to the adoption of temporary joint rules.
3 BE IT RESOLVED, by the Senate of the State of Minnesota, the
4 House of Representatives concurring therein:
5 The Joint Rules of the Senate and the House of
6 Representatives for the session are adopted as the
7 temporary joint rules of the session, to be effective until
8 the adoption of Permanent Joint Rules by the Senate and the
9 House of Representatives.
10 The rules referred to above are amended as follows:
11

EXAMPLE - CONCURRENT RESOLUTION (Joint convention of both houses)

1 A house concurrent resolution
2 providing for a joint convention of the Senate and the House
3 of Representatives to elect members of the Board of Regents of
4 the University of Minnesota.

5 BE IT RESOLVED by the House of Representatives, the Senate
6 concurring:

7 (1) The House of Representatives and the Senate shall meet
8 in joint convention on, at in the
9 chamber of the House of Representatives to elect members to the
10 Board of Regents of the University of Minnesota.

11 (2) The Education Committee of the Senate and the Higher
12 Education Committee of the House of Representatives in a joint
13 meeting shall prepare nominations and report them at the meeting
14 of the joint convention.

EXAMPLE - CONCURRENT RESOLUTION (Adjournment of legislature)

1 A house concurrent resolution
2 relating to adjournment until 1994.
3 BE IT RESOLVED by the House of Representatives, the Senate
4 concurring:
5 (1) Upon its adjournment, 1993, the House of
6 Representatives may set its next day of meeting for,
7 1994 at 12:00 noon, and the Senate may set its next day of
8 meeting for, 1994, at 12:00 noon.
9 (2) By the adoption of this resolution, each house consents
10 to adjournment of the other house for more than three days.

EXAMPLE - MOTION (House form)

1 moves that the Rules of the House of
2 Representatives for the 78th Legislature be the Rules of the
3 77th Legislature, but amended as follows:
4 (1) Rule 4.10 is amended to read:
5 4.10 PRESENTATION OF PETITIONS. Any petition, memorial or
6 other paper formally presented to the House for its
7 consideration shall include the name of the member introducing
8 it and a brief description of its contents and shall be
9 presented by the Speaker, who shall state briefly its contents.
10 (2) Rule 5.1 is amended to read:
11 5.1 BILL FORM. No bill or resolution shall be ~~introduced~~
12 voted upon until it has been examined and approved by the
13 Revisor of Statutes as to form and compliance with the Joint
14 Rules of the House and Senate and the Rules of the House.
15 Approval of a bill as to form shall be endorsed on the ~~bill~~
16 bill's cover by the Revisor of Statutes.

The Senate rules are adopted by resolution.

Amendments

7.1 Introduction

7.1 Introduction

7.2 The Amending Document

- (a) Motion in Committee
- (b) Committee Reports
- (c) Floor Amendments
- (d) Conference Committee Reports

7.3 The Document Being Amended

- (a) Identifying the Document Being Amended
- (b) Bills Amended in Subcommittee
 - (1) Subcommittee Reports
 - (2) Unofficial Engrossments
- (c) Bills from the Other House
 - (1) Engrossing of Amendments
 - (2) Committee Reports
 - (3) Unofficial Engrossments
 - (4) Rule 49 Amendments

7.4 The Amending Technique

- (a) "Page and Line" Amendments
 - (1) Amending operations
 - (2) Amendment structure
 - (3) Amendments that delete
 - (4) Amendments that strike
 - (5) Amendments that insert
 - (6) Amendments that reinstate
 - (7) Amendments that renumber
 - (8) Amendments to the title
- (b) "Delete Everything" Amendments
- (c) "Partial Delete" Amendments

7.5 Amendments to Amendments

7.6 Amendments and the Engrossing and Enrolling Process

7.7 Examples

7.1 Introduction

There are only a few rules to remember when drafting amendments. Senate Rule 38 expresses the basic requirements:

"In drawing an amendment to a bill or resolution reference shall be made therein, first to the number of the bill, then to the page, and then to the line or lines from which matter is to be stricken or in which new matter is to be inserted."

The House of Representatives has no formal rule similar to Senate Rule 38 but follows the same rule in practice.

In drawing an amendment, a person must know what bill is being amended, what version of the bill is the most current, and where in the bill the amendment is being inserted.

Once these facts are determined the drafter has two basic jobs to perform. First, the drafter must determine whether there is anything *in the bill* being amended that affects the amendment. For example, if the amendment is a new section of law, does the bill being amended contain an inappropriate effective date for that new section? If so, this would require further amendment of the bill. Second, the drafter must determine whether there is anything *in the amendment* that requires other changes in the bill. For example, does some change in terminology in the amendment require changes in the bill to make terminology consistent?

The drafter must also ensure that the amendment does what the drafter intends. Close reading of the bill being amended will ensure that this happens.

In the Minnesota legislature it is extremely rare for an amendment to fail for technical reasons. Both in committee and on the floor of each house, staff and other legislators will assist a legislator to ensure that an amendment fits into a bill and makes sense so that the substance of the amendment can be voted on. The House and Senate desks may add information to the amendment paper to assist their procedures or ask the drafter to do so.

After the amendment is drafted, the drafter should review it to ensure that it fits into the bill being amended and that persons unfamiliar with the amendment could fit it into the bill.

7.2 The Amending Document

Amendments can be proposed by a motion in committee, by a committee report, by a motion from the floor, or by a conference committee report. The stage of the legislative process determines the formal language of the introduction and ending of the amendment but does not affect the text of the amendment itself. Each of the four different kinds of documents will be discussed separately.

(a) Motion in Committee

This is the most common document by which amendments are proposed. When a bill is proposed to be amended in committee, that change is proposed to the committee in the form of a motion to amend. The motion to amend in the Senate begins with the language: "M..... moves to amend S.F. No. as follows:" In the House, the title "Mr.," "Mrs.," "Miss," or "Ms.," is omitted from the language. The blank space is to be filled with the member's signature when the amendment is offered. For both the Senate and House, the text of the amendment then follows. Identifying information may be marked on the amendment document, usually in the upper right hand corner. See the examples on page 189.

(b) Committee Reports

After a bill is heard by a committee, the committee will report its recommendation to the full house. The report will include the committee's recommended amendments.

The committee report is in a standard form that is prepared by the committee staff, in the house of representatives with the assistance of the revisor of statutes.

For examples of committee reports containing amendments, see the examples on pages 194 and 196.

(c) Floor Amendments

A motion to amend a bill on the floor is in the same form as a motion to amend in a committee.

For example:

1 moves to amend H.F. No. as follows:

For examples of floor amendments see pages 197 to 204.

(d) Conference Committee Reports

A conference committee report may recommend simply that the house of origin concur in the amendments adopted by the other house, or that the house that adopted amendments recede from its amendments. Usually neither house will yield completely to the other's position and the amendments previously adopted must either be concurred in or receded from, and further amendments agreed upon. For examples of conference committee reports, see pages 206 to 213.

***** THE CONFERENCE COMMITTEE REPORT MUST ACCOUNT FOR ALL MATTERS IN DISPUTE.**

7.3 The Document Being Amended

(a) Identifying the Document Being Amended

The drafter must carefully identify, and get a copy of, the document being amended. Specifically, is the original bill being amended or the first or a subsequent engrossment of the bill? If an engrossment, is it an official or unofficial engrossment? Is the amendment to the bill itself, or to a pending amendment to the bill? The drafter looks for the most current version of the bill.

In most cases, only the original bill or its latest official engrossment is subject to amendment. Only the house where the bill originates can order amendments to be officially engrossed into a bill. Amendments adopted by the other house or recommended by a committee are not officially engrossed into the bill until after the amendments have been adopted by the house of origin.

(b) Bills Amended in Subcommittee

(1) Subcommittee Reports.

If a bill has been amended in a subcommittee, the drafter of an amendment for the full committee must determine whether the amendment will affect any part of the bill that has been affected by the subcommittee amendments. If not, the amendment can be drafted to the original bill without reference to the subcommittee amendments.

If the amendment will affect the subcommittee amendments, the drafter should refer to them and not just to the original bill.

For example:

- 1 M..... moves to amend the amendments to S.F. No.
- 2 recommended by the Subcommittee on as follows:

If the amendment will affect both the original bill and the subcommittee amendments, the new amendment should be drafted to the subcommittee amendments or to the bill as amended by the subcommittee. The new amendment will both make the proposed changes in the subcommittee amendments and also add to them the proposed changes in the remainder of the bill. Frequently a "delete everything" amendment to the bill in full committee is the most efficient drafting method.

(2) Unofficial Engrossments.

If the amendments proposed by a subcommittee are so numerous or complex that the bill as amended cannot be readily comprehended without engrossing the amendments into the bill, the subcommittee report may be drafted in the form of a "delete everything" amendment. This is helpful when additional amendments are likely to be offered in the full committee. Amendments by the full committee can then be easily engrossed into the "delete everything" amendment to create the committee report.

If the subcommittee report is not in the form of a "delete everything" amendment and an unofficial engrossment has been prepared, the drafter should first inquire whether the committee chair has directed that amendments refer to the unofficial engrossment. If not, before referring to the unofficial engrossment, the drafter should first consider referring either to the bill or to the amendments recommended by the subcommittee. If either of these methods can be used without causing confusion, they should be preferred to referring to the unofficial engrossment. The convenience of the committee members is the determining consideration when drawing amendments for a committee hearing.

(c) Bills from the Other House

(1) Engrossing of Amendments.

Only the house of origin can officially engross amendments into its bill. The other house can adopt an amendment, but the amendment must be concurred in by the house of origin before it is officially engrossed into the bill. Some complexities are created when, at different stages of the amending house's process, the amending house adopts a series of amendments to a bill from the other house. A series of amendments may be created when a bill originating in the other house is, in the amending house, first amended by one or more committee reports and then amended one or more times on the floor. The procedure for amendments to bills from the other house varies somewhat between the Senate and House.

(2) Committee Reports.

In the Senate, when a House bill returns to the Senate floor for consideration after adoption of the Senate committee report, two documents are simultaneously before the Senate. They are the bill itself as sent to the Senate by the House, and the Senate committee's amendment as shown in the committee report. The drafter of a proposed Senate floor amendment to a House bill must consider how the proposed floor amendment will amend the bill, the previously adopted committee amendment, or both.

If a proposed floor amendment affects a part of the bill not affected by a previously adopted committee amendment, the drafter may use the usual opening language to propose a new amendment.

If it is determined that a prior committee amendment will be amended, the drafter should make reference to that amendment and not just to the original bill. For instance, an example of proper opening language to amend a proposed Senate committee amendment to a House bill would be:

- 1 M..... moves to amend the amendment placed on H.F.
- 2 No. by the Committee on, adopted by the Senate
- 3, 1992, as follows:

If the drafter determines that a requested amendment will affect both the bill and also a previously adopted committee amendment, the new amendment should only be drafted to the previously adopted amendment. The new amendment will both propose changes in the committee amendment and also add to the committee amendment the proposed changes in the remainder of the bill. A "delete everything" amendment may be a more efficient drafting method if the changes are very numerous or confusing.

(3) Unofficial Engrossments.

If the amendments proposed by a Senate committee to a House bill are complex, the chair, the committee, or the Senate may exercise their right under Senate Rule 41 to require the committee amendments to be unofficially engrossed. If the Senate has prepared an unofficial engrossment of a House bill, floor amendments are usually drafted to that unofficial engrossment.

The drafting of a floor amendment to an unofficial engrossment follows the usual format except that reference must be made to the fact that the document being amended is the unofficial engrossment. For example:

- 1 M..... moves to amend H.F. No., the unofficial
- 2 engrossment, as follows:

In the House, committee amendments to Senate bills are usually unofficially engrossed. When the Senate bill returns to the House floor, it is the unofficial engrossment under consideration, not the Senate engrossment combined with the House committee's amendment. Proposed floor amendments are drafted to the House unofficial engrossment.

See the examples on pages 202 and 204.

(4) Rule 49 Amendments.

The Senate operating under its substitution rule, rule 49, often amends a House bill to make it identical to the Senate bill and then proceeds with the House bill in substitution for the Senate bill. This is called a rule 49 amendment. Although amendments are then made to the House file, the "page and line" citations remain those of the Senate file. To visualize what happens, imagine that the bill remains the same but that it has been given a House file number.

The rule 49 amendment is not in "page and line" form, but rather is a one-sentence "delete everything" amendment to substitute all the Senate language and title. A copy of the form of the rule 49 amendment is included in an example on page 193.

An example of proper opening language to amend a House bill that has been amended by the Senate under rule 49 is:

1 M..... moved to amend H.F. No., as amended
2 pursuant to Rule 49, adopted by the Senate, 1992, as
3 follows:
4 (The text of the amended House File is identical to S.F. No.
5)

When the House File is considered on General Orders, if the Senate author wants to yield to the House position and strike the rule 49 amendment, the author will want to be prepared to explain to the Senate the differences between the Senate and House versions. This may involve only a summary of the differences, or both a summary and a "page and line" amendment.

The motion to strike the rule 49 amendment is as follows:

1 M..... moved that the amendment made to H.F. No.
2 ... by the Committee on Rules and Administration in the report
3 adopted, 1992, pursuant to Rule 49, be stricken.

7.4 The Amending Technique

For any of the kinds of documents discussed above, one of two different amending techniques may be used. The first is to repair and improve the bill item by item by means of individual amendments. The second is to scrap the entire bill and propose a wholesale substitute for it (a "delete everything" amendment). Which technique to use is a matter of professional judgment, by the author as well as by the drafter, giving due regard to what will make the amendment most intelligible to those who will be considering it as well as what will require the least amount of paper and effort. Each technique will be discussed separately.

(a) "Page and Line" Amendments

Amendments that change a bill by making a number of item-by-item changes are diverse in form and complex to draft.

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

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

(1) Amending operations.

There are six basic operations performed by an amendment. They are:

- (a) deleting (removing) text from a bill;
- (b) striking (adding cancel marks to the words, for example: "~~striking~~") text in a bill;
- (c) reinstating (removing the cancel marks) text in a bill;
- (d) inserting new text into a bill;

(e) renumbering sections, subdivisions, paragraphs, clauses, or proposed coding; and

(f) amending the title of the bill.

An amendment may contain numerous paragraphs each of which contains an amending operation. Each paragraph may contain a different kind of operation.

(2) Amendment structure.

There are several specific rules for the structure of an amendment.

First, when more than one operation is specified in an amendment, the operations must proceed by page and line number with amendments on page 1 coming before those on page 2 and so on. The only exception is an operation that amends the title. An operation that amends the title is always last.

Second, the amendment should contain one of the six operational command words. Two or more may be used in one instruction if the instruction will be clear. The operations are:

"delete"

"strike"

"reinstate"

"insert"

"renumber" (or "reletter," if appropriate)

"amend the title as follows:" (or "delete the title and insert.")

Third, the entire amending operation to be performed in an amendment must be contained within the same paragraph. A drafter may not, for instance, have an opening paragraph saying that all amendments are in a specified page and in subsequent paragraphs list only line numbers.

Fourth, the page that is amended must be specified before the line or lines that are amended. A drafter may not, for instance, give a location as "Line 14, page 1, to line 17."

(3) Amendments that delete.

Amendments that delete operate to have text removed from the bill amended. Proper occasions to use these amendments are as follows:

(a) Delete a line (Page 2, delete line 1);

(b) Delete multiple lines in numerical order (Page 2, delete lines 1 to 4);

(c) Delete all the words, that are not current law, following an indicated word, figure, or punctuation mark in a stated line (Page 2, line 2, delete everything after "university");

(d) Delete all the words, that are not current law, on a page following an indicated word, figure, or punctuation mark in a line and any number of additional lines (Page 2, lines 2 to 4, delete everything after "plague");

(e) Delete specified words, figures, or punctuation marks, that are not current law, in a line (Page 2, line 2, delete "center or other");

(f) Delete specific words, figures, or punctuation marks, that are not current law (Page 2, lines 4 and 5, delete "shall not undertake the activities when the operator knows");

(g) Delete all new (underlined) words, figures, and punctuation marks in a line and any number of additional lines (Page 2, lines 5 to 17, delete the new language);

(h) Delete a section (Page 12, delete section 4); and

(i) Delete multiple sections in numerical order (Pages 9 to 12, delete sections 4 to 6).

When the amending operation lists the words, figures, or punctuation mark affected by the operation, they must be enclosed in quotation marks.

When a punctuation mark, unaccompanied by text, is amended, the drafter should express the mark in words rather than by showing the mark itself (Page 1, line 17, after "occurred" delete the comma).

The deletion operation must never be used to change text in an existing law. In these cases, the "striking" operation must be used.

(4) Amendments that strike.

Amendments that strike add cancellation marks to specified text. The effect is to show that words that currently are part of the law are to be removed from the law.

Drafters can decide when and how to use amendments that strike by applying the rules that are set out in the immediately preceding section for amendments that delete. However, the drafter must be sure that all the words affected are existing law.

(5) Amendments that insert.

Amendments that insert operate to add additional words to a bill. Care must be exercised so that the amendment shows whether or not the words to be inserted are underlined. If the words to be added to a bill are new law, the words are underlined. If, however, the words to be added are already law or change the title, the words are not underlined.

Types of amendments that insert are as follows:

(a) Insert one or more numbered subdivisions, paragraphs, or clauses after or before a line (Page 2, after line 2, insert: ...);

(b) Insert specified words, figures, or a punctuation mark after or before specified words, figures, or punctuation marks in a line (Page 3, line 9, after "operation" insert ", college");

(c) Following any deletion or striking operation with specified text, insert one or more words, lines, or sections in place of the deleted or stricken text (Page 4, line 6, delete "university" and insert "college");

(d) Following any page and line deletion or striking operation, insert specified words or one or more numbered lines, subdivisions, paragraphs, or clauses in place of the deleted or stricken language (Page 6, strike lines 1 to 18 and insert "A high school principal may"); and

(e) Following any deletion or striking operation of everything after an indicated place, insert one or more lines, words, or figures in place of the deleted or stricken language (Page 2, line 2, delete everything after "university" and insert ", college and high school").

When the amending operation shows the words or figures affected by the operation, they must be enclosed in quotation marks.

When the language to be inserted is brief, the language to be inserted is contained within the amendment operation as shown above in example (b) without a colon. When, however, the material to be inserted is a paragraph, a series of paragraphs, or a larger element, the quoted material begins on a new line. A colon ends the introductory portion of the amendment instruction.

Amendments that delete and insert operate to remove text from a bill and replace it with other text. These amendments are used when it is desired to change the proposed wording of a new law or the amendments to an existing law

from one wording to another. When preparing these amendments, the drafter must be sure that both the words to be deleted and the words to be inserted are properly underlined or stricken.

Amendments that strike and insert operate to add cancellation marks to the text, which is followed immediately by new text to be added to the law. This amendment is used to change the proposed wording in an existing law. When preparing these amendments, the drafter must be sure that the words to be stricken are properly specified and the words to be inserted are properly underlined.

(6) Amendments that reinstate.

Amendments that reinstate are used solely to restore stricken text, shown with cancellation marks, in existing law. Cancellation marks denote text to be removed from the law if the bill is passed.

Proper occasions to use these amendments are as follows:

(a) Reinstate specified stricken text in a line (Page 1, line 8, reinstate the stricken "college");

(b) Reinstate specified stricken text in two lines (Page 1, lines 8 and 9, reinstate the stricken "university, college and high school");

(c) Reinstate all stricken text following an indicated word, figure, or punctuation mark in a stated line and any number of additional lines in numerical order (Page 4, lines 12 to 16, reinstate everything after "indication");

(d) Reinstate all stricken text in a line and any number of additional lines (Page 2, lines 17 to 21, reinstate the stricken language);

(e) Reinstate an entirely stricken line (Page 1, reinstate line 4); and

(f) Reinstate multiple entirely stricken lines in numerical order (Page 4, reinstate lines 9 to 18).

The words, figures, or punctuation marks affected by the reinstatement operation must be enclosed in quotation marks. (Example: Reinstate the stricken "commissioner").

(7) Amendments that renumber.

An amendment that renumbers is common and follows amendments to the text of the paragraph, subdivision, section, or bill to be renumbered. The standard wording is "Renumber the clauses in sequence," "Reletter the paragraphs in sequence," "Renumber the subdivisions in sequence," "Renumber the sections in sequence," or "Renumber the proposed coding in sequence."

(8) Amendments to the title.

Amendments to the title of the bill are necessary when operations change the stated subject of the bill or the list of statutory provisions amended or repealed, or both. Amendments to the title are amendments that delete, insert, or both. Amendments that strike or reinstate do not occur in the title.

The amended title must accurately reflect the subject of the bill as it will exist when the amending document is adopted. Statutory provisions cited in the title of the bill must be amended to conform to any other changes made that affect those citations.

(b) "Delete Everything" Amendments

Amendments that are complete substitutes for the body and title of the bills they amend are almost bills themselves. The only differences are the opening paragraph of the text which says "Delete everything after the enacting clause and insert:" and the final paragraph, deleting the title and setting out the new title.

Since the amendment supplies all the parts of a bill, all rules and procedures set out in this manual for the drafting of bills apply. For examples of "delete everything" amendments, see the examples at the end of this chapter.

"Delete everything" amendments are commonly used when the bill is changed so substantially in content that many pages of "page and line" amendments would be necessary to change the bill. This technique helps the reader better understand the impact of the proposed amendment because of its merger with the unchanged text of the bill.

When drafting "delete everything" amendments, the drafter must be careful to always say that a bill is being amended by deleting everything after the enacting clause and not just that the bill is deleted and something else substituted. Court cases have periodically arisen claiming that a bill has not been "read three times" as required by the Constitution when one bill is substituted for another. This claim occurs more frequently with regard to "delete everything" amendments. The courts, however, have approved a bill if it has retained the same enacting clause throughout the legislative process during which it was amended, even if by a wholesale change in the text.

When deciding whether to draft a "delete everything" amendment, the drafter should weigh the costs of the alternatives as well as consider the convenience in the particular case. A page and line amendment may be shorter and cheaper to print. On the other hand, a complicated page and line amendment is prone to error and may use too much expensive labor to create and engross.

(c) "Partial Delete" Amendments

A "partial delete" amendment represents a middle ground between a "delete everything" and a "page and line" amendment. It is used when a portion of the bill is substantially rewritten but the basic bill still remains. It avoids either the necessity of long and complex "page and line" amendments when only a portion of a bill is changed, or using a "delete everything" amendment when not "everything" is changed.

An example of a "partial delete" amendment would be the deletion of a large block of text and its replacement by revised text. If a "page and line" amendment is used, its effect may be incomprehensible without the benefit of an engrossment but a "delete everything" amendment may give the impression that the whole bill is changed. In addition, "delete everything" amendments can waste money in printing.

The form of a "partial delete" amendment is that of a "page and line" amendment except that a bill section or bill page is amended. It combines both the "delete" and "insert" operations. The text of existing law may be affected.

Ways to write a "partial delete" amendment are as follows:

- (a) delete a section and insert a new section (Example: Page 12, delete section 4 and insert);
- (b) delete multiple sections in increasing numerical order and insert new sections (Example: Pages 9 to 12, delete sections 4 to 9 and insert);
- (c) delete a page or more of text between designated page and line numbers and insert new text (Example: Delete page 4, line 9, to page 7, line 34, and insert).

(d) Senate Floor Amendments; Tense

Senate floor amendments that are prepared on the legislature's word processing equipment are usually typed in the past tense for easy transfer to the Senate Journal although they are read on the Senate floor in the present tense. See the examples on pages 197 to 202.

7.5 Amendments to Amendments

Amendments to amendments must sometimes be drafted. All rules regarding the drafting of amendments apply equally to the drafting of amendments to amendments.

The format for an ordinary amendment to an amendment is simple. For example:

- 1 M..... moves to amend the Jones amendment to H.F. No.
- 2 182, adopted by the Senate on January 15, 1992, as follows:
- 3 Page 1, line 11, delete "quality of life" and insert "the
- 4 amount of energy essential to residential customers"

In this amendment, note the clear identification of the document being amended. Note also the reference to page and line number and not to paragraph count, sentence count, or word count.

Drafting is more complex when material is quoted in the first amendment. For example, an amendment reading:

- 1 Mr. Jones moves to amend H.F. No. 182, as follows:
- 2 Page 7, line 11, delete "quality of life" and insert "the
- 3 amount of energy essential to residential customers"

might be amended as follows:

- 1 M..... moves to amend the Jones amendment to H.F. No.
- 2 182, adopted by the Senate on January 15, 1992, as follows:
- 3 Page 1, delete lines 2 and 3 and insert:
- 4 "Page 7, line 11, after 'life' insert 'as indicated by the
- 5 amount of energy essential to residential customers'."

In the House, the double quotation marks in the first amendment are converted to single quotation marks in the second amendment. Also, the reverse is true. Text in the second amendment that includes quotation marks to be inserted in the first amendment is shown with sets of single marks.

The Senate prefers to use sets of double marks in all cases.

See the example on page 205.

7.6 Amendments and the Engrossing and Enrolling Process

The process of drafting amendments is an integral part of the engrossing and enrolling process. Only if an amendment is "engrossable" is it really correct. Therefore, the chapter on engrossing and enrolling should be consulted.

7.7 Examples

Motion in Committee (Senate form), p. 189

Motion in Committee (House form), p. 189

Senate Committee Reports

Page and line amendment; no title amendment, p. 190

Delete everything amendment with page and line title amendment, p. 191

Rule 49 amendment, p. 193

House Committee Reports

Page and line amendment; no title amendment, p. 194

Delete everything amendment with a delete everything title amendment, p. 195

Senate Floor Amendments

Page and line amendment; page and line title amendment, p. 197

Delete everything amendment with delete everything title amendment, p. 198

House file amended by Rule 49 amendment, p. 200

Senate Floor Motion (Striking Rule 49 amendment), p. 200

Senate Floor Amendments

House file as amended by Senate committee, p. 201

Unofficial engrossment, p. 202

House Floor Amendments

Page and line amendment; page and line title amendment, p. 203

Unofficial engrossment, p. 204

Amendment to Amendment (Simple), p. 205

House Conference Committee Reports

House concurring in the Senate amendment, p. 206

Senate receding from its amendment, p. 207

Delete everything amendment; delete everything title amendment, p. 208

Page and line amendment; no title amendment, p. 211

Senate Conference Committee Report (Page and line amendment; no title amendment), p. 212

Section Renumbering (Page and line amendment requiring renumbering of sections in bill), p. 214

EXAMPLE - MOTION IN COMMITTEE (Senate form)

1	Jones No. 1
2	M..... moves to amend H.F. No. 1000 as follows:
3	Page 1, line 19, after the period insert " <u>A member of the</u>
4	<u>legislature may not serve on the subcommittee.</u> "

EXAMPLE - MOTION IN COMMITTEE (House form)

1	Jones No. 1
2 moves to amend H.F. No. 1000 as follows:
3	Page 1, line 19, after the period insert " <u>A member of the</u>
4	<u>legislature may not serve on the subcommittee.</u> "

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

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

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

3 S.F. No. 170, A bill for an act relating to political
4 subdivisions; regulating certain interests in contracts by
5 public officials; amending Minnesota Statutes 1992, section
6 471.88, subdivisions 2, 5, and 8.

7

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

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

11 Page 2, line 16, delete "\$3,000" and insert "\$2,000"

12 Page 2, after line 18, insert:

13 "Sec. 4. [EFFECTIVE DATE.]

14 This act is effective the day following final enactment.

15

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

18

19

20
21 (Committee Chair)
22
23 January 19, 19..
24 (Date of Committee recommendation)

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

EXAMPLE - SENATE COMMITTEE REPORT (Delete everything amendment with page and line title amendment)

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

3 S.F. No. 267, A bill for an act relating to taxation;
4 defining "common carrier" for certain purposes in connection
5 with the sales and use tax; amending Minnesota Statutes 1992,
6 section 297A.01, by adding a subdivision.

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

9 Delete everything after the enacting clause and insert:

10 "Section 1. Minnesota Statutes 1992, section 297A.211,
11 subdivision 1, is amended to read:

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

20 (1) persons possessing a certificate or permit authorizing
21 for-hire transportation of property from the Interstate Commerce
22 Commission or the public utilities commission; or

23 (2) persons transporting commodities defined as "exempt" in
24 for-hire transportation in interstate commerce; or

25 (3) persons who, under contracts with persons described in
26 clause (1) or (2), transport tangible personal property in
27 interstate commerce.

EXAMPLE - SENATE COMMITTEE REPORT (Rule 49 amendment)

1 Mr. Moe, R.D. from the Committee on Rules and
2 Administration, to which was referred

3 H.F. No. 1561 for comparison with companion Senate File,
4 reports the following House File was found not identical with
5 companion Senate File as follows:

6	GENERAL ORDERS	CONSENT CALENDAR	CALENDAR
7	H.F. No. S.F. No.	H.F. No. S.F. No.	H.F. No. S.F. No.
8	1561 1417		

9 Pursuant to Rule 49, the Committee on Rules and
10 Administration recommends that H.F. No. 1561 be amended as
11 follows:

12 Delete all the language after the enacting clause of H.F.
13 No. 1561 and insert the language after the enacting clause of
14 S.F. No. 1417, the first engrossment; further, delete the title
15 of H.F. No. 1561 and insert the title of S.F. No. 1417, the
16 first engrossment.

17 And when so amended H.F. No. 1561 will be identical to S.F.
18 No. 1417, and further recommends that H.F. No. 1561 be given its
19 second reading and substituted for S.F. No. 1417, and that the
20 Senate File be indefinitely postponed.

21 Pursuant to Rule 49, this report was prepared and submitted
22 by the Secretary of the Senate on behalf of the Committee on
23 Rules and Administration. Amendments adopted. Report adopted.

24 Although Senate Rule 49 requires this report to be prepared
25 and submitted by the secretary of the senate, it is drafted by
26 the revisor of statutes.

EXAMPLE - HOUSE COMMITTEE REPORT (Delete everything amendment with a delete everything title amendment)

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

3 H.F. No. 2451, A bill for an act relating to elections;
4 amending Minnesota Statutes 1992, section 202A.15, by adding a
5 subdivision.

6 Reported the same back with the following amendments:

7 Delete everything after the enacting clause and insert:

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

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

17 Sec. 2. Minnesota Statutes 1992, section 202A.65,
18 subdivision 3, is amended to read:

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

24 Sec. 3. [EFFECTIVE DATE.]

25 This act is effective the day following final enactment."

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

1 Delete the title and insert:
2 *A bill for an act
3 relating to elections; making public facilities
4 available for precinct caucuses; fixing the charge for
5 their use; providing for the filing of certain
6 nominating petitions; amending Minnesota Statutes 1992,
7 section 202A.65, subdivision 3; proposing coding for
8 new law in Minnesota Statutes, chapter 202A."
9
10 With the recommendation that when so amended the bill pass.
11
12
13
14
15
16 This Committee action taken, 19..
17, Chairman
18

EXAMPLE - SENATE FLOOR AMENDMENT (Page and line amendment; page and line title amendment)

1 M..... moved to amend S.F. No. 1234, as follows:
2 Page 1, line 10, after the period insert "These licenses do
3 not expire until January 1, 1994."
4
5 Amend the title as follows:
6 Page 1, line 3, after "valid" insert "; extending the
7 expiration date of certain licenses"

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

1 M..... moved to amend S.F. No. 1286, as follows:

2 Delete everything after the enacting clause and insert:

3 *Section 1. GENERAL OBLIGATION NURSING HOME BONDS.

4 Subdivision 1. [AUTHORIZATION.] The board of commissioners
5 of Chisago county may by resolution sell and issue general
6 obligation bonds of the county in an amount up to \$1,500,000 to
7 finance the acquisition and betterment of additional facilities
8 for the county nursing home, comprising apartment units.

9 Subd. 2. [ADMINISTRATION AND RENTAL OF APARTMENT UNITS.] The
10 apartment units must be constructed in close proximity to
11 existing county nursing home facilities and administered
12 together with the existing facilities as part of an overall
13 program for the care of aged and infirm persons. The board of
14 commissioners may rent the apartment units to persons applying
15 for entrance to the county nursing home, or to other elderly
16 persons of low and moderate income who may require use of
17 nursing home facilities, upon terms and conditions the board
18 deems advisable.

19 Subd. 3. [ELIGIBILITY.] The county may by ordinance adopt
20 regulations establishing age, health, and income eligibility
21 requirements for the rental of the apartment units. The
22 regulations may provide different rental terms and conditions
23 for persons of different ages, health conditions, and incomes.

24 Subd. 4. [BOND SECURITY; REFERENDUM PETITION.] The bonds
25 must be issued and secured in accordance with Minnesota
26 Statutes, sections 445.45 to 445.50 and chapter 475, except that
27 in authorizing the bonds the board of commissioners shall

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

1 .(a) adopt an initial resolution stating the amount, purpose
2 and, in general, the security to be provided for the bonds; and

3 .(b) publish the resolution once each week for two
4 consecutive weeks in the official newspaper.

5 The bonds may be issued without the submission of the
6 question of their issuance to the electors unless within 30 days
7 after the second publication of the resolution a petition
8 requesting the election signed by more than ten percent of the
9 qualified electors voting in the county at the last general
10 election is filed with the county auditor. If a petition is
11 filed, bonds must not be issued under this subdivision unless
12 authorized by a majority of the electors voting on the
13 question."

14

15 Delete the title and insert:

16

"A bill for an act

17 relating to Chisago county; authorizing the issuance of
18 general obligation bonds to finance the cost of
19 facilities for the county nursing home; providing for
20 the administration and rental of the facilities."

EXAMPLE - SENATE FLOOR AMENDMENT (House file amended by Rule 49 amendment)

1 M..... moved to amend H.F. No. 1991, as amended
2 pursuant to Rule 49, adopted by the Senate March 29, 1992, as
3 follows:

4 (The text of the amended House File is identical to S.F. No.
5 2084.)

6 Page 4, lines 12 to 20, delete the new language and
7 reinstate the stricken language

EXAMPLE - SENATE FLOOR MOTION (Striking Rule 49 amendment)

1 M..... moved that the amendment made to H.F. No.
2 1561 by the Committee on Rules and Administration in the report
3 adopted March 29, 1992, pursuant to Rule 49, be stricken.

EXAMPLE - SENATE FLOOR AMENDMENT (House file as amended by Senate committee)

1 M..... moved to amend the amendment placed on H.F. No.
2 1761 by the Committee on Taxes and Tax Laws, adopted by the
3 Senate April 14, 1992, as follows:

4 Delete the amendment to page 2, line 12

5 Page 2, line 28, delete "make rules and"

In the opening language, note the reference to the previously adopted committee amendment. This is necessary to ensure coordination of the new amendment with the old one.

This form will not be used in the House, where the amendment will be drafted to the unofficial engrossment of the Senate committee's amendment into the House file.

EXAMPLE - SENATE FLOOR AMENDMENT (Unofficial engrossment)

1 M.....moved to amend H.F. No. 1616, the unofficial
2 engrossment, as follows:
3 Page 1, line 17, strike "four" and insert "six"
4
5 Amend the title as follows:
6 Page 1, line 4, after the semicolon insert "increasing the
7 number of citizen board members;"

In the opening language, note the reference to the unofficial engrossment when that is being amended.

Note the numbering of lines to make subsequent amendments easier.

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

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

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

1 moves to amend H.F. No. 438 as follows:
2 Page 2, line 28, delete "This act" and insert "Section 1"
3 Page 2, after line 30, insert:
4 "Sec. 3. [LEOTA, TOWN OF; DETACHED BANKING FACILITY;
5 AUTHORIZATION.]
6 With the prior approval of the commissioner of commerce, a
7 bank doing business in this state may establish and maintain not
8 more than one detached facility in the town of Leota in Nobles
9 county. A bank desiring to establish a detached facility shall
10 follow the approval procedure prescribed in Minnesota Statutes,
11 section 47.54. The establishment of a detached facility in the
12 town of Leota is subject to Minnesota Statutes, sections 47.51
13 to 47.57."
14
15 Amend the title as follows:
16 Page 1, line 2, after "to" insert "banking;"
17 Page 1, line 7, after the semicolon insert "authorizing the
18 establishment of a detached banking facility in the town of
19 Leota in Nobles county;"

EXAMPLE - HOUSE FLOOR AMENDMENT (Unofficial engrossment)

1 moves to amend S.F. No. 1616, the unofficial

2 engrossment, as follows:

3 Page 1, line 17, strike "four" and insert "six"

4

5 Amend the title as follows:

6 Page 1, line 4, after the semicolon insert "increasing the

7 number of citizen board members;"

EXAMPLE - AMENDMENT TO AMENDMENT (Simple)

1 M..... moves to amend the Jones amendment to H.F. No.
2 182, proposed to the Senate on January 15, 1992, as follows:
3 Page 1, line 11, delete "quality of life" and insert "the
4 amount of energy essential to residential customers"
5 Page 1, line 13, after "encouraged" insert "and the quality
6 of life protected"
7 Page 2, delete line 1
8 Page 2, line 3, reinstate the stricken "revenue"
9 Page 2, line 7, strike "and any lost revenues"

In the opening language, note the precise identification of the amendment by sponsor, bill number, and date of proposal.

Note that all lines are numbered.

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

1 CONFERENCE COMMITTEE REPORT ON H.F. NO. 624

2 A bill for an act

3 relating to counties; fixing the amounts that may be
4 spent for Memorial Day observances; amending Minnesota
5 Statutes 1992, sections 375.34 and 375.35.

6 May 18, 1993

7 The Honorable
8 Speaker of the House of Representatives

9
10 The Honorable
11 President of the Senate

12 We, the undersigned conferees for H.F. No. 624, report that
13 we have agreed upon the items in dispute and recommend as
14 follows:

15

16 That the Senate recede from its amendment.

17

18 We request adoption of this report and repassage of the
19 bill.

20

21 House Conferees: (Signed)

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38 Senate Conferees: (Signed)

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

1 CONFERENCE COMMITTEE REPORT ON H.F. NO. 2466

2 A bill for an act

3 relating to privacy of data on individuals;
4 definitions, determination and emergency
5 classification; amending Minnesota Statutes 1992,
6 sections 15.162, subdivision 2a; and 15.1642,
7 subdivisions 3 and 5; repealing Minnesota Statutes
8 1992, section 15.1642, subdivision 4.

9 May 18, 1993

10 The Honorable
11 Speaker of the House of Representatives

12
13 The Honorable
14 President of the Senate

15 We, the undersigned conferees for H.F. No. 2466, report that
16 we have agreed upon the items in dispute and recommend as
17 follows:

18

19 That the Senate recede from its amendment and that H.F. No.
20 2466 be further amended as follows:

21

22 Delete everything after the enacting clause and insert:

23 "Section 1. Minnesota Statutes 1992, section 15.162,
24 subdivision 2a, is amended to read:

25 Subd. 2a. [CONFIDENTIAL DATA ON INDIVIDUALS.] "Confidential
26 data on individuals" means data which is (a) made not public by
27 statute or federal law applicable to the data and is
28 inaccessible to the individual subject of that data; or (b)
29 collected by a civil or criminal investigative agency as part of
30 an active investigation undertaken for the purpose of the
31 commencement of a legal action, provided that the burden of

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

1 proof as to whether such investigation is active or in
2 anticipation of a legal action is upon the agency. Confidential
3 data on individuals does not include arrest information that is
4 reasonably contemporaneous with an arrest or incarceration. The
5 provision of clause (b) shall terminate and cease to have force
6 with regard to the state agencies, political subdivisions,
7 statewide systems, covered by the ruling, upon the granting or
8 refusal to grant an emergency classification pursuant to section
9 15.1642 of both criminal and civil investigative data, or on
10 July 31, ~~1978~~ 1994, whichever occurs first.

11 Sec. 2. Minnesota Statutes 1992, section 15.1642,
12 subdivision 5, is amended to read:

13 Subd. 5. [EXPIRATION OF EMERGENCY CLASSIFICATION.] All
14 emergency classifications granted under this section and still
15 in effect shall expire on July 31, ~~1978~~ 1994. No emergency
16 classifications shall be granted after July 31, ~~1978~~ 1994.

17 Sec. 3. [15.1643] [INTERNATIONAL DISSEMINATION PROHIBITED.]

18 A state agency or political subdivision shall not transfer
19 or disseminate private or confidential data on individuals to
20 the private international organization known as Interpol.

21 Sec. 4. [REPEALER.]

22 Minnesota Statutes 1992, sections 144.151, subdivisions 8
23 and 9; and 144.175, subdivision 2, are repealed.

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

1 Sec. 5. [EFFECTIVE DATE.]
2 Sections 1, 2, and 4 are effective the day following final
3 enactment. Section 3 is effective July 1, 1992."
4
5 Delete the title and insert:
6 "A bill for an act
7 relating to privacy of data on individuals; continuing
8 confidentiality of certain investigative data;
9 continuing certain emergency classifications of data;
10 prohibiting the release of certain data to the
11 international organization known as Interpol; amending
12 Minnesota Statutes 1992, sections 15.162, subdivision
13 2a; and 15.1642, subdivision 5; proposing coding for
14 new law in Minnesota Statutes, chapter 15; repealing
15 Minnesota Statutes 1992, sections 144.151, subdivisions
16 8 and 9; and 144.175, subdivision 2."
17
18 We request adoption of this report and repassage of the
19 bill.
20
21 House Conferees: (Signed)
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38 Senate Conferees: (Signed)
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EXAMPLE - HOUSE CONFERENCE COMMITTEE REPORT (Page and line amendment; no title amendment)

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

2 A bill for an act

3 relating to public employees; designating the number of
4 arbitrators to resolve labor dispute; amending
5 Minnesota Statutes 1992, section 179.72, subdivision 6.

6 May 16, 1993

7 The Honorable
8 Speaker of the House of Representatives

9
10 The Honorable
11 President of the Senate

12

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

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

18 Page 2, lines 8 to 12, reinstate the stricken language

19 Page 2, line 11, strike "\$100" and insert "\$180"

20 Page 2, line 14, after the period insert "When a single
21 arbitrator is hearing a dispute, the costs of the arbitrator
22 must also be shared by the parties to the dispute."

23

24 We request adoption of this report and repassage of the
25 bill.

26

27 House Conferees: (Signed)

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44 Senate Conferees: (Signed)

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

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

2 A bill for an act

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

7 May 18, 1993

8 The Honorable
9 President of the Senate

10
11 The Honorable
12 Speaker of the House of Representatives

13

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

17 That the Senate concur in the House committee amendment
18 adopted May 6, 1993, and the House recede from the amendments it
19 adopted May 12, 1993, and that S.F. No. 274 be further amended
20 as follows:

21 Page 6, after line 14, insert:

22 *Subd. 7. [BIG STONE STATE PARK; DELETION.] The following
23 area is deleted from Big Stone State Park: The Northeast Quarter
24 of the Northwest Quarter of Section 20 in Township 123 North,
25 Range 48 West and that part of Government Lot 2, Section 10,
26 Township 122, Range 47 lying south of Highway No. 7 and west of
27 the following described line: Commencing at a point on the
28 westerly boundary line of Government Lot 2, Section 10, Township
29 122, Range 47 that is 189.75 feet due South of the intersection
30 of the Westerly boundary line of Government Lot 2 and the
31 Southerly right of way line of Trunk Highway No. 7; thence due
32 East 853.3 feet to an iron stake; thence deflect to the left at
33 a delta angle of 71 degrees 41 minutes 371.9 feet to the

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

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

6

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

9

10 Senate Conferees: (Signed)

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27 House Conferees: (Signed)

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

1 moves to amend H.F. No. 1702, as
2 follows:
3 Page 1, after line 13, insert:
4 "Sec. 2. Minnesota Statutes 1992, section 330.02, is amended
5 to read:
6 330.02 BOND.
7 Every auctioneer, before making sales, shall give a
8 corporate surety bond to the ~~county~~ state in a ~~the~~ penal sum of
9 ~~not less than \$1,000 nor more than \$3,000 to be fixed by the~~
10 ~~treasurer and with sureties approved by the treasurer \$5,000,~~
11 conditioned that he will pay all sums required by law and in all
12 things conform to the laws relating to auctioneers. ~~The~~
13 ~~treasurer shall endorse his approval upon such bond, and file it~~
14 ~~in his office~~ The bond must be approved and filed as provided in
15 chapter 574."
16 Renumber the remaining section
17
18 Amend the title as follows:
19 Page 1, after line 2, insert "modifying bond requirements;"
20 Page 1, line 3, delete "Section" and insert "sections"
21 Page 1, line 4, before the period insert "; and 330.02"

Note the directive to renumber the section. In the course of engrossing, this directive will be carried out.

Engrossing and Enrolling

- 8.1 The Engrossing Process
- 8.2 Origin and Action upon Documents by the Engrossing Process
 - (a) Motions in Committee
 - (b) Floor Amendments
 - (c) Conference Committee Reports
- 8.3 Examination of an Engrossment
- 8.4 Unengrossable Amendments
- 8.5 Correction of Errors
- 8.6 Identification of Engrossments
- 8.7 Unofficial Engrossments
- 8.8 The Enrolling Process
- 8.9 Examination of an Enrollment
- 8.10 Examples

8.1 The Engrossing Process

Engrossing is the process of incorporating into a bill amendments adopted by the House or Senate. Each drafter should understand engrossing in order to understand the practical possibilities and limitations of amendments.

Engrossing is done at the direction and under the authority of the secretary of the Senate and chief clerk of the House of Representatives. Any problems in engrossments are referred to those officers for resolution. Personnel engaged in engrossing are bound by the bill amendments adopted, and anything more than minor adjustments by them may raise the question of whether or not the purported text was agreed to by the legislature.

8.2 Origin and Action upon Documents by the Engrossing Process

(a) Motions in Committee

Committees adopt proposed amendments to bills and report their recommendations to the House or Senate floor on report forms furnished by their legislative body. Committee amendments are made to the original bill or to its most recent

official engrossment, if there is one. See pages 219 to 222 for examples relating to the engrossment of committee reports.

A motion in committee to amend a bill originating in the other house frequently results in a request for an "unofficial engrossment" to see how the proposed amendment will look if it is adopted. This is done informally and it should be noted that an unofficial engrossment for a committee is just a working paper that cannot be used for any formal purpose. A motion in a committee to amend an unofficial engrossment is not in order. The rules of the House explicitly so provide. (House Rule 1.17). Similarly, the committee report must show amendments drawn to the original bill or its last official engrossment.

(b) Floor Amendments

The Committee of the Whole, which is the full membership of either the House of Representatives or the Senate sitting as a committee, considers and adopts amendments proposed by individual legislators. Floor amendments are to the original or most recent engrossment of the bill, if there is one. Most bills have been amended and engrossed by the time they are debated on the floor of the House or Senate. In the course of the debate, floor amendments may be proposed and voted upon. If a floor amendment is adopted, the secretary or chief clerk marks the fact on the amendment. These amendments are kept at the secretary's or chief clerk's desk until the report of the Committee of the Whole is adopted. If the bill passes, the adopted amendments are attached to the bill in the order in which they were passed and sent to the revisor's office for engrossing. The floor amendments are then integrated into the bill in the order they were adopted on the floor. A bill originating in either house which is amended on the floor of that house is not given a third reading by that house until it is engrossed and reproduced as amended. A bill is only officially engrossed for the house of origin although unofficial engrossments of amendments adopted by the other house are frequently requested. See the examples on pages 226 to 228 relating to the engrossing of floor amendments.

(c) Conference Committee Reports

The report of a conference committee may include an amendment to the bill which compromises a disagreement on the bill between the two houses. A conference committee works on a bill which has attached to it amendments that are in controversy. Amendments in a conference committee report are engrossed like other amendments. See the examples on pages 223 to 225 relating to the engrossing of conference committee reports.

8.3 Examination of an Engrossment

The engrossing process requires double-checking to ensure that:

- (1) all directed changes to the bill in amendments are accomplished;
- (2) all changes are accomplished where the amendments give no direction but which are required by directed changes (such as internal cross-reference changes and section renumbering);
- (3) additional amendments are not necessary to fully accomplish any amendment's intent; and
- (4) no changes have been inadvertently incorporated in a bill that were not directed or required by an amendment.

In order to ensure that this is correctly done, the revisor's staff uses an extensive procedure of checking and rechecking by the supervisors, drafting assistants, and attorneys.

8.4 Unengrossable Amendments

In engrossing floor amendments to a bill, the adopted amendments are applied in the order they were adopted. For that reason a later amendment must take into account previously adopted amendments. If it fails to do so and two amendments are in conflict, the second amendment is unengrossable.

An amendment will be unengrossable if, for example, any of the following occurs:

- (1) the page number, line number, or locator words are wrong;
- (2) words to be inserted are underlined or stricken when they should not be or are not underlined or stricken when they should be;
- (3) the amendment amends words any part of which were changed or deleted by a previously adopted amendment. (Exception: an amendment which strikes lines of text that have been already stricken or amended is engrossable);
- (4) the amendment directs the insertion of text following a locator word, line, or section which was deleted by a previously adopted amendment;
- (5) the amendment is equivocal as to what text should be stricken or deleted or as to where it should be inserted; or
- (6) the amendment directs the amendment of the wrong engrossment of the bill.

Individual amendments may be engrossable but the combined effect of two or more of them may lead to unforeseen complications. The most typical problem is created when two amendments direct the insertion of text at the same point in a bill. Both amendments will be inserted. The result may be that nonfunctional sentences or paragraphs are created.

8.5 Correction of Errors

In the Senate, the secretary and engrossing secretary, in all proper cases, may correct all mistakes in grammar or spelling and in numbering the sections whether the errors occur in the original bill or are caused by amendments to it.

In the House, minor clerical errors in any bill, memorial, or resolution, such as errors in spelling or grammar, or the incorrect use of one word for another or the incorrect numbering of references, whether occurring in the original document or any amendment to it, are corrected as a matter of course by the chief clerk.

8.6 Identification of Engrossments

Bills may be amended several times at various stages of the legislative process. At each stage all amendments adopted are made part of the bill. Therefore, bills may be engrossed more than once. It is necessary to ensure that a drafter is working from the most recent engrossment of the bill. These are readily identified by the "1E," "2E," "3E," etc., added to the file number at the very top of the page and the words "FIRST ENGROSSMENT" or whatever subsequent engrossment it happens to be, above the H.F. or S.F. number on the bill cover.

8.7 Unofficial Engrossments

Any Senate file which has been amended on the floor of the House, except at the time of final passage, and any Senate file which has been reported to the House with amendments by a House standing committee, can be unofficially engrossed and reprinted. Amendments to unofficial engrossments of a Senate file

may be offered by members on the floor of the House but cannot be offered in standing committees. (House Rule 1.17.)

8.8 The Enrolling Process

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

All enrollment of bills is done at the direction and under the authority of the secretary of the Senate and chief clerk of the House of Representatives.

The words "A bill for an act" are removed from the master. A chapter number is marked on the first page.

A preprinted signature page for the House or Senate is prepared, with "H.F. No." or "S.F. No." and dates of passage inserted.

The bill is duplicated on special enrollment paper, the first page of which is headed by the words "AN ACT" and a chapter number is assigned to the act. In the case of a resolution, the words "A resolution" are not removed, and plain enrollment paper is used for all pages, including the first. One extra copy is made on regular duplicating paper for delivery to the other body.

Signatures of the presiding and chief administrative officers of each house are obtained. After the governor's approval and signature, the bill is delivered to the secretary of state's office for filing.

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

If the governor approves a bill, he or she notifies the house in which it originated of that fact. If the governor vetoes a bill, it is returned to the house in which it originated with a note of the governor's objections.

8.9 Examination of an Enrollment

Before a bill is enrolled, it is engrossed for the final time following all the checking procedures of that process. The enrollment is then created and it is subject to additional double checks.

8.10 Examples

House Committee Report on a Senate File, p. 219

Senate Committee Report on a Senate File, p. 220

Copy of Bill Sent to Revisor with the Committee Report Attached, p. 221

Committee Report Amendments Engrossed, p. 222

Conference Committee Report, p. 223

Text before engrossing, p. 225

Text after engrossing, p. 225

Floor Amendment, p. 226

Bill before engrossing, p. 227

Bill after engrossing, p. 228

Veto Override, House File, p. 229

Veto Override, Senate File, p. 231

EXAMPLE - SENATE COMMITTEE REPORT ON A SENATE FILE

1 Mr. from the Committee on Agriculture and Natural
Resources to which was referred

2

3 S.F. No. 344: A bill for an act appropriating money to the
Department of Natural Resources for the installation of a box
4 culvert under a highway in Stearns county, providing a waterway
5 connection between certain lakes to enable watercraft to cross
6 from one lake to the other.

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

9 Page 1, line 10, delete "the department of natural
10 resources" and insert "Stearns county"

11 Page 1, line 16, delete everything after "lakes."

12

13 Amend the title as follows:

14 Page 1, lines 2 and 3, delete "the department of natural
15 resources" and insert "Stearns county"

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

18

19

20

21 (Committee Chair)

22

23

24 (Date of Committee recommendation)

Note: Senate has adopted this amendment. It will be engrossed and returned to Senate for further action.

EXAMPLE - CONFERENCE COMMITTEE REPORT

1 CONFERENCE COMMITTEE REPORT ON S.F. NO.

2 A bill for an act

3 relating to business or agricultural loans; rate of
4 interest therein; amending Minnesota Statutes 1992,
5 section 334.011, subdivisions 1 and 4.

6 May 16, 1993

7 The Honorable
8 President of the Senate

9

10 The Honorable
11 Speaker of the House of Representatives

12

13 We, the undersigned conferees for S.F. No. 49, report that
14 we have agreed upon the items in dispute and recommend as
15 follows:

16 That the Senate concur in the House amendments and that S.F.

17 No. 49, the unofficial engrossment, be further amended as

18 follows:

19 Page 1, line 18, after "four" insert "and one-half"

EXAMPLE - CONFERENCE COMMITTEE REPORT (Cont.)

1	We request adoption of this report and repassage of the
2	bill.
3	
4	House Conferees: (Signed)
5	
6	
7
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17	
18	
19	
20	
21	Senate Conferees: (Signed)
22	
23	
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32

NOTE: If all conferees have signed the report and both houses have adopted the report it is ready for engrossing and enrolling.

EXAMPLE - CONFERENCE COMMITTEE REPORT (Cont.)

TEXT BEFORE ENGROSSING.

15 lender may, in the case of loans for business or agricultural
16 purposes, charge on any loan or discount made or upon any note,
17 bill or other evidence of debt, interest at a rate of not more
18 than ~~five~~ four percent in excess of the discount rate on 90 day
19 commercial paper in effect at the Federal Reserve Bank in the
20 Federal Reserve District encompassing Minnesota.
21 For the purposes of this subdivision, the term

TEXT AFTER ENGROSSING. New language of the report has been inserted
in the proper place.

Amendment on page 223.

15 lender may, in the case of loans for business or agricultural
16 purposes, charge on any loan or discount made or upon any note,
17 bill or other evidence of debt, interest at a rate of not more
18 than ~~five~~ four and one-half percent in excess of the discount
19 rate on 90 day commercial paper in effect at the Federal Reserve
20 Bank in the Federal Reserve District encompassing Minnesota.
21 For the purposes of this subdivision, the term

EXAMPLE - FLOOR AMENDMENT

1 moves to amend H.F. No. 187 as follows:
2 Delete everything after the enacting clause and insert:
3 "Section 1. Minnesota Statutes 1992, section 128A.03,
4 subdivision 3, is amended to read:
5 Subd. 3. ~~The councils shall expire and~~ The terms,
6 compensation and removal of members of the councils shall be as
7 provided in section 15.059; however, the councils shall expire
8 on December 31, 1993.
9 Sec. 2. [EFFECTIVE DATE.]
10 Minnesota Statutes 1992, section 128A.03, is effective the
11 day following final enactment of this act, notwithstanding laws
12 1984, chapter 271, section 99.
13 Sec. 3. [EFFECTIVE DATE.]
14 Sections 1 and 2 are effective the day following final
15 enactment."
16
17 Amend the title as follows:
18 Page 1, line 3, after "councils" insert "; amending
19 Minnesota Statutes 1992, section 128A.03, subdivision 3"

EXAMPLE - FLOOR AMENDMENT (Cont.)

1 A bill for an act
2 relating to education; braille and deaf schools;
3 providing for appointment of advisory councils.
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
5 Section 1. [123.45] [ADVISORY COUNCILS; SPECIAL SCHOOLS.]
6 The governor shall appoint an advisory council for each
7 school for the visually or hearing impaired.

Bill before engrossing the amendment on the preceding page.

EXAMPLE - VETO OVERRIDE, HOUSE FILE, Cont.

1 and repassed by a vote of two-thirds or more of the Senate on
2, 19... The vote of the Senate was determined by yeas
3 and nays and the names of the persons voting for or against the
4 bill were entered in the journal of the Senate. The House of
5 Representatives was then advised of the action of the Senate.

6
7 _____
8 George Bellows
President of the Senate

9
10 _____
11 John S. Sargent
Secretary of the Senate

12 The attached bill, H.F. No., having passed the House of
13 Representatives and the Senate notwithstanding the objections of
14 the Governor, has become law. It is transmitted to the Secretary
15 of State of the State of Minnesota to be deposited as a law of
16 the State of Minnesota, the Governor's veto to the contrary
17 notwithstanding.

18 Dated this day of, in the year of Our Lord one
19 thousand nine hundred and

20
21 _____
22 James M. Whistler
Speaker of the House of Representatives

23
24 _____
25 George Bellows
President of the Senate

26
27 _____
28 Frederick E. Church
Chief Clerk, House of Representatives

29
30 _____
31 John S. Sargent
Secretary of the Senate

32 Filed

33
34 _____
35 Mary Cassatt
Secretary of State

EXAMPLE - VETO OVERRIDE, SENATE FILE, Cont.

1 the persons voting for or against the bill were entered in the
2 journal of the House of Representatives. The Senate was then
3 advised of the action of the House of Representatives.

4
5 _____
6 James M. Whistler
Speaker of the House of Representatives

7
8 _____
9 Frederick E. Church
Chief Clerk, House of Representatives

10 The attached bill, S.F. No., having passed the Senate
11 and the House of Representatives notwithstanding the objections
12 of the Governor, has become law. It is transmitted to the
13 Secretary of State of the State of Minnesota to be deposited as
14 a law of the State of Minnesota, the Governor's veto to the
15 contrary notwithstanding.

16 Dated this day of, in the year of Our Lord one
17 thousand nine hundred and

18
19 _____
20 George Bellows
President of the Senate

21
22 _____
23 James M. Whistler
Speaker of the House of Representatives

24
25 _____
26 John S. Sargent
Secretary of the Senate

27
28 _____
29 Frederick E. Church
Chief Clerk, House of Representatives

30 Filed

31
32 _____
33 Mary Cassatt
Secretary of State

Practical Aids to Research and Drafting

9.1 Finding Minnesota Law

- (a) Laws of Minnesota
- (b) Minnesota Statutes
- (c) Tables
 - (1) Session Laws Amended or Repealed
 - (2) Coded Laws Amended, Repealed or New
 - (3) Special Law Tables
 - (4) Internal Cross-Reference Table
- (d) Computer Searches

9.2 Finding Minnesota Bills to Use as Drafting Models

- (a) Comparison Tables
- (b) Engrossing Files
- (c) House and Senate Index and Bill Status System
- (d) House and Senate Journals

9.3 Finding Laws or Bills in Other States

9.4 Finding General Research Materials

9.5 How to Begin Drafting

- (a) Photocopies or Computer Printouts
- (b) Cut and Paste Drafting

9.1 Finding Minnesota Law

(a) Laws of Minnesota

Laws of Minnesota is published annually by the revisor of statutes approximately three months after adjournment. It contains all the acts of the legislature exactly as passed. See the explanation at the beginning of each volume for information about its use. It contains a subject index and various tables.

(b) Minnesota Statutes

Minnesota Statutes is published biennially, about November of each even-numbered year, by the revisor of statutes. It contains all laws that have been coded by the revisor--usually laws of a general and permanent nature. Volume 1

of the set contains historical documents, the Minnesota and United States Constitutions and the University Charter. The preface contains a user's guide which explains the arrangement and numbering systems of the statutes and explains the statutory history and notes contained in the statutes. Using the guide will help you find material in the statutes quickly. The final volume of the statutes contains a subject index. A user's guide at the beginning of the index explains how to use it.

Each volume of the statutes is updated in odd-numbered years by a pocket part, cited as "Minnesota Statutes Supplement." The tables in the statutes most needed for drafting are discussed below.

(c) Tables

Tables are completed shortly after the session by the revisor of statutes. The tables are published in the session laws, but may be available from the revisor's office in a printout before publication. The local law tables published in the session laws are incorporated into Table 1 of the statutes. The following tables may be useful to the drafter.

(1) Session laws amended or repealed.

Table 1 in the session laws is the table of uncoded session laws that have been amended or repealed. It shows all such session laws amended or repealed during the preceding legislative year. It is arranged by year. It lists amendments to laws of prior years that have not been coded (local laws, appropriations, effective date sections, and the like), and amendments to laws that are passed in the same session and coded but not yet published in Minnesota Statutes.

(2) Coded laws amended, repealed or new.

Table 2 of the session laws lists coded laws amended, repealed, or new in that volume. It shows numerically all of the coded laws amended or repealed during the session year, and also tentative coding of new laws together with the session law chapter and section derivation. This table is a basic tool for all drafters, since it is a tool for determining, between statutory publications, whether or not an existing coded law has been amended or repealed. In drafting new law between publications, check the table to be sure that proposed tentative coding has not already been allocated to another section or subdivision. The table should always be checked between publications before drafting a bill involving amendments to coded law or choosing proposed coding for a draft of a new law.

(3) Special law tables.

Table 4 in the session laws shows uncoded laws passed during the year that affect local government units. Local government units affected are shown alphabetically with a brief description of the legislation. If the law is effective upon its approval by the affected unit and the filing of the approval with the secretary of state, the table so indicates. Approval and filing dates are also shown. The local law enacted may be new law, or it may be amendatory. In drafting local legislation always check the local law tables and the cumulative local law table in the statutes.

A cumulative local law table is found in Table 1 of Minnesota Statutes. It is cumulative from 1849. The local government units are shown alphabetically, followed by a brief description, also arranged alphabetically, of the subject matter of the legislation affecting them and the session law derivation. Amendments or repeals of local laws are also noted in the table. The table may also be helpful in drafting new legislation for a particular governmental unit, since similar legislation may have already been enacted for another local governmental unit.

(4) Internal cross-reference table.

Table 4 in Minnesota Statutes is a numerical table of the sections of the statutes that are referred to by section number in other sections of the statutes. The referring sections and the subdivisions, if any, are set out opposite the referenced section. In repealing or making substantive changes to a section, it may be necessary to amend other sections that refer to it.

(d) Computer Searches

The Office of the Revisor of Statutes maintains a computer data base of all of the material in Minnesota Statutes. This data base may be searched for specified information.

A search can find every instance in which a word or word combination is dealt with in the statutes. Combinations of words can be used to identify a subject. A computer search can be used to locate and remove or alter obsolete terms; locate different definitions of a single word; locate and change as necessary any worded references to a program, person, or provision. There are two types of searches: the "cite search," which produces a list of entries and their cites, and the "text search," which prints out the text of each reference.

For example, you might conduct a search for the term "legislature." The search would produce a list of all sections of the statutes where the term "legislature" is used.

Using multiple words in logical combinations, a search can be narrowed to a particular duty of the legislature, eliminating material that the drafter does not need. For example, with a proper combination of words used in the search, every provision of the statutes may be found that requires an appointment by the governor to be confirmed by either or both houses of the legislature.

To request a search, contact the revisor's office.

9.2 Finding Minnesota Bills to Use as Drafting Models

(a) Comparison Tables

The revisor of statutes maintains a comparison table that enables the user to convert the House or Senate file number assigned the bill at introduction to the revisor's bill drafting number or vice versa. A bill drafting request specifying a particular House or Senate file may thus be easily converted to the revisor's bill drafting number and expeditiously handled. If the House or Senate file has not been amended, the request can be completed by making new covered copies of the original draft. If the House or Senate file has been amended, the drafter should find out whether the requester wants the original draft or a particular engrossment or variation of the bill.

(b) Engrossing Files

As bills are amended in the legislative process, they are returned to the revisor of statutes for engrossment. There may be several engrossments.

A bill or amendment request may specify a particular engrossment of a House or Senate file, or the file as amended by a particular committee. Files are maintained in the revisor's office on all engrossments until after the end of the biennium. Engrossments for the current biennium may also be obtained from the chief clerk of the House or the secretary of the Senate. The Legislative Reference Library retains engrossments for a period.

(c) House and Senate Index and Bill Status System

The Minnesota Legislative Information System (MLIS) developed by the House and Senate and the Revisor provides a rapid means of determining the

status of any bill file introduced during the current session. It may also be used to check if bills similar to a bill request have been drafted and introduced. Bills are indexed by House file or Senate file number, topic, author, and committee. The system also contains an author/topic cross index and a statutory reference index. The system displays the number of all files which, as introduced, amend a specific section of Minnesota Statutes, the session laws, and the constitution. Terminals are available in many legislative offices, the legislative reference library, and the revisor's office.

(d) House and Senate Journals

The House and Senate journals contain the day-by-day floor action of the House and the Senate.

The Senate journal contains a numerical index by House file or Senate file number at the back of each day's publication.

The House and Senate journals' cumulative indexes contain the same information as House and Senate index systems. An unofficial index is available in the fall or early winter after the first year of the session. The official index is published after the end of the two-year session. The index contains a numerical index by House file or Senate file number, a subject index of all bills introduced under broad topics, author index, and companion bill comparison table. The Senate journal also includes a miscellaneous section.

After you obtain a House file or Senate file number from the journal, ask the Legislative Reference Library for a copy of the bill. It maintains House and Senate bills since 1957.

9.3 Finding Laws or Bills in Other States

Issues of concern to Minnesotans are often issues of concern to other states as well, so do not hesitate to borrow from statutes or bills of other states. Three helpful organizations in locating statutes or bills from other states are:

(1) Council of State Governments

Council of State Governments, National Headquarters, Iron Works Pike, P.O. Box 11910, Lexington, Kentucky 40578, 606-252-2291; (Midwestern Office), 203 N. Wabash, Chicago, Illinois 60601, 312-236-4011

The Council of State Governments is a joint organization of all the state governments. It researches and publishes pamphlets on state programs and problems. It provides an information service for the states, legislators, and staffs. Finally it issues several useful publications. Among the most helpful are an annual volume containing model drafts of suggested state legislation (it contains a cumulative index), a monthly publication containing information on the current activities of the states, and a quarterly journal containing discussion of selected governmental problems and solutions. The council also publishes research pamphlets on issues of concern to the states.

(2) National Conference of State Legislatures

National Conference of State Legislatures, 1125 Seventeenth Street, Suite 1500 Denver, Colorado 80202, 303-623-6600

The National Conference of State Legislatures collects information of importance to the states, writes guides and manuals on various state issues, and drafts model legislation. It also provides a research staff to assist in research of government employees. The conference also publishes the magazine "State Legislatures" which contains articles on current issues, collects data, and summarizes actions of the states.

(3) Advisory Commission on Intergovernmental Relations (ACIR)

Advisory Commission on Intergovernmental Relations (ACIR), 1111 - 20th Street Northwest, Washington, D.C. 20575, 202-653-5536

The Advisory Commission on Intergovernmental Relations is most helpful if the bill request affects state/federal programs or raises the issues of federalism of federal preemption. This organization is a national bipartisan body representing the executive and legislative branches of federal, state, and local governments. The organization researches and formulates policy positions on selected issues and suggests solutions. It also drafts model legislation.

The state law library's collection contains the statutes of all 50 states.

Copies of bills may be obtained from the state office which corresponds to the revisor's office or secretary of the Senate or chief clerk's office in Minnesota. The Council of State Governments publishes a directory of state offices in the 50 states.

9.4 Finding General Research Materials

The Legislative Reference Library (LRL) is directed by statute to collect, index, and disseminate information of interest to the legislature and its staff. The library contains over 30,000 books and pamphlets, 500 active periodical subscriptions, and 31 newspaper subscriptions. It is part of the state university system's on-line catalog (PALS), and maintains an on-line computer search service using three computer data base services. Together the three data bases search over 150 data bases of governments, industries, and universities and provide journal articles, books, reports, proceedings, and government documents and data. The search service can also be used to obtain extensive bibliographies.

The library maintains a Minnesota associations and organizations file containing, where possible, statements of the purposes, programs, and offices of the organizations.

The library is the depository for state government publications, including consultants reports. The LRL checklist indexes these publications. The library publishes LRL Resources, a monthly listing of newly acquired books and pamphlets, and occasional topical bibliographies called Topics in the News. The library's selective information services provide notification to patrons of new materials in their areas of interest. Ongoing distribution of contents pages of recently received periodicals is also available. (Contact the library for more information.) The library also maintains:

- (1) Newspaper clippings by subject, by district, by state agency, or by individual's name: 1969 to date.
- (2) Minnesota government publications: 1974 to date.
- (3) Speech materials: quotes or examples.
- (4) Legal materials: USCA, MSA, Minnesota and federal rules and regulations, uniform laws.
- (5) Mandated reports to the Legislature.
- (6) Minnesota documents on microfiche: some from 1940-1973, most 1974 to date.
- (7) Legislative Manuals: 1887 to date; House and Senate journals.
- (8) Bills introduced: House and Senate since 1957.
- (9) Senate and House Committee Books: Call for details.
- (10) Tape recordings of floor and committee debate: Call for details.

The legislative reference librarians can direct you to the indexes, bibliographies, and directories which will provide you with experts or documents needed for your research. The librarians are also familiar with and can direct you to the collections of other libraries, and individual experts both private and public.

9.5 How to Begin Drafting

In drafting a bill requiring amendments to existing law, use a photocopy of the law and mark the desired changes on the copy. If the existing law is coded in the statutes, always copy from the latest edition of the statutes (or the supplement). If the law has been amended since the last edition and the data base has been updated to include the latest amendments, use a computer printout for drafting. The revisor's office will furnish the printout. If the computer data base has not been updated and there are amendments made since the latest edition, photocopy the session law or laws amending the particular law to be again amended, and fit the new amendments into that copy. To learn whether or not changes have been made in coded sections, use Table 2 of the session laws.

In amending uncoded law, use a photocopy of the session law, making sure to use the latest amended version of the law. Check the local law tables to determine if the local law has been amended.

Use of photocopies or computer printouts reduces errors, permits rapid identification of coded law on the computer terminals, and permits proofreading of local laws without the cumbersome session law book.

Readability in Drafting

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- 10.29 Nominal Style

10.30 Gender-Neutral Language

10.31 Suggestions from Readers

This chapter is about readability or "plain language" issues in bills. It is not about substantive clarity, which is outlined in chapter 2, or about form or mechanics, which are treated in chapters 4 and 12. Its aim is to review current thinking on what makes bills hard, or easy, to read.

A glance at section 2 of the bibliography will show how much material there is about readability in legal documents. In most cases, researchers agree about what writers should do, but not in all cases. So this chapter gives drafters general advice, but it also refers them to other works for further examples and discussion.

10.1 The Question of Audience

Bills are not all aimed at the same readers. Rather, the primary audience of bills varies with the bill. If your bill regulates migrant labor and orders recruiters and employers to put workers' terms in writing, then employers, recruiters, and workers are your audience, some with limited education. On the other hand, if you are drafting a bill regulating securities sales, then brokers and bankers are your audience, and your bill will have to use the technical vocabulary of their trade. Laws addressed to people in general--for example, laws prohibiting dumping in state parks--ought to aim at people of average intelligence and average education.

Writing for a less knowledgeable audience means that you must work hard at keeping sentences short and eliminating or defining difficult words. But writing for a knowledgeable audience does not give you an excuse to write long, unwieldy sentences. For sophisticated readers you may be able to be briefer; you can pack information into specialized words. For other readers your material must be less dense. See *Child, Drafting Legal Documents*, p. 7 and 8; *Charrow and Erhardt, Clear and Effective Legal Writing*, p. 39-56; *Dickerson, Fundamentals*, p. 26-31.

*** BEFORE YOU DRAFT, CONSIDER YOUR AUDIENCE.**

10.2 Order and Organization

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

You should probably put definitions first and basic provisions before special cases, but for everything else you're free to use one of several patterns.

Chronological order works especially well in bills that describe procedures. For example, a section regulating employers' treatment of migrant workers might tell what employers must do at several stages of the work season:

- when they recruit and hire;
- when they write contracts setting hours and pay;
- when they meet special situations (a worker is fired, quits, becomes ill, or refuses to work);
- when they pay wages; and
- when they settle at the end of the season.

Using chronological order may mean preferring one audience to another. For example, bills governing prisons affect not only prisoners but prison workers who must comply with the law and agency workers who have to check compliance. There is no particular order to obeying these laws. It might be best to decide on a convenient order for inspection and to order sections that way. If food service, health equipment, and sanitation will be checked together, laws governing them should be next to one another.

Not all chronological order is this obvious. It may take some discussion and reflection to decide what the order of sections should be.

10.3 Headnotes

Headnotes for sections and subdivisions are not part of the law, but they are very valuable to readers when they are written well. Their function is to help readers find the material they need. Subdivision headnotes are especially important in long sections, because a reader who has only a section number needs them to help narrow the search.

See Redish, *Beyond Readability*, p. 9; Felker, et al., *Guidelines*, p. 17-19; Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 83-86.

10.4 Section, Subdivision, and Paragraph Length

The more material you place in a single block, the harder it is for readers to find the particular provisions they are interested in. Long, solid blocks of text also make it more difficult to keep one's place in reading. To make reading easier, try to limit the length of unbroken passages.

*** KEEP BLOCKS SHORT.**

10.5 Person

Drafters need to compromise between the needs of statutory drafting and the requirements of plain English. Most plain English contract laws call for the use of the second and first person--addressing the consumer as "you" and calling the provider "we." Using "we" and "you" is impractical in bills which have to deal with several different sets of people and their duties at once. Write in terms of "the commissioner," "the department," and so on.

*** WRITE IN THE THIRD PERSON.**

10.6 Number

Use the singular form of a noun rather than the plural. This custom is based on the practical difficulty of using plurals consistently. See section 2.2.

Examples:

Use: A person who....

Do not use: All persons who....

*** USE THE SINGULAR RATHER THAN THE PLURAL.**

10.7 Voice

What is passive voice? A sentence is in the active voice when the subject "does" the verb: "Agencies publish rules in the State Register," is in the active voice. "Rules are published in the State Register by agencies," is in the passive voice because the subject *rules* is not the doer of the verb *are published*. The doer shows up in *by agencies*. "Rules are published in the State Register" is still in the passive voice, although the doer of the action does not show up at all.

Another way to recognize passive voice is to look for the verbs *be, is, are, was, were, has been, have been, and had been* followed by words that end in *-ed, -t, or -en*. Here are some examples:

is taken

must be arithmetically averaged

are taught

have been reduced

Clauses or sentences that contain verbs like these are in the passive voice.

What's wrong with passive voice? In laws and rules, passive sentences without phrases containing "by" are dangerous because they do not say what duties are assigned to whom. Wydick's *Plain English for Lawyers* demonstrates the problem with this sentence from a patent license:

All improvements of the patented invention which are made hereafter shall promptly be disclosed, and failure to do so shall be deemed a material breach of this license agreement.

Nothing in the sentence tells us who must disclose improvements to whom. If rules and laws exist to explain people's responsibilities, then drafters must avoid sentences that don't assign responsibilities clearly.

When is the passive voice needed? Passive voice lets you put old or repeated information at the beginning of the sentence where it demands less attention and new information at the end of the sentence where it stands out.

The indictment, information, or affidavit must charge the person with having committed a crime. It must be authenticated by the executive authority making the demand.

Passive voice can also let you put a long string of nouns at the end of a sentence so that your reader will not have to work through the series before coming to the verb:

The application may be made by the prosecuting attorney of the county in which the offense was committed, the parole board, or the chief executive officer of the facility or sheriff of the county from which the person escaped.

Sometimes passive voice will help you avoid using *he* or *she*.

When you use passive voice for any of these reasons, be certain that the duty or permission is assigned clearly, either in the passive sentence or in one of the sentences nearby.

When is the passive voice unnecessary? When the passive voice does not solve these specific problems, it is probably unneeded. When a sentence contains a phrase beginning with by ("by the commissioner") and that phrase is not at the end of the sentence, you can safely change the sentence to active voice.

Passive: The required monitoring frequency may be reduced by the commissioner to a minimum of one sample analyzed for total trihalomethanes per quarter.

Active: The commissioner may reduce the required monitoring frequency to a minimum of one sample analyzed for total trihalomethanes per quarter.

Passive: When a demand is made upon the governor of this state by the executive authority of another state for the surrender of a person charged with crime....

Active: When the executive authority of another state demands that the governor of this state surrender a person charged with crime....

10.8 Tense

A drafter is tempted to look forward to the time when the statute will be applied and, therefore, to frame legislation in the future tense. Avoid that error. Use the present tense and write the statute as you want it to read at the time it is applied.

Use: A person who drinks intoxicating liquors or uses profane language on any passenger railway car is guilty....

Do not use: A person who shall drink intoxicating liquors or shall use profane language...shall be guilty....

*** USE THE PRESENT TENSE.**

10.9 "Shall" and "Must"

Readability experts have criticized the lawyer's traditional use of *shall* as a verb of mandate, and have encouraged drafters to use *must* to express commands and requirements. Many drafters now do so. See section 2.2 and Redish, "How to Write Regulations (and Other Legal Documents) in Clear English," *Drafting Documents in Plain Language* 1981, p. 253.

Objections to the use of *must* include the following:

- (1) It is another alternative verb to keep track of.
- (2) It is difficult to use consistently.
- (3) The tone of *must* lacks the dignified assurance of *shall*, a timeless modal present.

While some drafting experts prefer to use *shall* in the active voice and *must* in the passive, and to distinguish carefully between duties of people and requirements for things, in practice these distinctions become blurred. For those drafters who use *must*, the simplest rule is to use *must* for duties, *must not* for prohibitions (*may not* is potentially ambiguous), and *may* for permissions.

For definitions, use *means*. For stative provisions (also called "self-enforcing provisions" or "provisions true by operation of law") use *is* or *are*. For examples of the fine distinctions, see Dickerson, *Materials on Legal Drafting*, p. 180-185.

For advice about special situations like creating a crime or establishing an agency, see Robert J. Martineau, *Drafting Legislation and Rules in Plain English*, p. 109-110.

10.10 Sentence Length

Sentences in the law are often long, and they seem to grow longer every time they are amended. Long sentences may not be difficult in themselves, but length often goes along with other evils. The longer the sentence, the more likely it is that the reader will have to ask: *What parts go together? What does this modifier modify? Which of these clauses and phrases are parallel?* To avoid confusion, drafters should write short sentences when possible, and give long sentences clear structure. The sections and readings that follow suggest some methods of shortening or clarifying long sentences.

See: Dickerson, *Fundamentals*, p. 174, 182-183. Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 95-100.

10.11 Intrusive Phrases and Clauses

Most sentences in bills have verbs with more than one part: *shall* + (verb), *may* + (verb), *must* + (verb), and so on. Sometimes a word is placed between these parts, as in "The commissioner shall *immediately* order an investigation of a reported epidemic."

One-word adverbs in this position do no harm; sometimes they are necessary. But longer divisions are difficult to read, as in this sentence:

Within ten days after service of the notice of appeal, the appealing party *shall* in writing, with a copy to the executive secretary of the Public Employment

Relations Board and all parties or their representatives of record, *order* from the Bureau of Mediation Services a transcript of any parts of the proceedings it deems necessary...

The interrupting words make no sense without the verb *order*, but the reader must struggle through 20 words to reach it. The interrupting words would serve better as a separate sentence:

...the appealing party shall order from the Bureau of Mediation Services a transcript of any parts of the proceedings it considers necessary. The transcript order must be in writing. The appealing party shall give a copy of the transcript order to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record.

The same advice holds in other places in the sentence as well: avoid interrupting any group of words that must be understood together.

See Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 100-102.

10.12 Conditions and Exceptions

One of the most common functions of a statute is to set forth a simple, general proposition, subject to certain conditions and exceptions. Even when a proposed statutory section is drafted for introduction with few or no conditions or exceptions, conditions and exceptions are often added by amendment during the legislative process. The more conditions and exceptions that apply, the longer and more complex the statute becomes. One of the challenges to the drafter is to organize the statute so that the general proposition remains clear while conditions and exceptions are added to it, one after another, without needing to rewrite the whole statute each time.

If only one condition applies, the usual way to express it is to begin the sentence with an *if* or *when* clause: "If the person under arrest refuses to permit chemical testing, none may be given." Use *if* or *when*, not the legalism *where*.

Sometimes more than one condition introduces a sentence. When this happens, keep the main clause as short as possible:

If the basic member and the surviving dependent spouse are killed in a common disaster, and the total of all survivor's benefits paid under this subdivision is less than the accumulated deductions plus interest payable, *the surviving children shall receive the difference* in a lump sum payment.

If you can't keep the main clause short, or if there are more than two conditions, put the conditions after the main clause:

The city is eligible for a proportional share of the subsidy provided for the counties if the city has a population of 40,000 persons or more; has a board of health organized under Minnesota Statutes, section 145.913; and provides local matching money to support the community health services as provided in Minnesota Statutes, section 145.921.

See Dickerson, *Fundamentals*, p. 182 and 183; Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 101-103.

10.13 Provisos

The phrase provided that often gives drafters a tool for gluing afterthoughts onto the end of a sentence. They should avoid it.

Example: (an unnecessary *provided that*)

The board may revoke a supervised release if the supervised release fails to enter a program; provided, however, that if no community program is available at

the time of supervised release, the board may order the supervised releasee to enter the first available community program.

Example: (a clearer version, without *provided that*)

The board may revoke supervised release if the supervised releasee fails to enter a program. If no community program is available at the time of supervised release, the board may order the supervised releasee to enter the first available community program.

*** AVOID PROVISOS.**

10.14 Sentences within Sentences

Do not write lists in which sentences are attached to phrases or clauses.

For example, don't write:

Subd. 2. [EXCLUDED STOCK.] "Excluded stock" for a brother-sister controlled group means:

(1) stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees;

(2) stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. *A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock;*

(3) stock in a member corporation that is held by a non-profitable educational or charitable organization.

If only one item has an inserted sentence, you can move that item to the end of the list. That will solve the problem temporarily, but an amendment may add a new item and make the sentence an interrupter again. You can also move the sentence to a paragraph after the list and refer to the item that the sentence applies to: "In clause (2), a bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock." That will add an internal reference, and internal references should be minimized. You can turn the sentence into an independent clause by deleting the period and inserting a semicolon. The best solution is to turn your list of sentence parts into a list of sentences, so that the inserted sentence can be left next to the item it explains:

Subd. 2. [EXCLUDED STOCK.] (a) "Excluded stock" for a brother-sister controlled group has the meanings given in this subdivision.

(b) It means stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees.

(c) It means stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock.

(d) It means stock in a member corporation that is held by a non-profitable educational or charitable organization.

10.15 Parallel Form

When writing a series or list, be careful to keep similar ideas in similar, or "parallel," form. Sentences with parallel structure are easier to read and remember. Here is an example of what to avoid:

An applicant must not be hired who has any of the following conditions:
blood pressure over 160/60, any communicable disease, or applicant not of good general health.

The key word is "conditions." "Applicant not of good general health" is not the name of a condition in the way that "blood pressure" and "disease" are. The last clause should be rewritten as "poor general health." Here is another example:

A person shall not drain, throw, or deposit upon the lands and waters within a state park any substance that would mar the appearance, create a stench, or destroy the cleanliness or safety of the park.

"Appearance," "cleanliness," and "safety" all go with "of the park," but "stench" doesn't. The sentence needs to be rearranged this way:

...anything that would mar the park's appearance, destroy its cleanliness or safety, or create a stench.

When you write a series or list, make sure that every item in it does the same job in the sentence.

See Child, *Drafting Legal Documents*, p. 41 and 211-215; and Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 113-115.

10.16 Modifiers

A modifier is a word or group of words that tells more about another word's meaning. In these examples, the modifiers are italicized:

- the *escaped* prisoner
- the *executive* officer of the *county*
- an order that *has been signed by the governor*
- an order *signed by the governor*
- a document *stating the accused's name*

Modifiers should appear right next to the words they modify. When they don't, sentences at best look silly and at worst look confusing, as in this rule:

"The public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available to the nonpublic school students *by August 15*."

Are the services to be made available by August 15, or is the district to inform the school by August 15?

The canon of construction known as the "rule of last antecedent" also involves modifiers and their positions. See section 2.6.

10.17 "And" and "Or"

Normally *and* means that the items are to be taken together, and *or* means that one is to be chosen from the list. But these examples adopted from Reed Dickerson's *Legislative Drafting* show how a choice of *and* or *or* can depend on the wording of your items:

The security roll includes:

- (1) each person who is 70 years of age or older;
- (2) each person who is permanently, physically disabled; and
- (3) each person who has been declared mentally incompetent.

The security roll includes each person who:

- (1) is 70 years of age or older;
- (2) is permanently physically disabled; or
- (3) has been declared mentally incompetent.

10.18 Tables

When you need to present many numbers, as in appropriations, approved complements, and revisor's instructions, use tables. See those topics in other parts of this manual for examples. For guidance in setting up tables for easy reading, see Felker, et al., *Guidelines for Document Designers*, p. 95-98.

10.19 Computations

Computations probably cause more headaches than any other feature of bills. In the standard phrasing for computations, the sentences are often long: they include long multiple conditions; they include references that block sentence flow and delay the arrival of the next sentence elements; they have long subordinate clauses that separate modifiers from the things they modify. Here is a relatively simple example:

If only a portion of the rent constituting property taxes is paid by these programs, the resident shall be a claimant for purposes of this chapter, but the refund calculated pursuant to section 290A.04 shall be multiplied by a fraction, the numerator of which is income as defined in subdivision 3 reduced by the total amount of income from the above sources other than vendor payments under the medical assistance program or the general assistance medical care program and the denominator of which is income as defined in subdivision 3 plus vendor payments under the medical assistance program or the general assistance medical care program, to determine the allowable refund pursuant to this chapter.

Drafters need a more readable way to describe computations. Reed Dickerson recommends the "cookbook" approach, that is, describing the steps, one by one, that produce the right figure. Here is part of Dickerson's own example:

The seller shall compute the price of any item that is packed in a new container type or size as follows:

(1) He shall first determine the most similar container type for which he has established a price for that product. From that container type he shall select the nearest size that is 50 percent or less larger than the new size, or if he has no such size, the nearest size that is 50 percent or less smaller. This is the base container.

(2) The seller shall take as his base price his price for the product when packed in the base container. If this price is a price delivered to any point other than the shipping point, he shall convert it to a price f.o.b. shipping point by deducting the transportation charges that are reflected in it.

The advantages of this method are short sentences, information delivered in small amounts, and active voice.

10.20 Consistent Terms

Throughout your draft, use one term consistently to mean one thing. This rule seems easy to follow, but the following definition shows how thoroughly it can be broken:

...Unless the context clearly indicates a different meaning, "warehouse" may be used interchangeably with "elevator," "storage house," or "facility."

The same problem appears here:

Community water *supplies* which serve a population of 10,000 or more individuals...shall analyze for total trihalomethanes in accordance with this part...*Systems* serving 75,000 or more individuals shall begin sampling and analysis not later than January 1, 1982.

Drafters make variations like these unconsciously. Variations often show up near the beginnings of sentences, which do not usually deliver new information and so get less of drafters' attention. To keep from varying your terms, choose one of the terms available, try to use it consistently, and check your draft or have someone else check it for variations, especially near sentence beginnings.

**** KEEP TERMS CONSISTENT.**

10.21 Definitions

Definitions in statutes are problem-ridden, and the problems are of many kinds. They are often problems of legal substance; on that subject see Dickerson, *Fundamentals*, chapter 7. They can also affect readability. When the drafter ignores his or her own definitions, when the definitions do not clarify matters for the reader, or when the definitions are needless, they should be omitted. When definitions are hard to find or distant from the place where the terms are used, they make the reader do extra work. Use only the definitions you really need, and remember the definition when you use the term. If the term is used only in one section of the draft, define it in that section. Definitions of terms that are never used occur with surprising frequency. See section 4.5 of this manual; Mellinkoff, *Legal Writing: Sense and Nonsense*, p. 137; Redish, *Beyond Readability*, p. 16.

10.22 Familiar Words

*** USE FAMILIAR, LESS FORMAL WORDS.**

Use speaking vocabulary, not writing vocabulary, as much as you can without being slangy. The list below mentions some plainer alternatives to more formal words.

Formal	Familiar
accorded	given
afforded	given
approximately	about
as to	about, concerning
attempt	try
cease	stop
commence	begin, start
deem	consider, judge
effect (as a verb)	make, carry out, do
effectuate	carry out, do

For more complete lists see Dickerson, *Fundamentals*, p. 209-213; and Redish, *How to Write Regulations*, p. 250-251.

Use the lists, but remember the principle: prefer the most familiar words. It is not the length of the word that matters, but its formality and the proportion of the readers who will understand it.

10.23 Verbose, Obsolete, or Vague Terms

These words are often unclear and nearly always unnecessary. Again, see Dickerson, *Fundamentals*, for complete lists.

Don't Use	Use
all, any, each, every, some such, said, same	a, an, the a, an, the, it, that, them (or some other word or nothing)
above, aforesaid, aforementioned beforementioned, hereby, herein, hereinafter, hereinbefore, herewith, therefor, therein, thereinafter, thereinbefore, thereof	Name a specific section or part.
thereupon, whereupon to wit	when, at that time namely

10.24 Wordy Expressions

Replace wordy expressions with shorter substitutes. See Dickerson, *Fundamentals*, for complete lists.

Don't Use	Shorter
absolutely null and void and of no effect	void
adequate number of	enough
all of the	the
attains the age of 21 years	becomes 21 years old
at the time, at such time as, at the time as	when
at that (this) point in time	then (now)
by means of	by
does not operate to	does not
due to the fact that	because
during such time as	while
during the course of	during
excessive number of	too many
for the duration of	during

10.25 Overdrafting

Usually this manual tells you to be as specific as possible, but being specific does not mean naming every single thing you are forbidding or requiring.

This National Park Service rule has been called the classic example of trying to cover all the possibilities:

S 50.10 Trees, shrubs, plants, grass and other vegetation. (a) General injury. No person shall prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower, or part thereof, nor shall any person permit any chemical, whether solid, fluid, or gaseous, to seep, drip, drain or be emptied, sprayed, dusted or injected upon, about or into any tree, shrub, plant, grass, flower, or part thereof, except when specifically

authorized by competent authority; nor shall any person build fires, or station, or use any tar kettle, heater, road roller or other engine within an area covered by this part in such a manner that the vapor, fumes, or heat therefrom may injure any tree or other vegetation.

The section demonstrates well how hard it is to name every act the draft is intended to forbid. Not only is the section wordy and difficult to read, it also has substantive problems. Using general terms--like "No one may harm the plants,"--will probably give more legal protection than trying to list specific things. For a discussion of the dangers of overparticularity, see Child, *Drafting Legal Documents*, p. 165-169; also see section 2.6 of this manual and the discussion of the canons of construction.

10.26 Jargon

Jargon has neutral and negative meanings. It refers to the useful technical vocabulary of a trade or profession, but it is also used for unclear expressions that have a technical ring. Real technical language can save time and space; if your audience understands it and expects it, then use it. Jargon-like terms created to dignify your subject are simply hard to read. Learn to recognize them and weed them out.

Use the words that ordinary people know. If the newspapers have been using the term "living wills," it is not helpful to readers, indexers, or librarians if the statute refers to the same documents as "adult health care decision declarations." Using ordinary terms simplifies not only reading but also indexing and electronic searching.

If you must create a general term, don't make it more general than necessary. Government writing is said to be full of "buzzwords," phrases that sound imposing but mean little. It's not hard to see why we write them since drafters often have to create names that cover broad classes. For example, the phrase "health care facility" in a bill might cover hospitals, clinics, and nursing homes.

To avoid creating buzzwords when you write broad terms, don't depend on abstract words like *facility*, *entity*, *organization*, and *structure*. Phrases like "regional channel entity," "entity operational structure," or "parallel policy options" are meaningless unless the reader looks back at the definitions. Be as specific as possible. Don't call something a "programming entity" if you can call it a programming *company*. If certain boards grant licenses, don't call them "credentialing organizations;" call them licensing boards.

What if the jargon already exists in the law? Drafters are conservative by nature; they often repeat any language that works legally in order to avoid lawsuits. For example, the phrase "Flesch scale analysis readability score," which would horrify Dr. Flesch by its unreadability, was copied into Minnesota law from another state's draft. It is certainly not the clearest or briefest way to refer to the Flesch test. Let your guide be communication with your readers, and don't preserve bad wording unless you have a compelling legal reason. Consistency is valuable, but so is clarity.

10.27 Noun Strings

A string of four or five nouns is hard to read because it masks the relationships between words. You may need more words in order to make their relationships clear, as these examples show:

Don't Use
electronic financial terminal
| authorization application

Use
application for the
| right to use an electronic financial
terminal.

Flesch scale analysis
| readability score

early childhood program
| alternative case loads

Flesch test score, or readability
| score on the Flesch scale.

case loads for early
| childhood programs

See Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 125-127; Felker, et al., *Guidelines for Document Designers*, p. 63-65.

10.28 Initials

Initials are hard to read because they force a lay reader to go back to the definition section and to make repeated mental substitutions. A set of initials by itself gives no clue of what its meaning may be and, as more sets are used in laws, the same set or very similar sets are likely to be used for different phrases. If you don't want to write the phrase "large electric power generating plant" over and over, don't call it an LEPPG. Instead, define a short substitute like "large power plant" or just "plant."

10.29 Nominal Style

Many verbs have related nouns: *decide* is related to *decision*; *complain*, to *complaint*; *speech*, to *speech*. An idea can often be expressed with either a verb or a related noun. For example, you can *complain* or *make a complaint*.

Writing that uses verbs (verbal style) is usually brief and clear. Writing that uses nouns (nominal style) can be too formal and wordy.

Nominal	Verbal
to implement pupil behavior management techniques...	to manage pupils' behavior
established a contractual relationship with...	contracted with
has knowledge or suspicion that...	knows or suspects that...
make application for	apply for
make payment for	pay for
make provision for	provide for
upon X's request to Y	if X asks Y
upon a determination by X that	if X determines that

There are many other possibilities. The suffixes *-ance*, *-ancy*, *-ant*, *-ence*, *-ency*, *-ent*, *-ion*, and *-ment* often mark nouns derived from verbs, so check for nominal style whenever you see these suffixes.

Not all nominals, however, show how they are related to specific verbs. For example, "to *have an adverse impact* on the environment" could mean "to *harm* the environment" or "to *disturb* the environment" or any of a number of verbs. Nominals of this kind are harder to spot and correct, so learn to concentrate meaning in your verbs in the very first draft.

See Charrow and Erhardt, *Clear and Effective Legal Writing*, p. 125-127; Felker, *Guidelines for Document Designers*, p. 35-38.

10.30 Gender-Neutral Language

There are many ways to avoid gender-specific nouns like *workman* or *man-hours*. The revisor's office has some standard substitutions developed for use during the gender project of 1986, which removed gender-specific language from the statutes. Other useful lists appear in *The Nonsexist Word Finder* by Rosalie Maggio.

Avoiding pronouns like *he* or *she* is much harder. Normal English word order begs for a pronoun in the main clause of a sentence like this: "If the commissioner finds that the sampling frequency may be safely reduced, he may order it reduced to the rate specified in subdivision 2." Not every method for avoiding pronouns works in every sentence. Consider the methods in the following order of preference.

Repeat the noun: "If the commissioner finds...the commissioner may order..." This is legally clear but can sound awkward when the two nouns are close together.

Use a relative clause: An applicant who has been licensed in another state must submit verification of licensure and the required fee.

Use a modifier without an expressed subject: Upon finding that the sampling frequency can be safely reduced, the commissioner may order it reduced as specified in clause (2).

Remove the nominal: A person who imports or possesses untaxed intoxicating liquor is guilty of a misdemeanor.

Use he or she or his or her: The revisor has been asked by the legislature to avoid the use of these doubled pronouns which can be cumbersome.

Use the plural: Sections 150A.01 to 150A.12 do not apply to duly licensed physicians or surgeons unless they practice dentistry as a specialty.

Use the passive voice: After having been certified, the candidate may begin supervised clinical practice. But see section 10.7.

*** AVOID GENDER-SPECIFIC LANGUAGE WITHOUT SACRIFICING CLARITY.**

References

11.1 Minnesota Statutes

- (a) In Titles
- (b) In Text
- (c) To Proposed New Law
- (d) To Include Future Amendments
- (e) To Exclude Future Amendments
- (f) In Uncompiled Text

11.2 Laws of Minnesota

11.3 Minnesota Rules

11.4 State Constitution

11.5 Federal Laws and Regulations

- (a) The Problem of Future Amendments
- (b) Popular Names and Scattered Law
- (c) Regulations

11.6 Safety Codes

11.7 Court Rules

11.8 Other Materials

11.9 Examples

References in bills must be written out in full, not abbreviated. To make your drafts comprehensible to general readers, not just attorneys, follow the forms given here, not those in *A Uniform System of Citation*.

11.1 Minnesota Statutes

(a) In Titles

When a bill amends existing Minnesota Statutes, the introduction for each amendatory section of the bill includes the title and date of the most recent edition of the statutes. For example: "Minnesota Statutes 1984, section 14.41, is amended to read:" Joint Rule 2.01 requires this form. If the amended text is included in the Supplement, the form is "Minnesota Statutes 1985 Supplement, section 14.41, is amended to read:"

(b) In Text

A reference in the text of a bill to an existing section of Minnesota Statutes should use the statutory section number without the phrase "Minnesota Statutes" when:

- (1) the reference is in a section of the bill that amends an existing statutory section or proposes new law to be included in statutes; and
- (2) the drafter does not intend to tie the reference permanently to any specific edition of statutes.

An example of the proper form for a reference to an existing statutory section under these usual circumstances is:

"... as provided by section 14.31."

(c) To Proposed New Law

The proper form for a reference to a section of a bill which is proposing a new section to be added to Minnesota Statutes is different. The reference should be to the bill's section number: "...as provided by section 22." Alternatively, a reference may identify a section by its proposed coding.

(d) To Include Future Amendments

A reference to a statutory section number with or without the title and date of the edition includes future amendments to the statutory section. Minnesota Statutes, section 645.31, subdivision 1, provides that adoption of another law by reference also adopts any subsequent amendments to the law unless the contrary is provided. The effect of section 645.31 may be overcome by the context of the reference, if the meaning is clear, or by other explicit language.

(e) To Exclude Future Amendments

If the drafter intends to tie a reference to a section of Minnesota Statutes to a specific edition of statutes, the reference must include "Minnesota Statutes" and the date of the edition.

The form under these circumstances is:

"... as provided by Minnesota Statutes 1941, section 14.41."

It should also be implicit or explicit in the context that the law is not intended to be changed by later amendment to the section that is referred to.

(f) In Text That Is Not Coded in Minnesota Statutes

If a section containing the reference will not itself be included in the statutes, a reference to an existing section of statutes should include the phrase "Minnesota Statutes."

The proper form under these circumstances is:

"... as provided by Minnesota Statutes, section 14.31."

The language will appear only in the session laws, not in Minnesota Statutes itself.

The phrase "Minnesota Statutes" should be used as many times as necessary so that the reader will easily understand that the references are to that publication. It may not be necessary to repeat the phrase with every citation.

11.2 Laws of Minnesota

Uncoded Minnesota laws are cited in this form:

Laws 1984, chapter 123, section 4, subdivision 5.

Laws 1979, Extra Session chapter 9, section 10.

Laws 1981, Third Special Session chapter 6, section 7.

11.3 Minnesota Rules

Ordinarily, a reference in a bill to Minnesota Rules should be in this form: "as provided by Minnesota Rules, part 1001.0100, subpart 1, item A, subitem (2)." If there is a special reason to tie the reference to the text of a particular edition of Minnesota Rules, give the date of the edition: "Minnesota Rules 1983, part 1001.0100," and so on. You can also refer to larger units of Minnesota Rules: "Minnesota Rules, chapter 1400."

11.4 State Constitution

Cite the Constitution of Minnesota as "the Minnesota Constitution, article VI, section 1."

11.5 Federal Laws and Regulations

(a) Forms of Reference

When adoption of federal law or regulation by reference is necessary, it should follow a consistent form. If federal law has been compiled in the *United States Code*, the reference should be to it and not to *Statutes at Large*. If the text is not compiled in *United States Code*, the reference may be to *Statutes at Large*. If the text is not yet published in *Statutes at Large*, its Public Law number may be used.

Forms of reference to exclude future amendments are "... as provided by United States Code, title 14, section 1401, as amended through December 31, 1984" or "... as provided by Statutes at Large, volume 38, page 730, section 123" or "... as provided by Public Law Number 89-110." Abbreviations for the titles ("U.S.C.," "Stat.," "Pub. L.," or "P.L.") should not be used. The date for the *United States Code* is necessary to tie the reference to the law in existence at the time the law is enacted. The other references are, by nature, tied to a specific enactment.

(b) Popular Names and Scattered Law

Drafters should generally avoid referring to federal law by its popular name alone (for example: "The Furgeson-Jones Act) or its short title alone (for example: "The Inland Waterways Improvement Act of 1947"). These references make it difficult to locate the compilation of the law; they also leave it unclear whether the reference is intended to be to the laws as originally enacted or to the law with amendments enacted prior to enactment of the bill referring to the law.

In some cases, though, the law is codified in many scattered locations so that it is difficult to cite. Cite these laws by following the approach recommended in section 12.2.2 of *A Uniform System of Citation*, 15th edition, but spell out the publication names as shown above. Your goal should be to cite the law in such a way that a reader can find it easily and that a court will know exactly what amendments are included in the reference.

An exception to the usual rule that reference should not be made to a short title is the *Internal Revenue Code*. The correct form is "... as provided by the Internal Revenue Code of 1986, as amended through December 31, 19..."

All references should be to the official compilation *United States Code*, not to the unofficial *United States Code Annotated* or *Federal Code Annotated*.

General forms for references to federal materials appear on page

(c) Regulations

When referring to the *Code of Federal Regulations*, an example of the proper form of reference is "... as provided by Code of Federal Regulations, title 22, section 41.30 (1981)." The abbreviation "C.F.R." or "CFR" should not be used. Only when a rule is not yet published in the *Code of Federal Regulations* should reference be made to the *Federal Register*. An example of the correct form is "... as pro-

vided by Federal Register, volume 46, page 23405 (1981)." References to the *Federal Register* are to its volume and page number, not to any section or paragraph numbers within a document published in it.

11.6 Safety Codes

Numerous references occur in the statutes to various building and safety codes. They can be adopted by reference, but problems exist like those when foreign law is adopted by reference. The drafter should use language which adopts a code as it exists on a specific date prior to enactment. The proper form of reference is "... as provided by standard 501B of the National Fire Safety Code as in effect on December 31, 1980." This form has three elements. The exact wording of the reference may vary slightly as long as all three elements are included and in the same order as listed here. First, give the number of the standard. Second, identify the source of the standard by its title or publisher. Third, give a date for the reference that is earlier than the effective date of the bill where the reference occurs. Ideally, the date should be the publication date shown on the publication where the standard is published.

If a building, safety, or other code is included in foreign law, it can be treated like other foreign law.

11.7 Court Rules

Refer to court rules by the names given in their title or citation sections, if any. The correct forms are:

Minnesota Juvenile Court Rules, rule 4-4.

Minnesota Rules of Appellate Procedure, rule 103.01, subdivision 2.

11.8 Other Materials

The laws of other states, the *United States Code Congressional and Administrative News*, and the *Congressional Record* may be useful for Laws of Minnesota, but they should not be incorporated by reference. Instead, the language from those sources should be duplicated.

11.9 Examples

References to Minnesota Statutes, p. 257

References to Minnesota Rules, p. 258

References to Federal Law, p. 259

References to Safety Standards,

 First references, p. 260

 Second and later references, p. 261

 General Format, p. 262

EXAMPLE - REFERENCES TO MINNESOTA STATUTES

- **To an entire chapter:** chapter 645
- **To a chapter when the reference is within the same chapter:** this chapter
- **To a section:** section 645.01
- **To a section, when the reference is within the same section:** this section
- **To a subdivision, when the reference is within the same subdivision:** this subdivision
- **To another subdivision within the same section:** subdivision 4
- **To a range of subdivisions:** subdivisions 4 to 7
- **To several subdivisions:** subdivisions 4, 5, and 7
- **To paragraphs and clauses:** this paragraph
paragraph (a)
this clause
clause (2)
- **To a range of sections:** sections 645.01 to 645.31
-
- **To several sections and subdivisions:** sections 645.01, subdivisions 2, 3, and 5; 645.04; and 645.08
- **To a choice of sections or subdivisions:** section 5.01 or 5.02
subdivision 2 or 3

EXAMPLE - REFERENCES TO MINNESOTA RULES

- **To an entire chapter:** chapter 1325
- **To a part:** part 1001.0300
- **To smaller divisions of a part:** part 1001.0300, subpart 4, item C, subitem (1)
- **To a chapter when the reference is within the same chapter:** this chapter
- **To a part, when the reference is within the same part:** this part
- **To a subpart, when the reference is within the same subpart:** this subpart
- **To another subpart within the same part as the reference:** subpart 4
- **To a range of subparts:** subparts 4 to 7
- **To several subparts:** subparts 4, 5, and 7
- **To another item within the same part as the reference:** item A
- **To an item in another subpart within the same part as the reference:** subpart 2, item A
- **To a range of parts:** parts 1001.0300 to 1001.1500
- **To several disparate parts:** parts 1001.0300, 1001.0400, and 1001.0900
- **To a choice of parts or subparts:** part 1001.0300 or 1001.0400
subpart 2 or 3
- **To emergency rules:** part 1001.0405 [Emergency], subpart 4, item A

EXAMPLE - REFERENCES TO FEDERAL LAW

Compiled form

...as provided by United States Code, title 14, section 1401, as amended through December 31, 19XX

Uncompiled form (used for specific section appearing on a single page)

...as provided by Statutes at Large, volume 38, page 730, section XXX

Uncompiled form (used for inclusive reference to entire bill or portion of it)

...as provided by Statutes at Large, volume 38, pages 220 to 236

Public law

...as provided by Public Law Number 89-110

Internal revenue code

...as provided by section 482 of the Internal Revenue Code of 1986, as amended through December 31, 19XX

EXAMPLE - FIRST REFERENCES TO SAFETY STANDARDS

1 Safety Recommendations for Sensitized Ammonium Nitrate
2 Blasting Agents," issued by the U.S. Department of Interior,
3 Bureau of Mines, as Information Circular 8179 (Washington, D.C.:
4 Government Printing Office, 1963).

5 The "American National Safety Code for Elevators,
6 Dumbwaiters, Escalators, and Moving Walks," issued by the
7 American National Standards Institute as ANSI A17.1-1978, with
8 supplement ANSI A17.1a.-1979 (New York, 1978) is incorporated by
9 reference.

10 Copper tubing in these installations must conform to
11 standard B 88-81, "Specification for Seamless Copper Water
12 Tube," in the "Annual Book of ASTM Standards," issued by the
13 American Society for Testing and Materials (Philadelphia, 1981).

EXAMPLE - SECOND AND LATER REFERENCES

If your draft names a publication several times, it will be awkward to give full reference information each time. If you want to use a shortened reference form, either define the short form in the definitions section or provide a cross-reference to the section or subdivision that contains the full reference.

1 Subd. 4. [SAFETY RECOMMENDATIONS.] "Safety recommendations"
2 means "Safety Recommendations for Sensitized Ammonium Nitrate
3 Blasting Agents," issued by the U.S. Department of Interior,
4 Bureau of Mines, as Information Circular 8179 (Washington, D.C.,
5 Government Printing Office, 1963).

6 Subd. 4. [SAFETY PRACTICES.] Safety recommendations as
7 described in section 19 shall be followed on all pyramid
8 projects.

EXAMPLE - GENERAL FORMAT

1 ...on pages 10 to 14 of "Empire Building," by James J. Hill,
2 issued by the United States Department of Commerce as Pamphlet
3 No. 666 (Washington, D.C.: United States Government Printing
4 Office, 1983).

5

6 ...in section 42.42 of "Life, the Universe, and Everything,"
7 issued by the State Department of Ultimate Questions (Saint
8 Paul, 1982).

A reference probably will not have all of the parts shown in the examples. It is important, though, to give as much information as is available from the publication, especially if the work is being incorporated by reference. Try to examine the publication you are citing.

Punctuation, Mechanics, Style

This chapter sets out preferences in matters such as choosing between two possible correct spellings of a word, deciding whether to hyphenate, and knowing what to capitalize. In some cases, this chapter refers the reader to another part of the manual or to more extensive reference works:

The American Heritage Dictionary of the English Language, second college edition edited by William Morris, (Boston: Houghton Mifflin Company, 1991) for usage questions.

The Chicago Manual of Style, 13th ed., rev. (Chicago: The University of Chicago Press, 1982) for capitalization, punctuation, and hyphenation questions.

Webster's Third New International Dictionary. (Springfield, Massachusetts: Merriam-Webster Inc., 1986) for spelling and hyphenation questions.

This chapter contains the following entries in alphabetical order:

abbreviations	initials	quotation marks
addresses	italics	semicolons
apostrophes	lists	slashes
brackets	measurements	spelling
capitalization	money	strikeouts
clauses	numbers	subdivisions
coding	official titles	symbols
colons	paragraphs	tables
commas	parentheses	temperature
compound words	percentages	time of day
dashes	periods	underscoring
dates	punctuation	word division
hyphens		

Abbreviations

Avoid abbreviations. When in doubt about whether to abbreviate a word, spell it out or check with the revisor's office.

In particular, avoid using initials as a substitute for an official name. For example, write "Environmental Protection Agency" or "the agency." Do not write "the EPA." Full names are especially important for publications being incorporated by reference. For examples, see chapter 11, References.

The following are exceptions to the general rules:

- (1) *Proper names.* An abbreviation may be used if it is part of a proper name, as in "Cargill, Inc."
- (2) *a.m. and p.m.* The abbreviations a.m. and p.m. may be used to express time, as in "1:00 a.m." or "2:34 p.m." See Numbers.
- (3) *Special materials.* Abbreviations may be used in tables, illustrations, and similar material.
- (4) *Compass points in street names.* The names of the compass points may be abbreviated after a street name as in "821 Fifth Avenue SE." The names of the compass points are written without periods.
- (5) *Land descriptions.* In legal land descriptions, names of the compass points should remain exactly as they are in the legal instrument the drafter is working from. Whether the points of the compass are abbreviated with periods, abbreviated without periods, or written out, they should not be changed.

Example:

within the S.W. 1/4 of section 19, township 105N, range 32W

Do not use the abbreviations *e.g.*, *i.e.*, *et al.*, *et seq.*, and *etc.* Do not abbreviate any part of a citation of Minnesota Statutes or Minnesota Rules.

Addresses

Write addresses in paragraph form. Do not put quotation marks around the address. Capitalize as you would on the front of an envelope. (This is an exception to the rule that the titles of offices are lowercased.) Abbreviate only the points of the compass and the state name.

Example:

Mail applications to: Director, State Building Construction Division,
Department of Administration, Administration Building, 50 Sherburne Avenue,
Saint Paul, MN 55155.

Apostrophes

Use apostrophes to mark singular and plural possessive forms.

Example:

the court's intention (singular)
children's television
farmers' cooperative associations (plural)

However, some possessives are "frozen"; that is, the apostrophe is omitted. These include:

- (1) names of countries and organized bodies ending in *s*, as in "United States laws," "House of Representatives session," "United Nations meeting"; and

- (2) words more descriptive than possessive, that is, words not indicating ownership, as in "teachers college," "the Editorial Experts, Inc., Proofreaders Manual."

If an existing name is usually written without an apostrophe, don't add one.

Use apostrophes to pluralize abbreviations, single letters, or figures used as nouns, such as "Btu's," "x's," or "4's."

Brackets

Put brackets around headnotes and proposed coding.

Example:

Section 1. [222.02] [RETURNS AND RECORDS.]

Brackets show that the enclosed material is not part of the law.

Capitalization

The rules set out here apply to bills. For resolutions, see the example pages in chapter 6. To answer a question not addressed here, refer to *The Chicago Manual of Style*.

Capitalized words.

- (1) **Headnotes for sections and subdivisions are shown in full capitals.**

Example:

Section 1. [222.02] [RETURNS AND RECORDS.]

Subdivision 1. [SALES AND USE TAX RETURN.]

- (2) **In references, capitalize only the words "Minnesota Rules," "Minnesota Statutes," "Laws," and names of other publications.**

Examples:

Minnesota Statutes, section _____, subdivision _____, clause _____.

Minnesota Rules, part _____, subpart _____, item _____, subitem _____.

Laws 1978, chapter 785, section 4, subdivision 8.

In the layout of each section, capitalize "Subdivision" and "Subd."

Example:

Subdivision 1. XXXXXXXXXXXXXXXXXXXXXXXX.

Subd. 2. XXXXXXXXXXXXXXXXXXXXXXXX.

- (3) **Capitalize the important words in titles of books, government documents, periodicals, or serials and in the titles of chapters or sections of these publications. See References for more information.**

(4) **Capitalize proper names.** These include the names of political subdivisions, as well as the names of people, places, and institutions. They do not include titles of individual civic offices except when the titles precede names. They do not include agency names.

Examples:

Hennepin county
Floyd B. Olson Memorial Highway
Governor Rudy Perpich
University of Minnesota
Houghton Mifflin Company

Uncapitalized words.

(1) **Do not capitalize words referring to a civic office or agency.**

Examples:

the commissioner of agriculture, the department of agriculture, the senate

(2) **Do not capitalize words referring to a political subdivision, law, person, institution, or place if they are not part of a proper name. Do not capitalize them when they refer back to a capitalized proper noun. "University of Minnesota" in line 1 will be "the university" in lines 2 and 3. See Addresses for one exception to this rule.**

Examples:

the state
the department
the department of revenue
the county
Ramsey county
the highway
the governor
the university
the company
the act
the rules
the state board of chiropractors

(3) **If you are not sure whether something is a proper name, do not capitalize it. Names of forms (like "certificate of live birth") or programs (like "home improvement loan program") should not be capitalized. Neither should funds, grants, types of aid, or other state administrative creations. If an act is given a proper name by law, capitalize it, for example, the "Uniform Fiduciaries Act."**

(4) **Lowercase "state" in the phrase "state of Minnesota" and elsewhere. Do not capitalize the words "federal" or "legislature."**

(5) **Do not capitalize initial words in numbered clauses unless each is a complete sentence.**

Example: a list of phrases

A certification by the director under Minnesota Statutes, section 179.69, subdivision 3 or 5, must contain:

(1) the petition requesting arbitration;

(2) a concise written statement by the director indicating that an impasse has been reached and that further mediation efforts would serve no purpose;

(3) a determination by the director of matters not agreed upon based upon the director's effort to mediate the dispute;

(4) the final positions submitted by the parties; and

(5) those agreed-upon items to be excluded from arbitration.

Example: a list of sentences

Instructions must be printed on the ballot envelope and must include the directions printed below:

(a) After you have voted, check your ballot to be sure your vote is recorded for the candidate or question of your choice.

(b) Put your ballot in this envelope, leaving the stub exposed.

(c) Return this envelope with the ballot enclosed to the election judge.

(d) If you make a mistake in voting or if you spoil your ballot, return it to the election judge and get another ballot.

Clauses

A section, subdivision, or paragraph may be divided into grammatical or legal clauses and marked (1), (2), and so on or (a), (b), and so on. Every clause but the last should end in a semicolon.

Coding

Coded sections are given decimal section numbers.

Example: Section 100.01. Sections are ordered decimally, not numerically, so that new sections can be inserted between existing sections. For example, a new section numbered 100.125 would follow section 100.12 and precede section 100.13.

Colons

(1) Place a colon after the enacting clause of a bill.

Example:

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

(2) Place a colon after the introductory citation in a section of a bill.

Example:

Minnesota Statutes 1992, section 100.01, subdivision 1, is amended to read:

(3) Place a colon after an expression that introduces a series of items.

Example:

The petition must contain the following information: the name and address of petitioner, the names and addresses of adverse parties, a concise statement of the grievance, and references to all the relevant documents.

For further examples, see Series.

(4) Place a colon between the place of publication and the publisher's name in a citation. See the chapter on References.

Commas

If you wonder whether or not to use a comma, consult *The Chicago Manual of Style*. Here are the most important rules regarding the use of the comma in drafting:

(1) Use a comma to set off a nonrestrictive dependent clause that follows or falls within a main clause. A nonrestrictive clause is one that can be omitted without altering the meaning of the main clause.

Example:

The application, which may be obtained from the department of education, must be submitted by June 30, 1992.

(2) Use a comma to separate words, phrases, or clauses in a simple series. When a conjunction joins the last two elements in a series, use a comma before the conjunction.

Example:

The members of the commission are the commissioner of education, the commissioner of administration, and the commissioner of transportation.

(3) Use a comma to set off the year following the month and day.

Example:

Before June 30, 1992, ...

0 Omit the commas around the year when no day is given.

Example:

The exemption expires in March 1992 unless the agency reappplies.

(4) Use commas to separate the parts of references. For examples, see References.

Compound Words

See Hyphens.

Dashes

Avoid the use of dashes in text material. It is nearly impossible to show that a dash has been stricken in the amendment process.

Dates

Express complete dates in month-day-year sequence. Spell out the month of the year. Do not abbreviate the month, and do not use the numerical symbol for it. If only the month and year are used, do not insert a comma after the month or after the year. See Commas.

Example:

Before September 2, 1992, the commissioner

In September 1992 and every month after that

Fractions

See Numbers.

Hyphens

Do not hyphenate to divide a word at the end of a line. Only hyphenate when a word's proper spelling includes a hyphen.

In amendments, keep hyphenation consistent with existing text.

In new language, to answer questions about hyphenation, first consult *Webster's Third New International Dictionary*. If that gives no answer, consult *The Chicago Manual of Style*, table 6-1. Most hyphenation questions concern compounds like "part-time" and "60-day." These compounds are hyphenated when they precede nouns, as in "part-time job" or "60-day license."

With four classes of exceptions, words beginning with the following prefixes are spelled without hyphens: ante, anti, co, extra, infra, intra, non, over, post, pre, pro, pseudo, re, semi, sub, super, supra, ultra, un, and under.

Here are the exceptions to the general rule:

(1) Hyphenate if the second element of the word is capitalized or a figure.

Examples:

anti-Semitic, pre-1914

(2) Hyphenate to distinguish certain homographs.

Examples:

re-cover, un-ionized

(3) Hyphenate if the second element has more than one word.

Examples:

pre-Civil war, non-English-speaking people

(4) Hyphenate some compounds in which the last letter of the prefix is the same as the first letter of the word following.

Examples:

semi-independent, non-native

Use hyphens in compound numbers (like "thirty-three"), in fractions (like "one-half"), in mixed numbers (like "4-3/4"). See Numbers to learn when these should be spelled out. Use hyphens in dates representing periods extending over more than one year (like "1991-1992").

Do not use a hyphen in any other case as a substitute for the word *to*.

Initials

See Abbreviations.

Italics

Italics cannot be used in bills.

Lists

See sections 10.14, 10.15, and 10.17.

Measurements

Treat quantities such as distance, length, area, and volume according to the rules for spelling out numbers:

Examples:

45 miles
ten degrees Celsius
three cubic feet
240 volts

Money

Use figures to express dollar amounts.

Examples:

\$5, \$300, \$750

Express a dollar amount that begins a sentence as a figure.

Example:

\$100 may be paid...

Express an even dollar money amount with a dollar sign and the dollar amount, omitting the decimal and zeros.

Examples:

\$5, \$700

In running text, express money amounts with dollar signs, omitting the decimal and zeros for figures which represent even dollar amounts.

Examples:

\$4, \$9.50, \$23.35, and \$50

However, in tables that include at least one figure with cents, show the decimal point and zeros for even dollar amounts.

Examples:

\$12.50
38.00
50.75

For amounts under a dollar in text, spell out the word cent or cents. Avoid the cents symbol. In tables, use dollar signs, decimal points, and zeros. Include the dollar sign only once, with the first figure in the column.

Examples:

50 cents
\$7.50
.50
2.25

Numbers

Numbers used as designators. Use figures for numbers used to refer to specific entities: grades K to 8, independent school district No. 24.

Amounts.

Write numbers ten and under in words; write numbers 11 and over in figures.

Examples:

two sheets and one towel
at least 24 hours

Write a number that begins a sentence in words (but see also Money, above, and Fractions, below).

Example:

Thirty days after the commission has received the report, the commissioner shall....

Order.

Write out the ordinal numbers one to ten. Write ordinal numbers greater than ten in numbers and letters.

Examples:

first, second, fifth
11th, 15th, 81st

Do not use an abbreviation or period following an ordinal figure.

Fractions and decimals.

When the denominator is ten or less, write the fraction in words.

When it is over ten, express the fraction with figures.

Examples:

three-tenths, one-half
5/16, 3/25, .04, .007

Express mixed numbers in figures, except at the beginning of a sentence.

Examples:

1-1/2, 9-15/16
"One and one-half" at the beginning of a sentence.

Fractions expressed in figures should not be followed by endings like sts as in "21sts," rds as in "23rds," nds as in "32nds," ths as in "64ths," or by an "of" phrase as in "1/2 of one."

Inclusive numbers.

Use the word "to" to link two figures that represent a continuous sequence. The only exceptions are references to school years, tax years, and the like. In these references, do not abbreviate the second figure.

Example:

the 1990-1991 school year

Do not use:

the 1990-91 school year

Percentages.

In text, spell out the word "percent" and write the number according to the other rules here.

Example:

12 percent, three percent, 2-1/2 percent, .04 percent

Official Titles

When referring to a public officer, agency, or organization, **use the official title** of the officer, agency, or organization. The official titles for state officers or agencies are usually found in the constitutional or statutory sections that create them. For rules on capitalization in official titles see Capitalization.

Paragraphs

A section or subdivision may be divided into paragraphs (a), (b), and so on.

Parentheses

Use parentheses to set off place of publication, publisher, and date in references. See the chapter on References.

Generally, avoid parentheses in text.

Commas or rephrasing will usually do as well to separate a parenthetical expression.

Percentages

See Numbers.

Periods

Use a period after a section or subdivision headnote.

Example:

Section 1. [999.09] [RECORDS AND SAMPLES.]

Use periods at the ends of complete sentences. Do not use periods after phrases or clauses in a tabulated list; use semicolons. See Series and Capitalization for examples of this rule.

Punctuation

See individual marks. To answer questions about punctuation that are not addressed in this manual, see *The Chicago Manual of Style*.

Quotation Marks

(1) Use quotation marks for definitions.

Example:

"Commissioner" means

(2) Short titles or citations are discouraged, but if you must use them, put them in quotation marks when you first assign them to a group of sections. Do not use quotation marks in later references to the short title.

Example:

Sections 1 to 20 may be cited as the "Tax Reform Act."

(3) Use quotation marks to enclose words and phrases following terms such as "marked," "designated," "named," or "entitled."

(4) Use quotation marks around titles of published and unpublished works.

(5) Do not use quotation marks in text to indicate words used in a special sense. Try not to use words this way. If you must use a word in a special sense, define it so that it will not need quotation marks.

Semicolons

(1) Use a semicolon after every phrase in a bill's title.

Example:

An act relating to children; providing for review of foster care of certain developmentally disabled children; permitting Ramsey and Hennepin county

juvenile court referees to hear certain contested cases; amending Minnesota Statutes 1992, section 257.071, subdivision 3, and by adding a subdivision.

(2) Use a semicolon to separate closely related independent clauses not connected by a conjunction. Be careful not to overuse this construction. Separate sentences are better than needlessly connected ones.

Example:

The commissioner may call a meeting of the board whenever necessary; he may require all members to be present.

(3) Use a semicolon between independent clauses joined by a transitional connective such as also, furthermore, moreover, however, nevertheless, namely, that is, for example, hence, therefore, thus, then, later, finally. Again, don't overuse this construction.

Example:

Applications must be submitted before January 1, 1992; however, the board may grant an extension for good cause.

(4) Use a semicolon to separate equal elements that contain commas.

Example:

For the purpose of this part, "surety" means any note; stock; bond; assumption of any obligation or liability as a guarantor, endorser, or surety; or collateral trust certificate.

(5) Use semicolons to separate references when one or more of the references contain internal commas.

Example:

Minnesota Statutes, sections 325.01, subdivision 2; 468.01; and 524.03, subdivision 5.

(6) Use semicolons after clauses or phrases in a list, except after the last item in the list. If the listed items are complete sentences, use periods. See Capitalization and the chapter on clear drafting for examples of this rule.

Slashes

Use the slash between the numerator and denominator of fractions.

Examples:

5/6, a/b

Do not use slashed alternatives such as and/or, she/he, or federal/state.

Spelling

In amendments, keep spelling consistent with existing text.

In new text, use *Webster's Third New International Dictionary* to decide spelling questions. When you have found the entry that is the right part of speech and has the right meaning, use the main spelling (first spelling) for that entry. Do not use a variant (second or third spelling). For example, if you find *labeling* and the note says "or *labelling*," use the form with the single *l*.

Strikeouts

In amendments, **strike out material to be removed from the text of existing laws.**

Example:

~~one year.~~

See Underscoring.

Subdivisions

A subdivision is the largest division of a section. The first subdivision is always spelled out as "Subdivision 1." but the second and later subdivisions are abbreviated "Subd. 2." and so on. In references, always write the word "subdivision" in full.

Symbols

Do not use symbols such as § or % in bills, resolutions, or amendments.

Tables

In tables, **capitalize every important word in a column heading.** See materials on appropriations for examples.

Temperature

Treat temperature numbers according to the ordinary rules for numbers. Write out "degree" and "Fahrenheit" or "Celsius."

Time of Day

In designations of time with a.m. or p.m., always use figures.

Examples:

"eight o'clock," but "2:00 p.m."

Underscoring

Underline new material to be inserted or substituted for old material in the text of existing laws.

Example:

two years

See Strikeouts.

Word Division

See Hyphens.

Bibliography

The works named here are organized into the following categories:

- (1) drafting of laws and other legal documents
- (2) readability and plain English
- (3) statutory interpretation
- (4) legislation
- (5) legal language and legal writing
 - (a) treatises
 - (b) usage/mechanics handbooks
 - (c) dictionaries and thesauri
 - (d) bibliographies
- (6) gender-neutral writing

In addition to these works, there are bill drafting manuals published by most of the states and updated irregularly. The revisor's office keeps a collection of state drafting manuals.

A specialized bibliography of work on criminal law appears in section 5.3 of this manual.

1. DRAFTING OF LAWS AND OTHER LEGAL DOCUMENTS

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