

**MINNESOTA
REVISOR'S MANUAL**

with
Styles and Forms
2002 Edition

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FOREWORD

This 2002 edition of the Revisor's Manual replaces the manual printed in 1997. It incorporates changes required by the development of legislative practice and many changes suggested by users and by experience.

Please remember that the advice and the requirements set forth can be fully understood only in the context of the entire legislative process. Nearly all of the requirements have exceptions and those exceptions, when understood, throw light on the requirements.

This manual has benefited from many suggestions by its users and, in particular by staff from the following legislative offices: the Chief Clerk's Office, House Research, House Fiscal Services, the Secretary of the Senate, Senate Counsel and Research, the Legislative Reference Library, and the Legislative Commission on Pensions and Retirement. All of us in the revisor's office wish to express our thanks to those who have given us their time and thoughts.

I also wish to thank all of the staff in the revisor's office who contributed to this manual. The project was truly a group effort, beginning with the establishment of a writing standards task force, and continuing with corresponding revisions.

We hope that the 2002 Revisor's Manual will be helpful as you embark on the important task of drafting legislation. We encourage users of this manual to continue to give us their comments, criticisms, and suggestions for improvements.

Michele L. Timmons
Revisor of Statutes

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Chapter 1

Introduction

1.1 Authority
1.2 Functions of Manual

1.3 Organization of Manual

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. Chapter 13 provides a bibliography. The bill drafting manuals produced by the legislatures of other states also 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 drafting issue. Bills, resolutions, and amendments are treated individually and in detail. Practical helps, style suggestions, mechanics, and certain complex subject areas also have their own chapters.

Chapter 2

Interpretation of Statutes

What Drafters Need to Know

- 2.1 The Aim of This Chapter
- 2.2 The Basics: Minnesota Statutes, Chapter 645
 - (a) Basic Concepts
 - (b) Definitions
 - (c) Rules of Construction
- 2.3 What Makes a Law Unclear?
- 2.4 Beyond the Basics: Principles of Interpretation
Outside Chapter 645
- 2.5 Judges' Approaches to the Text
 - (a) Textualist Approach
 - (b) Language-Related Canons of Construction
 - (c) The Value of Canons of Construction
 - (d) Archeological or Intentionalist Approach
 - (e) Extrinsic Aids in Minnesota
 - (f) Interpretive Approach
- 2.6 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 language problems result 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 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 standard rules of statutory interpretation that 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 Minnesota Statutes, section 14.02, "city" in section 410.015, and "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 a 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 for more information on gender-neutral drafting.
- (3) "Shall" and "must" are mandatory; "may" is permissive (645.44).

A complication that is almost a contradiction is that "shall" and "must" are 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 section 10.8.

- (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); *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 303 n.23 (Minn. 2000). But see *Matter of Contest of General Election on Nov. 8, 1977*, 264 N.W.2d 401, 404 n.5 (Minn. 1978). But the Uniform Commercial Code is an example in which the headnotes are made part of the act 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. For advice about writing headnotes, see sections 4.6(c)(3) and 10.3; 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) (645.20).
- (2) Retroactivity (the question of whether a section can apply to cases that arose before it was passed) (645.21).
- (3) Savings 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 (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. 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.

Section 645.16 also codifies a form of the "plain meaning rule" or theory of construction by binding interpreters to the text of a law if it is clear, and by listing the sources that may be considered if the text is not clear. The rule has been criticized because it is sometimes used to frustrate the apparent intent of the legislature and because it requires a court to find the text to be

ambiguous before the court may consider all the information it needs to make an informed judgment.

Readings on plain meaning:

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

Murphy, Arthur W. "Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts." *Columbia Law Review* 75 (1975): 1299.

2.3 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. Specific guidance about types of ambiguity and ways to avoid it can be found in sections 10.8 to 10.13.

Readings on ambiguity and vagueness:

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

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

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

Readings on specific problems leading to ambiguity:

Child, Barbara. "Achieving Clarity and Avoiding Ambiguity." In *Drafting Legal Documents: Principles and Practices*, 2nd ed. St. Paul: West Publishing Co., 1992.

Dickerson, Reed. "Substantive Clarity: Avoiding Ambiguity." In *Fundamentals of Legal Drafting*, 2nd ed. Boston: Little, Brown, 1986.

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.

2.4 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 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 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.

Frickey, Philip P. "From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Construction." *Minnesota Law Review* 77 (1992): 241.

Hart, Henry M., and Albert M. Sacks. *The Legal Process: Basic Problems in the Making and Application of Law*. Westbury, N.Y.: Foundation Press, 1994.

See also part 3 of the bibliography in chapter 13.

2.5 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. Another is the **archaeological** or **intentionalist** approach, which emphasizes the historical and legislative background of the statute. A third is the **interpretive** approach, which draws on the current legal and social context of the law to decide what it ought to mean. For a fuller discussion of the general theories of statutory construction, see Lisa Larsen, "Contested Statutes" House Information Brief, October 1990.

(a) Textualist Approach

The textualist approach relies on the plain meaning rule. 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 demonstrate and analyze textualist arguments.

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); *Amaial v. Saint Cloud Hosp.*, 598 N.W.2d 379 (Minn. 1999); 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); *State v. Taylor*, 594 N.W.2d 533 (Minn. App. 1999).

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," *Vanderbilt Law Review* 3 (1950): 395-406. The subject is discussed further in "Symposium: A Reevaluation of the Canons of Statutory Interpretation," *Vanderbilt Law Review* 45 (1992): 529-795.

(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:

Breyer, Steven. "The Uses of Legislative History in Interpreting Statutes." *Southern California Law Review* 65 (1992): 845.

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

Slawson, David W. "Legislative History and the Need to Bring Statutory Interpretation under the Rule of Law." *Stanford Law Review* 44 (1992): 383-427.

"Why Learned Hand Would Never Consult Legislative History Today," *Harvard Law Review* 105 (1992): 1005-1024.

(e) Extrinsic Aids in Minnesota

Minnesota sets statutory limits on the use of extrinsic aids in determining the legislative intent of a law. *Tuma v. Commissioner of Economic Security*, 386 N.W.2d 702, 706 (Minn. 1986) (legislative intent can be considered in interpreting a statute only after the statute is found to be ambiguous). 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 50.9 and house rule 6.24. 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 12.11 and house rule 6.30. 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, section 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, section 645.39; see also *Garberg v. Hennepin County*, 294 Minn. 450 at 455, 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 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. Opinions of the attorney general 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); *Billigmeier v. Hennepin County*, 428 N.W.2d 79 (Minn. 1988).

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 N.W.2d 661 (1971); *Soo Line Ry. Co. v. Commissioner of Revenue*, 277 N.W.2d 7 (Minn. 1979).

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, section 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 doctrine does not apply when neither statute is ambiguously worded. *State v. Lucas*, 589 N.W.2d 91 at 94 (Minn. 1999). Furthermore, it has long been the rule that “where failure of expression rather than ambiguity of expression *** is the vice of the enactment, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature.” *State v. Moseng*, 254 Minn. 263 at 269, 95 N.W.2d 6 at 11-12 (1959).

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. Elsberg*, 202 Minn. 232, 277 N.W. 535 (1938), statutes with the same subject and purpose are considered to have been enacted with the same legislative intent despite having been enacted at different legislative sessions. *Christgau v. Woodlawn Cemetery Assn.*, 208 Minn. 263, 293 N.W. 619 (1940).

CONSTRUCTION OF STATUTES ADOPTED BY REFERENCE.

Minnesota Statutes, section 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 (Minn. 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 present forms of reference designed explicitly to exclude or to include future amendments.

CONSTRUCTION OF UNIFORM LAWS.

Uniform laws are 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).

CONSTRUCTION OF STATUTES ADOPTED FROM OTHER STATES.

Generally, when a state adopts a statute from a sister state whose highest court has interpreted the statute, the adopting state takes that interpretation with the statute adopted. See *Olson v. Hartwig*, 288 Minn. 375, 180 N.W.2d 870 (1970).

(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, 271 Pa. 378, 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).

Schus v. Powers-Simpson Co., 85 Minn. 447, 89 N.W. 68 (1902) (legislative enactments in general and comprehensive terms, prospective in operation, apply to persons, subjects, and business within their general scope which come into existence subsequent to their passage).

2.6 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," *University of Michigan Law Review* 86 (1987): 333-80.) The drafter should accept that interpretation of statutes can produce surprises.

Chapter 3

Laws and Rules about Bills

- 3.1 Generally
- 3.2 Provisions Governing the Form of a Bill
 - (a) Approval of Bill Form by Revisor
 - (b) Compliance with Rules of Legislature
 - (c) Title of Bill
 - (d) Enacting Clause
 - (e) Bills Should Amend Minnesota Statutes
 - (f) Forms of Reference
 - (g) Showing New Language
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- 3.3 Provisions Affecting the Contents of a Bill
 - (a) Statutes Governing Interpretation of Statutes
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 - (c) Measuring Time
 - (d) General Definitions Applying to the Statutes
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 - (g) Equal Protection of Law
 - (h) Prohibition of Special Laws
 - (i) Separation of Powers
 - (j) Restrictions on Internal Improvements
 - (k) Restrictions on Loan of the State's Credit
 - (l) Debt Limits
 - (m) Public Purpose Doctrine
 - (n) Power of Taxation
 - (o) Appropriations
 - (p) Administrative Rulemaking
 - (q) School Lands and Other Public Lands; Restrictions on Disposition
 - (r) Eminent Domain
 - (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 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

"A bill or resolution must not be introduced until it has been examined and approved by the Revisor of Statutes as to form and compliance with these rules and the joint rules of the house and senate. The Revisor's approval must be endorsed on the bill or resolution." House rule 4.01.

The Revisor of Statutes endorses approval by initials on the 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 .

(d) Enacting Clause

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

(e) Bills Should Amend Minnesota Statutes

"Reference shall be made to Minnesota Statutes for the provisions appearing therein unless reference to previous session laws is required for some special reason
A bill for the amendment of a statute shall contain the full text of the section or subdivision to be amended as it appears in the latest edition of Minnesota Statutes unless it has been amended at a later session, in which event it shall contain the full text as amended." Joint rule 2.01.

(f) Forms of Reference

"Bills shall refer to Minnesota Statutes as follows:

‘Minnesota Statutes . . . , section’

Bills shall refer to the session laws as follows:

‘Laws . . . , chapter . . . , section’" Joint rule 2.01.

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

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

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

(g) Showing New Language

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

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

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

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

(h) Removing Old Language

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

(i) Numbering Sections and Subdivisions

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

(j) Headnotes

"If such a bill assigns to the sections thereof headnotes or identification by the decimal system of numbering used in Minnesota Statutes, such headnotes and decimal identification may be submitted by standing committee chairmen to the Revisor of Statutes for examination. Any such headnotes shall be capital letters enclosed in brackets, and shall be subject to the provisions of Minnesota Statutes, section 648.36." Joint rule 2.01. [NOTE: Section 648.36 was repealed and reenacted as 645.49.]

"The headnotes printed in boldface type before sections and subdivisions in any edition of the Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute." Minn. Stat., sec. 645.49.

(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 parenthesis." 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 .

(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 throughout the statutes. Many statutes contain special definitions or use terms that are not defined in Minnesota Statutes, chapter 645. A complete list of special definitions appears in the index to Minnesota Statutes. Unless a special definition is

explicitly made applicable to a statute, however, the administrative agencies and courts which construe and apply that statute will look to Minnesota Statutes, chapter 645, for an authoritative definition of the terms found there.

The definitions provided in Minnesota Statutes, chapter 645, include the following:

645.44 PARTICULAR WORDS AND PHRASES.

Subdivision 1. **Meanings ascribed.** The following words, terms, and phrases used in Minnesota Statutes or any legislative act shall have the meanings given them in this section, unless another intention clearly appears.

Subd. 1a. **Appellate courts.** "Appellate courts" means the supreme court and the court of appeals.

Subd. 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 15a.

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. 13a. **Wetlands.** "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- (1) have a predominance of hydric soils;
- (2) are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) under normal circumstances, support a prevalence of such vegetation.

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. 15a. **Must.** "Must" is mandatory.

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 legitimization 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 he 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;
- (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

percent 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.

(m) Public Purpose Doctrine

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

(n) Power of Taxation

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

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

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

"To encourage and promote forestation and reforestation of lands whether owned by private persons or the public, laws may be enacted fixing in advance a definite and limited annual tax on

the lands for a term of years and imposing a yield tax on the timber and other forest products at or after the end of the term." Minn. Const., art. X, sec. 2.

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

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

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

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

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

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

(o) Appropriations

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

3.23 APPROPRIATIONS.

A standing appropriation, within the meaning of 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. **Carryforward.** Agencies may carry forward unexpended and unencumbered nongrant operating balances from the first year of a biennium into the second year of the biennium.

Subd. 2. **Use of carryforward.** No money shall be carried forward without the approval of the commissioner of finance.

Subd. 3. **Lapse.** Any portion of any appropriation not carried forward and remaining unexpended and unencumbered at the close of a fiscal year lapses to the fund from which it was originally appropriated. Any appropriation amounts not carried forward and remaining unexpended and unencumbered at the close of a biennium lapse to the fund from which the appropriation was made.

Subd. 4. **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. 5. **Permanent improvements.** An appropriation to acquire or better public land or buildings or other public improvements of a capital nature, 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. This subdivision also applies to any part of an appropriation for a fiscal year that has been requisitioned to acquire real property or construct permanent improvements. An appropriation to pay moving expenses lapses at the end of the third fiscal year during which it was made available.

Subd. 6. **Canceled October 15.** On October 15 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, goods ordered, or grants issued in the last fiscal year, or certifies that funding will be carried forward under subdivision 1. Encumbrances for grants issued by June 30 may be certified for a period of one year beyond the year in which the funds were originally appropriated. Services rendered under grant contracts may occur during the certification period. 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. 7. **Exceptions.** Except as otherwise expressly provided by law, subdivisions 1 to 6 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.

Subd. 8. **Historical society.** Except as provided by law, an appropriation made to the Minnesota historical society, if not spent during the first year, may be spent during the second year of a biennium. An unexpended balance remaining at the end of a biennium lapses and shall be returned to the fund from which appropriated. An appropriation made to the society for all or part of a biennium may be spent in either year of the biennium.

(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 any publicly 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).

Chapter 4

Bill Drafting

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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 is a summary of those principles.

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 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 Minnesota Constitution. The exact form of a bill varies according to its purpose. The purpose may be any one or combination of the following:

- (1) to create new law
- (2) to amend existing law
- (3) to repeal existing law
- (4) to propose an amendment to the Minnesota Constitution.

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

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 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.

(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 antilogrolling and antirider 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.

But if the parts are mentioned in the title in too great detail, an objection may be made that some further detail has been omitted and that the readers of the title have been misled by the omission. Therefore the drafter must find a middle way between a single laconic generality and an 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 broad. Examples are education, taxation, highways, state government, energy, or crimes. If the law is a 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"	"changing"
"adding"	"modifying"
"authorizing"	"regulating"
"empowering"	"abolishing"
"providing"	"limiting"
"creating"	"restricting"

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

(4) SPECIFIC LANGUAGE REQUIRED BY LEGISLATIVE CUSTOM.

In some instances legislative custom requires that specific language be added following the object or specific subject. When a criminal penalty is imposed, the phrase "providing criminal penalties" should be inserted. If a bill creates a legislative commission or other entity requiring that some members be legislators, the phrase "providing appointments" should be added. When the bill contains an appropriation, the phrase "appropriating money" must be inserted in the title after the other specific subject phrase or phrases.

(5) 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 20..., section 12.34."

If only a subdivision is amended, the section and subdivision are designated. An example is: "amending Minnesota Statutes 20..., section 12.34, subdivision 4."

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

(6) 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 an existing publication. While the proposed coding is not binding on the revisor when publishing, it is often used when the next edition of Minnesota Statutes is compiled.

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.

(7) 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 20..., sections 123.45 to 123.77."

For examples relating to titles, see pages 62 to 64.

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.

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	<u>Minnesota Statutes, sections 199.10 to 199.31, may be cited</u>
3	<u>as the "Minnesota Property Tax Refund Act."</u>

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

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

1	Subd. 7. [SHORT TITLE.] <u>This section is the "Uniform</u>
2	<u>Simultaneous Death Act."</u>

(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 example of a statement of policy 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.

4.5 Definitions

A definition section is 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.] <u>The definitions in this</u>
3	<u>section apply to sections . . . to</u>
4	Subd. 2. [BOARD.] <u>"Board" means the board of architecture,</u>
5	<u>engineering, land surveying, landscape architecture,</u>
6	<u>geoscience, and interior design.</u>
7	Subd. 3. [ENGINEERING.] <u>"Engineering" means . . .</u>
8	Subd. 4. [PRACTICE OF ENGINEERING.] <u>"Practice of</u>
9	<u>engineering" excludes . . .</u>

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

(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 12 miles distant from the transportation system." Instead, write: "'Reasonable *access*' (noun) means a *location* (noun) less than 12 miles from the transportation system. Or write "'*To have reasonable access*' means *to be less than 12 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) ALPHABETIZE YOUR DEFINITIONS.

Alphabetize your definitions word by word when drafting new language.

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: EEOC, efficiency, EIS, EPA.

If you are drafting a new definition to add to an existing section containing alphabetized definitions, try to avoid changing existing subdivision numbers. This can be accomplished by numbering the new definition with a letter extension to the previous subdivision number. For example, in example 1 below, subdivision 2a has been inserted between subdivisions 2 and 3.

EXAMPLE 1

```
1      Section 1. Minnesota Statutes 20.., section 123.45, is
2 amended to read:
3      123.45 [DEFINITIONS.]
4      Subdivision 1. [SCOPE.] For the purposes of sections 123.45
5 to 123.99, the definitions have the meanings given.
6      Subd. 2. [BOARD.] "Board" means . . .
7      Subd. 2a. [CRIME.] "Crime" means . . .
8      Subd. 3. [DIRECTOR.] "Director" means . . .
```

You should change an existing subdivision number only where it cannot be avoided. In example 1, if you wanted to insert a new definition of "caller," the existing subdivision number, 2a, could be used for that definition and a new subdivision 2b inserted for the existing definition of "crime."

EXAMPLE 2

```
1      Section 1. Minnesota Statutes 20.., section 123.45, is
2 amended to read:
3      123.45 [DEFINITIONS.]
4      Subdivision 1. [SCOPE.] For the purposes of sections
5 123.45 to 123.99, the definitions in this section have the
6 means given.
7      Subd. 2. [BOARD.] "Board" means . . .
8      Subd. 2a. [CALLER.] "Caller" means . . . .
9      Subd. 2b. [CRIME.] "Crime" means . . .
10     Subd. 3. [DIRECTOR.] "Director" means . . .
```

If you use the method in example 2, you will need to check to see if any cross-references to the renumbered subdivision need to be changed. An alternative approach to amending example 2 is to add "caller" as subdivision 2b and to instruct the revisor to renumber 2a, "crime," as 2c. This method ensures that any cross-references will be changed editorially.

EXAMPLE 3

1 Section 1. Minnesota Statutes 20., section 123.45, is
2 amended by adding a subdivision to read:
3 Subd. 2b. [CALLER.] "Caller" means . . .
4 Sec. 2. [REVISOR'S INSTRUCTION.]
5 The revisor of statutes shall renumber Minnesota Statutes,
6 section 123.45, subdivision 2a, as subdivision 2c.

If you are adding a subdivision to a definition section where none of the existing definition sections are alphabetized, and you want to alphabetize them, instead of accomplishing this in the bill by striking and underscoring, consider using one of the following methods: (1) include an instruction to the revisor at the end of the bill to alphabetize the definitions; (2) ask the revisor to alphabetize the definitions editorially; or (3) include the alphabetized definitions in a style and form bill.

(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 Minnesota Statutes, 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.

A short form of a longer term can often be used without definition. For example, if a bill or section begins with a reference to "the commissioner of agriculture," the word "commissioner" can usually be used throughout the rest of the bill or section to refer to that commissioner, without causing confusion or requiring formal 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.

4.6 Basic Provisions

(a) Bill Section Order

The standard order for a bill is described below. Except for the title and enacting clause, which are mandatory, most bills do not contain all of these elements. Sometimes, too, there are reasons to vary from this order.

- title
- enacting clause
- appropriation description and summary by fund (in omnibus appropriation bills)
- appropriation riders (in omnibus appropriation bills)
- coded sections (amended and proposed) in statutory order
- amendments to session laws in order of year, chapter, article, section, and subdivision
- uncoded sections
- uncoded appropriation sections
- revisor's instructions
- repealers
- effective and/or application date sections not appended to specific bill sections

A long or complex bill may be divided into articles. If it is, the order set out above (except for the title and an enacting clause) should be followed in each article. If there is an article 1, there must also be an article 2. Articles may be followed by descriptive headings. The use of divisions other than articles is discouraged, except in the circumstances discussed later in this section.

Occasionally uncoded sections may appear between coded sections or at the beginning of coded sections.

(b) 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 20.., section 15A.082, is
2   amended to read:
3   15A.082 [COMPENSATION COUNCIL.]
4   Subdivision 1. [CREATION.] A compensation council is
5   created to assist the legislature in each even-numbered year
6   . . . .

```

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 that are published in Minnesota Statutes are not shown when amending existing sections in Minnesota 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, the reference in the introductory phrase should be to Minnesota Statutes as amended by the relevant session laws.

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

(2) AMENDING SUBDIVISIONS.

The subdivision is the smallest unit of a statute 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 is amended in a separate section of the bill. For example:

```

1   Sec. 51. Minnesota Statutes 20.., section 16A.04,
2   subdivision 1, is amended to read:
3   Subdivision 1. [BUDGET CASH FLOW.] The department
4   commissioner of finance shall prepare a biennial budget and a
5   ten four year cash receipts and . . . .
6   Sec. 52. Minnesota Statutes 20.., section 16A.04,
7   subdivision 4, is amended to read:
8   Subd. 4. [RULES.] The department commissioner of finance
9   may make rules and regulations governing the powers, duties,
10  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 20.., section 16A.04, is
2   amended by adding a subdivision to read:
3   Subd. 4a. [ADDITIONAL DUTIES.] The commissioner shall also
4   . . . .

```

Try to avoid renumbering the existing subdivisions, since cross-references to them may be affected. Other subdivisions of a section are usually not 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.

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

(3) CHANGES IN HEADNOTES.

If necessary, changes are made in the existing headnotes of a section or subdivision to reflect amendments 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).

If a drafter wants to change a section or subdivision headnote that is not part of the bill, he or she may notify the revisor. The revisor will consider the suggested change when the next edition of Minnesota Statutes is compiled.

(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?

Section 4.8 discusses the alternatives available to the drafter and the advantages and disadvantages of those alternatives.

(c) 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 be published in Minnesota Statutes, unless the revisor decides to recodify a section when it is finally compiled for the 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	<u>The commissioner of revenue shall refund any tax</u>
3	<u>erroneously paid or collected and shall reimburse the general</u>
4	<u>fund for the expenses of implementing this chapter.</u>

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

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

(3) HEADNOTES.

Use a headnote for each section and subdivision, using all capital letters enclosed in brackets and ending with a period.

Readers use headnotes as finding aids. 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 their usefulness your first priority. Remember that at times readers have nothing but headnotes to tell them what sections and subdivisions are about.

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."

Headnotes do not become law if the bill is passed, but they can provide information for the construction of the provisions.

Providing headnotes to material beyond the subdivision level is seldom necessary. If a subdivision has become so long that paragraph headnotes look like a good idea, the drafter should first try dividing the subdivision into several subdivisions. A section with so much complexity might be a good candidate for recodification and should be mentioned to the revisor's editorial staff.

Drafters who decide to headnote material beyond the subdivision level should be aware that Minnesota Statutes, section 645.49, on its face does not apply to these headnotes.

(4) CODING.

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

1 Section 1. [144.0536] [INSPECTION OF BUILDINGS.]
--

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

For examples of uncoded law, see pages 73 to 75.

The proposed coding does not become law if the bill is passed.

(5) DIVIDING BILLS AND SECTIONS.

GENERALLY

Some general principles should be followed for dividing bill text into sections, paragraphs, and other divisions:

(a) If new text may logically be divided into subtopics, you should use two or more divisions of the text instead of one lengthy section, subdivision, or paragraph.

(b) If either subdivisions or paragraphs could be used, you should use subdivisions if the text is complex, lengthy, or contains logically distinct parts.

(c) If a section or subdivision contains lettered or numbered paragraphs, clauses, or other indented material, all other indented material should be similarly lettered or numbered to avoid unmarked, indented text in the midst of marked, indented text.

SPECIFIC DIVISIONS OF TEXT

(a) *Sections*: The first section of a bill is called "Section 1." Each successive section is abbreviated as "Sec. 2.," "Sec. 3.," etc. If there is only one section in a bill, it is still called "Section 1."

(b) *Subdivisions*: The first subdivision of a section is called "Subdivision 1." Each successive subdivision is abbreviated as "Subd. 2.," "Subd. 3.," etc. If there is a subdivision 1, there must be a subdivision 2. New subdivisions inserted between existing subdivisions are often given lettered extensions, such as "Subd. 1a." or "Subd. 3e.," to avoid changing the existing subdivision numbers. To avoid problems with cross-references, subdivisions should be renumbered by revisor's instruction rather than by amendment.

(c) *Paragraphs*: Paragraphs begin immediately following a section or subdivision headnote. Paragraph text begins with a capital letter, contains a complete thought, and ends with a period. Paragraphs may contain one or more sentences. Paragraphs need not always be marked, but if they are, should be lettered (a), (b), (c), etc. so as to avoid an ambiguous reference to "this paragraph" if the material in the paragraph needs to be referred to in another provision. If any paragraphs are lettered, all paragraphs should be lettered, including introductory material. A paragraph (a) must be followed by a paragraph (b).

EXAMPLES

1	Sec. 15. [296.01] [COMPLIANCE.]
2	(a) <u>The commissioner shall ensure that participants comply</u>
3	<u>with section 296.02.</u>
4	(b) <u>Section 296.04 applies to the commissioner's</u>
5	<u>appointments.</u>

1	Sec. 15. [296.01] [COMPLIANCE.]
2	(a) <u>The commissioner shall ensure that participants comply</u>
3	<u>with paragraphs (b) and (c).</u>
4	(b) <u>The participant shall apply for a license.</u>
5	(c) <u>The participant shall pay the prescribed fee.</u>

(d) *Clauses*: Marked clauses appear after a lead-in clause and begin with lower case letters. Clauses are numbered (1), (2), (3), etc. If the clauses are typed in tabulated, indented form, the lead-in clause ends with a colon and the clauses end in semicolons, except for the last clause, which usually ends with a period. If the clauses are not typed in tabulated, indented form, the lead-in clause need not end with a colon and the intervening clauses may end with commas,

semicolons, or, if there are only two clauses, no punctuation. In either case, the conjunction appears only before the last clause.

Numbered clauses, along with the lead-in clause, should collectively form a complete grammatical sentence and should not be interrupted by stand-alone sentences. If stand-alone sentences are necessary as part of a list, the list can usually be restructured as a list of paragraphs. Clauses may be contained within lettered paragraphs. If a section or subdivision contains only one set of clauses, no paragraph letter is needed. If it contains more than one set of numbered clauses, or if it contains a set of numbered clauses and a separate paragraph, then each element should be a lettered paragraph.

EXAMPLES

1	Sec. 15. [296.01] [COMMISSIONER'S DUTIES.]
2	<u>The commissioner shall ensure that participants:</u>
3	<u>(1) comply with section 296.03; and</u>
4	<u>(2) pay the prescribed fee.</u>

1	Sec. 15. [296.01] [COMMISSIONER'S DUTIES.]
2	<u>The commissioner shall ensure that participants (1) apply</u>
3	<u>for a license and (2) pay the fee prescribed in section</u>
4	<u>296.02.</u>

1	Sec. 15. [296.01] [COMMISSIONER'S DUTIES.]
2	<u>(a) The commissioner shall ensure that participants:</u>
3	<u>(1) comply with section 296.03; and</u>
4	<u>(2) pay the prescribed fee.</u>
5	<u>(b) The commissioner shall receive and administer grants to</u>
6	<u>carry out the provisions of sections 296.01 to 296.25.</u>

(e) *Items*: Items are numbered (i), (ii), (iii), etc. They are divisions of clauses and follow the rules for clauses; however, it is recommended that, for readability, they be avoided. See Minnesota Statutes, section 298.01, subdivision 4c, for an example of the use of items.

(f) *Subitems*: Subitems are lettered (A), (B), (C), etc. They are divisions of items and follow the rules for clauses; however, it is recommended that, for readability, they be avoided. See Minnesota Statutes, section 62A.31, subdivision 1u, for an example of the use of subitems.

For principles to follow in citing these units, see chapter 11.

UNIFORM LAWS

Uniform laws are sets of laws proposed by the National Conference of Commissioners on Uniform State Laws. Because they are intended to be adopted by many states, they have their own style and form and may not follow the conventions described above.

(6) ARTICLES.

A long and complex bill may also be divided by grouping sections of a bill into an article or a group with or without a bracketed centered heading. Articles should be numbered in Arabic not Roman numerals.

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

1	ARTICLE 4
2	CAMPAIGN FINANCING

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

(7) HEADINGS.

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

1	CAMPAIGN FINANCING
---	--------------------

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

Neither article headings nor group headings are necessarily carried forward into the statutes although they are considered for use as editorial headings if appropriate. The drafter should divide a bill using articles and headings to facilitate understanding when necessary.

Examples of bills that propose new law appear on pages 71 to 75.

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.

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.

(b) Severability or Nonseverability Clause

Minnesota Statutes, section 645.20, makes the provisions of all laws severable. If you don't want the provisions of your bill to be severable, specify that they are not.

You may, for some special reason, wish to explicitly provide that the provisions of your act are nonseverable. An example of a nonseverability provision would be:

1	Sec. ... [NONSEVERABILITY.]
2	<u>If any provision of this act is found to be invalid because</u>
3	<u>it is in conflict with a provision of the constitution of the</u>
4	<u>state of Minnesota or the constitution of the United States</u>
5	<u>or for any other reason, all the provisions of this act are</u>
6	<u>without effect.</u>

(c) Saving or Nonsaving Clause

A saving clause is a section that is occasionally inserted into a bill to preserve rights, remedies, or privileges that might otherwise be destroyed by the bill, particularly by repeals or amendments. A saving clause is only needed under special circumstances, since 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 particular affected actions or rights should also be made explicit.

(d) Repealers

When drafting a bill, a drafter sometimes finds it necessary to remove a subdivision from an existing statutory section. This may be done in two ways:

- (1) simply repeal the subdivision in a repealer section; or
- (2) amend the statutory section by striking the entire subdivision.

The choice of method has definite consequences that drafters should keep in mind when choosing the method appropriate for the circumstances.

The first method is preferred. For editing purposes, it generates a listing for Table 2, which shows all sections and subdivisions amended or repealed during a legislative session. There is also a history notation attached to the subdivision entry that shows the session law citation of the subdivision repeal.

If the second method is used, the specific, stricken subdivision is not cited in Table 2 nor is it shown in either the title or repealer section of the bill. Instead, the history of the repeal of the subdivision must be constructed manually during the statutory editing process.

However, if the subdivision is part of a statutory section being extensively amended, the second method may be employed to promote the draft's economy and readability.

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	<u>Minnesota Statutes 20.., sections 51.02; 51.04,</u>
3	<u>subdivisions 1, 3, and 5; and 51.06, are repealed.</u>

If a series of sections is being repealed, each should be listed rather than using a reference like "sections 51.02 to 51.06."

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 or by performing a computer search of the statutes database.

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 considered 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. Sometimes there may be a difficulty in finding the uncodified special laws affected. Table I of Minnesota Statutes can assist; all affected laws should be found and repealed and a general repealer avoided.

The drafter should consider the effect of Minnesota Statutes, sections 645.34, 645.35, and 645.36, upon the use of repealers. The text of these sections is shown in chapter 2. The effect of these 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 pages 81 and 82.

(e) Expiration of laws

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.

1	Sec. 10. [EXPIRATION.]
2	<u>Sections 1 to 9 expire January 1, 20...</u>

A delayed repeal should not be used to accomplish an expiration. In practice such repeals are easily overlooked after a lapse of time. Also, if they are changed or repealed, they become involved in the rules about repeals that are discussed in the preceding section, in particular, that relating to the repeal of a repealer.

(f) Instructions to the Revisor

(1) SPECIFICITY.

Drafters should be specific when including instructional provisions in bills. Many terms have a variety of uses, not all of which may be intended to be changed. If a term has a variety of uses, a drafter should instruct the revisor to make the change “when appropriate” or may specify the context in which the change should be made. For example:

1	Sec. .. [REVISOR’S INSTRUCTION.]
2	<u>In Minnesota Statutes and Minnesota Rules, the revisor of</u>
3	<u>statutes shall substitute the term "local tax rate" for "tax</u>
4	<u>capacity rate" wherever the term refers to the rate of tax</u>
5	<u>applied to the tax capacity of property within a local unit</u>
6	<u>of government or to the sum of the rates of tax of local</u>
7	<u>governments.</u>

An instruction should not be drafted to "make any necessary statutory and rule cross-reference changes required as a result of the provisions in this act..." or drafted with other similar wording that imposes excessive discretion on the revisor. These kinds of instructions can be impossible to implement because of difficulty in determining the proper new cross-reference.

(2) RENAMING.

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 “worker’s compensation.” An instruction to the revisor is used primarily to reduce the bulk of a bill necessary to achieve such a change. The revisor will review the appropriateness of editorially applying the revisor's instruction to Minnesota Rules.

Drafters should also consider other forms of a term such as plurals, possessives, abbreviations and pronouns when crafting a revisor’s instruction. Again, the drafter should be specific when instructing a change to a word or phrase including all variants of the word or phrase. The words “or similar terms” should be included in the instruction as a reminder to deal with plurals, possessives, abbreviations, and other alternatives to nouns. An instruction to “make related grammatical changes” should be included to alert people to the need to check for needed changes

to pronouns, verbs, and anything else that might need to agree with the changed nouns. For example:

1	Sec. .. [REVISOR'S INSTRUCTION.]
2	<u>The revisor of statutes shall change the terms "fraternal</u>
3	<u>beneficiary association," or similar terms to "fraternal</u>
4	<u>benefit society," "society," or similar terms wherever they</u>
5	<u>appear in Minnesota Statutes and Minnesota Rules when</u>
6	<u>referring to those entities regulated under Minnesota</u>
7	<u>Statutes, chapter 64B. The revisor shall also make</u>
8	<u>grammatical changes related to the changes in terms.</u>

(3) RENUMBERING.

In bills requiring the extensive revision, renumbering, or reorganization of statutory sections, cross-references (located elsewhere in statutes) to those amended statutes also need to be changed. Often, changing the cross-reference number is the only change necessary in the section encompassing that cross-reference. Of course, it is possible to set out each of the statutory 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 and as a result, a bill may become much larger than it needs to be because these technical changes are being displayed. A method of accomplishing these changes is to use a revisor's instruction. Drafters should not use an instruction to "change internal cross-references as required by this act" because the proper new cross-reference may be unclear. Rather, drafters should be specific, indicating what the new reference should be. For example:

1	Sec. .. [REVISOR'S INSTRUCTION.]
2	<u>In each section of Minnesota Statutes referred to in column</u>
3	<u>A, the revisor of statutes shall delete the reference in</u>
4	<u>column B and insert the reference in column C.</u>
5	<u>The references in column C may be changed by the revisor of</u>
6	<u>statutes to the section in Minnesota Statutes in which the</u>
7	<u>bill sections are compiled.</u>
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>43A.04, subd. 4</u>

The revisor of statutes will review the appropriateness of applying the instruction to Minnesota Rules.

(4) SUBSTANTIVE INSTRUCTIONS.

Drafters should not use revisor's instructions to accomplish a substantive change in statutes or rules, such as reducing all income tax brackets by five percent. Because of the interrelationship of statutory or rule sections, an instruction of this type is difficult to implement. Similarly, an instruction should not give policy discretion in an instruction to the revisor.

A revisor's instruction may be used to require the renumbering of statutory sections. (See section 4.8.) An instruction of this type usually occurs as part of a bill to substantially revise larger portions of the statutes. This kind of instruction, for smaller, less comprehensive revisions, should not be necessary since the revisor has statutory authority to editorially renumber statutes and rules. Written renumbering requests may be sent to the revisor. If the revisor agrees with the

renumbering request, the revisor will acknowledge the request so that it will be known for sure that the change will be implemented.

(5) REFERRING TO SPECIFIC STATUTORY EDITIONS.

A drafter should not use language instructing the revisor to do something "in the next and subsequent editions of Minnesota Statutes and Minnesota Rules . . ." This language purports to restrict the general recodification power of the revisor contrary to accepted policy and tradition that the revisor do continuous revision of Minnesota Statutes and Minnesota Rules. Use the phrase "In Minnesota Statutes and Minnesota Rules, . . ."

(g) 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 K through 12 education. Omnibus appropriations bills are discussed in section 5.1.

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 repealers, revisor's instructions, or 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	<u>\$100,000 in fiscal year 20.. and \$100,000 in fiscal year</u>
3	<u>20.. are appropriated from the general fund to the</u>
4	<u>commissioner of administration to administer sections 1 to 9.</u>

or

1	Sec. 10. [APPROPRIATION.]
2	<u>\$100,000 is appropriated in fiscal year 20.. and</u>
3	<u>\$100,000 is appropriated in fiscal year 20.. from the</u>
4	<u>general fund to the commissioner of administration to</u>
5	<u>administer sections 1 to 9.</u>

The dollar amount should be rounded off to the nearest thousand dollars, except in special circumstances.

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

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, but other funds may also be used. When the source is undisclosed, Minnesota Statutes, section 16A.575, makes the appropriation from the general 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 use an acronym or another name different from that used to create it in the statutes. If this occurs, use the statutory name in the appropriation.

Describe the purpose of the appropriation in a short phrase. 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 ..." 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 may also lapse on June 30 of the next year, under Minnesota Statutes, section 16A.28. To extend the appropriation, the phrase ", to be available until June 30, 20.." 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	<u>\$100,000 is appropriated from the general fund to the</u>
3	<u>commissioner of administration to administer sections 1 to 9,</u>
4	<u>\$20,000 to be available for the fiscal year ending June 30,</u>
5	<u>20.., and \$80,000 to be available for the fiscal year ending</u>
6	<u>June 30, 20...</u>

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 when the carryforward provisions of Minnesota Statutes, section 16A.28, may not apply:

"The unencumbered balance 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 antilapse provision.

If the bill is made effective the day following final enactment, the appropriation may lapse on the next June 30, under Minnesota Statutes, section 16A.28, unless an antilapse provision is added.

Appropriations for permanent improvements, including the acquisition of real property, are available until expended, under Minnesota Statutes, 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.

(4) STANDING APPROPRIATIONS FOR A SPECIFIED AMOUNT.

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, sections 3.23 and 3.24.

(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 subject to various conditions.

(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:

- (1) special revenue accounts, if the revenue is simply restricted to expenditure for a specific purpose;
- (2) enterprise accounts, if the state is acting like a private business;
- (3) internal service accounts, if goods or services are provided by one state agency to another;
- (4) trust accounts; and
- (5) agency accounts, if the state is acting as the agent for a governmental unit, individual, or fund.

All of these dedicated receipt accounts are often referred to in conversation as "revolving funds" 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) APPROPRIATION TRANSFERS.

An agency may transfer appropriations between programs within an agency if the agency first notifies the commissioner of finance and the transfer is consistent with legislative intent. Minnesota Statutes, section 16A.285. If the drafter does not want an agency to have this flexibility with a specific appropriation, language should be included stating that such transfer is not allowed. See Laws 2001, First Special Session chapter 9, article 17, section 10, subdivision 3.

1	<u>Notwithstanding Minnesota Statutes, section 16A.285, the</u>
2	<u>agency must not transfer this appropriation.</u>

(8) EXAMPLES.

Examples of various appropriation sections, including open appropriations of dedicated receipts, can be found on pages 82 and 83.

(9) OMNIBUS APPROPRIATION BILLS.

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

(h) 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.

All parts of an act containing one or more appropriations are effective at the beginning of July 1 next following its final enactment, unless another effective date is specified.

An effective date is not necessary if the drafter wants the default provisions in Minnesota Statutes, section 645.02, to apply. However, if the drafter wants to specify a different effective date for a section or series of sections in a bill or the entire bill or article in a bill, a separate effective date section may be placed at the end of the bill or article as follows:

1	Sec. . . [EFFECTIVE DATE.]
2	<u>Sections 1 to 12 are effective January 1, 20... Sections 13</u>
3	<u>and 14 are effective the day following final enactment.</u>

or

1 Sec. ... [EFFECTIVE DATE.]
2 This act (or article) is effective January 1, 20...

Alternatively, if a drafter wants to specify an effective date for a bill section other than the default date, the effective date may be placed immediately after the section as follows:

1 Sec. .. Minnesota Statutes 2001 Supplement, section
2 289A.02, is amended by adding a subdivision to read:
3 Subd. ... [INTERNAL REVENUE CODE.] Unless specifically
4 defined otherwise, "Internal Revenue Code" means the
5 Internal Revenue Code of 1986, as amended through March 15,
6 20...
7 **[EFFECTIVE DATE.]** This section is effective the day
8 following final enactment.

or

1 Sec. . . . [ROCHESTER LODGING TAX.]
2 Notwithstanding Minnesota Statutes, section 469.190 or
3 477A.016, or any other law, the city of Rochester may
4 impose an additional tax of one percent on the gross
5 receipts from the furnishing for consideration of lodging
6 at a hotel, motel, rooming house, tourist court, or resort,
7 other than the renting or leasing of it for a continuous
8 period of 30 days or more.
9 **[EFFECTIVE DATE.]** This section is effective for lodging
10 furnished on or after July 1, 2002.

If several sections have the same effective date, repeat the effective date in each section or place it in an effective date section at the end of the bill. Do not put an effective date provision that applies to several sections at the end of one section in the bill. Readers may miss the effective date if it is not attached to the section or in a single section at the end of the bill.

If an effective date placed with the section to which it applies needs to be amended after its enactment, the heading should refer to the law containing the section and specify that it is the effective date that is being amended, as follows:

1 Sec. ... Laws 2001, First Special Session chapter 5,
2 article 12, section 82, the effective date, is amended to
3 read:
4 **[EFFECTIVE DATE.]** This section is effective January 1,
5 2003 for sales and purchases made after December 31, 20...

The effective date of a repealer may be done in the same manner as other effective dates or it may be included as part of the repeal. For example:

1 Section 1. [REPEALER.]
2 Minnesota Statutes 2000, section 297A.68, subdivision 28,
3 is repealed.
4 Sec. 2. [EFFECTIVE DATE.]
5 Section 1 is effective for sales and purchases made after
6 June 30, 20...

or

1	Sec. ... [REPEALER.]
2	<u>Minnesota Statutes 2000, section 297A.68, subdivision 28,</u>
3	<u>is repealed.</u>
4	<u>[EFFECTIVE DATE.] This section is effective for sales and</u>
5	<u>purchases made after June 30, 20...</u>

or

1	Sec. ... [REPEALER.]
2	<u>Minnesota Statutes 20.., section 297A.68, subdivision 28,</u>
3	<u>is repealed effective for sales and purchases made after June</u>
4	<u>30, 20...</u>

If you find it necessary to refer to "the effective date of this act" or "the effective date of sections 13 to 52," be certain that all the referenced provisions have the same effective date.

Drafters should resist the 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. This is especially true for bills enacting new, or modifying existing, criminal laws. Immediate effective dates for technical or housekeeping changes or to provide for authority to make administrative rules at a time before the program to which they relate begins to operate are examples of exceptions to this general rule.

For other specific examples of effective date provisions, see pages 83 to 85.

(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 general application. The use of local approval provisions is described in section 5.4.

(i) Price Indexes

It is sometimes desirable to anticipate the effect of inflation on a rate or fee by providing that the rate or fee shall increase as some measured economic factor increases, usually prices. The most familiar index is probably the Consumer Price Index, but the Producer Price Index and the Gross Domestic Price Deflator and other indexes may also be used in laws of this kind. The index used should be fully identified. For example:

1 The commissioner of commerce shall reset the amount of the
2 fee provided by this section on April 1, 2001, and each
3 following year, to include an increase in the fee in the
4 proportion that the Consumer Price Index (base years
5 1982-1984), published by the United States Bureau of Labor
6 Statistics, has increased during the whole calendar years
7 since December 31, 1999. Any increase must be rounded to
8 the nearest five percent of the statutory amount. The
9 commissioner shall publish the adjusted amount of the fee.

Minnesota Statutes, section 47.59, subdivision 3, paragraphs (i) to (l), is an example of a detailed provision of this kind. Section 518.551, subdivision 5, paragraph (k), establishes a similar adjustment but delegates the entire responsibility for its details to the supreme court. "Using Price Indexes" published by the Minnesota House of Representatives Research Department in July 1998 is a useful summary of this subject.

4.8 Recodifications

(a) Generally

A recodification bill is a bill that makes significant changes in statutory coding within one or more chapters of Minnesota Statutes, usually with the aim of organizing the material in a new and more useful way. There are other types of modernizing bills, including revisor's bills and style and form revisions, but here we are mainly concerned with bills that change the location of material by extensively changing coding. Recodification bills are basically of two types: repeal and reenactment, and renumberings. A repeal and reenactment repeals existing law and sets out the new law as new, underscored text. A renumbering instructs the revisor to renumber certain existing statutes with other statutory numbers. Either method, or a combination of both, may be used depending on the complexity of the recodification and what the drafter wants to accomplish. Whatever the approach, we suggest that drafters outside the revisor's office consult with the office early in the drafting process of these bills.

(b) Repeals and Reenactments

An example of a repeal and reenactment is set out in the example on page 88. Repeals and reenactments have the advantage of clearly setting out in the bill how the new law will read and how it will be organized. Their disadvantages are first, when the new law is printed in Minnesota Statutes, the statutory history will reflect only the recodification bill, and second, it is difficult to tell which section in the new law corresponds with which section in the old law. These disadvantages hinder legal researchers. Drafters have attempted to solve these problems using the devices shown on page 88 REPEAL AND REINACTMENT. In section 1 of the example, the old statute number of the repealed, predecessor section is shown in brackets following its corresponding new section in the session laws publication and in section 2 the revisor is instructed to publish the statutory derivations of the laws in Laws of Minnesota and to report the derivations in Minnesota Statutes. In the example on page 88 REPEAL AND REINACTMENT (Reporting of derivations in Minnesota Statutes), the revisor has carried out this instruction by publishing a concordance in Table II, Allocation of Acts, in Minnesota Statutes. In other cases, the revisor has compiled a concordance table that is not published, but is available to the public, or has prepared a side-by-side comparison or other companion document to assist legislators in evaluating changes. A concordance table or companion document cannot easily be prepared, however, if the old law is so extensively rearranged that the origins of parts of the bill cannot be identified with particularity.

However, a repeal and reenactment may be the only practical approach in a complicated recodification in which the codified law is derived from several sources that have been integrated together, especially if these sources are fragments of other provisions. In these cases, it is not always possible to recodify by renumbering because of the difficulty of identifying the source provisions with particularity.

(c) Recodification by Renumbering

Examples of recodification by renumbering are set out in the examples on page 89. In the first example, the revisor is instructed to renumber the sections in a particular manner. In the second example, the revisor is given the discretion to assign the statutory numbers. For each example the text of the statutes may or may not be amended in the bill. The advantage of a recodification by renumbering is that the statutory history can be tracked for each new section and subdivision, since each old section and subdivision will have the legend, ["Renumbered section"] In addition, legislators can easily discern any changes in the old statutory language. Further, the entire statutory history will be printed following each new section when it is compiled for the statutes. The disadvantages are first, the recodification bill does not show exactly how the new law will be reorganized, although a companion document can be produced to show how the law will read after enactment. Second, this method does not work well if a recodification requires extensive rewriting and rearrangement of existing language, since a revisor's instruction generally should only reallocate sections and subdivisions, although it is possible to reallocate paragraphs and clauses as well.

(d) Other Approaches and Considerations

Occasionally the revisor is requested to prepare a recodification that arranges the law in its proposed order by amending existing law and striking existing section and subdivision numbers. This way, the requester can see both the organization of the proposed law and what changes have been made to existing law. This approach is not recommended because it becomes confusing to draft and edit.

If the drafter anticipates that a recodification will make substantive changes, or will include controversial elements, the drafter may want to use the approach set out in the following example, where the revisor is instructed to present the recodification in the form of a bill for the next legislative session.

1	Sec. 10. [JUVENILE CODE RECODIFICATION.]
2	<u>The revisor of statutes shall reorganize Minnesota</u>
3	<u>Statutes, chapter 260, and other laws relating to child</u>
4	<u>protection and child welfare services to create separate,</u>
5	<u>comprehensible areas of law dealing with child protection and</u>
6	<u>delinquency in the form of a bill for introduction at the</u>
7	<u>20.. regular legislative session.</u>

(e) How the Recodification Could Be Construed

Drafters should also be aware that the construction of other amendments in conflict with a recodification may be affected by the recodification method chosen.

If a drafter chooses to recodify law by amendment and renumbering and one of the amended and renumbered sections is also amended by other law enacted at the same legislative session to

create a substantive conflict, the general rules of statutory construction apply. Minnesota Statutes, section 645.26, subdivision 3, provides that the law with the latest date of enactment, irrespective of its effective date, prevails from the time it becomes effective.

If the drafter chooses to recodify law by repeal and reenactment, and one of the repealed sections is also amended by other law enacted at the same legislative session to create a substantive conflict with its reenacted counterpart, a different, more specific, rule of statutory construction applies. The application of this rule may change the result one would otherwise expect if the amendment and renumbering method had been chosen. Minnesota Statutes, section 645.26, subdivision 3, by its terms does not apply to repeals and reenactments, which are governed by Minnesota Statutes, section 645.30. That section provides that: “When any existing law incorporated into and repealed by a code or revision is also amended by other legislation enacted at the same session of the legislature, such separate amendment shall be construed to be in force, notwithstanding the repeal by the code of the act it amends, and such amendment shall be construed to prevail over the corresponding provisions of the code.”

The problem of integrating amendments to sections that are being recodified exists with either method. If the drafter does not provide a method for integrating these amendments, the revisor will, consistent with Minnesota Statutes, section 645.33, merge the amendments together so as to give effect to each. If the amendments cannot be merged, the actions of the legislature will be separately reported in Minnesota Statutes. The revisor will then usually include an amendment in the next session’s Revisor’s bill to reconcile the actions taken by the legislature.

Drafters should consider providing for the integration of these amendments as part of the recodification bill. See the following example. However, drafters should be advised that courts have not always interpreted these provisions as the drafter may have intended. See *Kuiawinski v. Palm Garden Bar*, 392 N.W. 2d 899 (Minn. App. 1986).

1	Sec. 10. [OTHER AMENDMENTS.]
2	<u>If a provision of Minnesota Statutes, chapter 10, is</u>
3	<u>amended or repealed in the 20.. regular legislative session,</u>
4	<u>the revisor of statutes shall codify the amendment or</u>
5	<u>repealer in Minnesota Statutes, chapter 10A, notwithstanding</u>
6	<u>any other law to the contrary.</u>

Drafters may also wish to add some language stating that the recodification is not intended to change the law. See the following example.

1	Sec. 11. [EFFECT OF CHANGES IN THIS ACT.]
2	<u>This act is intended to be a clarification and</u>
3	<u>reorganization of laws relating to juvenile delinquency and</u>
4	<u>child protection in Minnesota Statutes, chapters 257 and 260.</u>
5	<u>The changes that have been made are not intended to change</u>
6	<u>the meaning or prior interpretation of those laws.</u>

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;
Legislative appointments:	providing appointments;
Amendments:	amending
most recent statutes	Minnesota Statutes 20.., section 123.45;
most recent supplement	Minnesota Statutes 20.. Supplement, section 234.56;
session laws	Laws 1996, chapter 56, section 7;
House or Senate File, if enacted	20.. ..F No. . . ., if enacted;
New law:	proposing coding for new law
less than a chapter	in Minnesota Statutes, chapter 323;
a whole chapter	as Minnesota Statutes, chapter 429;
Repealers:	repealing
most recent statutes	Minnesota Statutes 20.., section 525.67;
most recent supplement	Minnesota Statutes 20.. Supplement, section 634.57;
session laws	Laws 1997, chapter 88, section 3;
House or Senate File, if enacted	20.. ..F No. . . ., if enacted;

EXAMPLES—TITLES (References to affected law)

General title, only one section affected:

1 relating to . . . ; amending [or repealing] Minnesota 2 Statutes 20.., section 12.34.
--

General title, only one subdivision affected:

1 relating to . . . ; amending [or repealing] Minnesota 2 Statutes 20.., 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 20..
2 section 278.91, by adding a subdivision.

General title, several sections affected:

1 relating to . . . ; amending [or repealing] Minnesota
2 Statutes 20.., sections 12.34; 12.36; 217.38; 325.40.

Amended since publication of statutes:

relating to . . . ; amending [or repealing] Minnesota
Statutes 20.., section 234.56, as amended.

Subdivision added since the cited publication:

1 relating to . . . ; amending [or repealing] Minnesota
2 Statutes 20.., section 123.45, subdivision 6, as added.

Section amended and published in the supplement:

1 relating to . . . ; amending [or repealing] Minnesota
2 Statutes 20.. Supplement, section 123.45.

Amendment since publication of supplement:

1 relating to . . . ; amending [or repealing] Minnesota
2 Statutes 20.. Supplement, section 123.45, as amended.

Amendment to a law not coded:

1 relating to . . . ; amending [or repealing] Laws 1965,
2 chapter 123, section 1.

Amendment to a law not coded that has been amended:

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

Amendments to several laws not coded, as amended:

relating to . . . ; amending Laws 1997, chapter 200, article 1, section 5, subdivision 3; Laws 1997, chapter 203, article 9, section 21, as amended; Laws 1997, chapter 225, article 4, section 4, as amended; Laws 1998, chapter 389, article 16, section 31, subdivision 2, as amended; Laws 1998, chapter 404, sections 7, subdivision 23, as amended, 8, 14.

Amendment to House or Senate File, if enacted:

1 relating to . . . ; amending 20.. ..F. No. . . , if enacted.

New law proposed (existing chapter):

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

New law proposed (new chapter):

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

Entire chapter amended (rare):

1 relating to . . . ; amending Minnesota Statutes 20..,
2 chapter 123.

Combined references:

1 relating to . . . ; amending Minnesota Statutes 20.., sections
2 14.05, subdivision 3; 14.07, subdivisions 1, 2; 14.101,
3 subdivisions 1, 4, by adding a subdivision; 14.15,
4 subdivisions 1, 3, 4, 5; 62E.10, subdivision 8; 85A.02,
5 subdivision 5b, by adding subdivisions; 182.655, subdivisions
6 1, 10a, 12, 13, 14; proposing coding for new law in Minnesota
7 Statutes, chapters 59A; 116L; 175; 184A; repealing Minnesota
8 Statutes 20.., sections 14.61; 14.62, subdivisions 1, 3, 4;
9 15.039, subdivision 3.

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, and the new language is underlined.

The section amended here did not originally 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. "Subdivision" is written out as subdivision 1 but 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 they are being added. 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.

Section 2 has a headnote even though the section will not be coded in Minnesota Statutes. It is customary to indicate the contents of each section of the bill by headnote.

EXAMPLE—AMENDATORY BILL (Amending a subdivision)

1	A bill for an act
2	relating to taxation; providing an exception to the
3	application of tax in certain cases of cigarettes stored
4	or used in Minnesota; amending Minnesota Statutes 20..,
5	section 297.22, subdivision 3.
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. Minnesota Statutes 20.., section 297.22,
8	subdivision 3, is amended to read:
9	Subd. 3. This tax shall not apply to the use or storage
10	of cigarettes in quantities of 200 or less in the possession
11	of any one consumer, <u>if they were carried into this state by</u>
12	<u>the consumer.</u>
13	Sec. 2. [EFFECTIVE DATE.]
14	<u>Section 1 is effective the day following final enactment.</u>

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

Note the punctuation in lines 11 and 12. Punctuation in law is treated the same way as words. New punctuation is underlined and punctuation to be omitted is stricken. In this example, an existing period appears at the end of the new language and is not underlined.

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

The words "section" or "subdivision" are not capitalized except when they begin a sentence.

If several subdivisions of a section are amended or added, the bill may be simpler and clearer if the entire amended section is shown in one section of the bill.

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	surveys with . . .; amending Minnesota Statutes 20..
4	Supplement, section 389.08.
5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
6	Section 1. Minnesota Statutes 20.. 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 <u>that has a county</u>
11	surveyor is a full time position and the surveyor has who
12	<u>maintains</u> an office <u>on a full-time basis</u> in a building

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

1	A bill for an act
2	relating to corrections; exempting guards from pistol permit
3	requirements when on duty; amending Minnesota Statutes 20..
4	Supplement, section 624.714, by adding a subdivision.
5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
6	Section 1. Minnesota Statutes 20.. Supplement, section
7	624.714, is amended by adding a subdivision to read:
8	<u>Subd. 13.</u> [EXEMPTIONS; PRISON GUARDS.] <u>A guard at a state</u>
9	<u>adult correctional institution does not need a permit to carry</u>
10	<u>a pistol when on guard duty or otherwise engaged in an assigned</u>
11	<u>duty.</u>

In this example, the section that is amended has been published only in the supplement to Minnesota Statutes.

EXAMPLE—AMENDATORY BILL (Amending a session law)

1 Sec. 8. Laws 2001, chapter 212, article 1, section 3,
2 is amended to read:
3 Sec. 3. [BENCHMARKS FOR EXISTING PUBLIC BUILDINGS.]
4 The department of administration shall maintain
5 information on energy usage in all public buildings for
6 the purpose of establishing energy efficiency benchmarks
7 and energy conservation goals. The department shall
8 report preliminary energy conservation goals to the chairs
9 of the senate telecommunications, energy and utilities
10 committee and the house regulated industries committee by
11 January 15, 2002. The department shall develop, in
12 coordination with the department of commerce, a
13 comprehensive plan by January 15, 2003 2004, to
14 maximize electrical and thermal energy efficiency in
15 existing public buildings through conservation measures
16 having a simple payback within ten to 15 years. The plan
17 must detail the steps necessary to implement the
18 conservation measures and include the projected costs of
19 these measures. The owner or operator of a public
20 building subject to this section shall provide information
21 to the department of administration necessary to
22 accomplish the purposes of this section.

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

1 A bill for an act

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

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

6 Section 1. Laws 1973, chapter 175, section 1, as
7 amended by Laws 1975, chapter 117, section 1, is amended
8 to read:
9 Section 1. [~~MOUND, CITY OF; VOLUNTEER FIREMEN'S~~
10 ~~FIREFIGHTERS RELIEF ASSOCIATION PENSIONS.~~]
11 Notwithstanding Minnesota Statutes, section 69.06,
12 ~~after the effective date of this act~~ the Mound volunteer
13 fire department relief association shall pay to any retired
14 firefighters and newly retiring firemen firefighters
15 qualifying with 20 years of service and having attained the
16 age of 50, a monthly annuity not to exceed \$120 per month.
17 Payments may be made retroactively from January 1, 1975.
18 Sec. 2. [EFFECTIVE DATE.]
19 Section 1 is

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 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
16 and easterly of the former Lake Superior and Mississippi
17 Railroad Company Fond Du Lac Branch right-of-way, southerly
18 of the former Burlington Northern Inc.'s St. Paul to Duluth
19 Branch right-of-way and easterly of the right-of-way of
20 Minnesota Highway 210.

This unusual format is used for descriptions of land in state parks and monuments. Only the names of the parks and monuments and lists of citations to the many acts that establish their territories are published in Minnesota Statutes.

EXAMPLE—CONSTITUTIONAL AMENDMENT (Proposing amendment to multiple sections, Cont.)

1 salaries of the executive officers shall be prescribed by law.
2 article VIII, section 2, will read:

3 Sec. 2. The governor, secretary of state, ~~treasurer,~~
4 auditor, attorney general and the judges of the supreme court,
5 court of appeals and district courts may be impeached for
6 corrupt conduct in office or for crimes and misdemeanors; but
7 judgment shall not extend further than to removal from office
8 and disqualification to hold and enjoy any office of honor,
9 trust or profit in this state. The party convicted shall also
10 be subject to indictment, trial, judgment and punishment
11 according to law.

12 article XI, section 7, will read:

13 Sec. 7. Public debt other than certificates of
14 indebtedness authorized in section 6 shall be evidenced by the
15 issuance of bonds of the state. All bonds issued under the
16 provisions of this section shall mature not more than 20 years
17 from their respective dates of issue and each law authorizing
18 the issuance of bonds shall distinctly specify the purposes
19 thereof and the maximum amount of the proceeds authorized to
20 be expended for each purpose. ~~The state treasurer shall~~
21 ~~maintain~~ A separate and special state bond fund shall be
22 maintained on ~~his~~ the official books and records. When the
23 full faith and credit of the state has been pledged for the
24 payment of bonds, the state auditor shall levy each year on
25 all taxable property within the state a tax sufficient with
26 the balance then on hand in the fund to pay all principal and
27 interest on bonds issued under this section due and to become
28 due within the ensuing year and to and including July 1 in the
29 second ensuing year. The legislature by law may appropriate
30 funds from any source to the state bond fund. The amount of
31 money actually received and on hand pursuant to appropriations
32 prior to the levy of the tax in any year shall be used to
33 reduce the amount of tax otherwise required to be levied.

34 article XI, section 8, will read:

35 Sec. 8. The permanent school fund of the state consists of
36 the proceeds of lands granted by the United States for the
37 use of schools within each township, (b) the proceeds derived
38 from swamp lands granted to the state, (c) all cash and
39 investments credited to the permanent school fund and to the
40 swamp land fund, and (d) all cash and investments credited to
41 the internal improvement land fund and the lands therein. No
42 portion of these lands shall be sold otherwise than at public
43 sale, and in the manner provided by law. All funds arising
44 from the sale or other disposition of the lands, or income
45 accruing in any way before the sale or disposition thereof,
46 shall be credited to the permanent school fund. Within
47 limitations prescribed by law, the fund shall be invested to
48 secure the maximum return consistent with the maintenance of
49 the perpetuity of the fund. The principal of the permanent
50 school fund shall be perpetual and inviolate forever. This

EXAMPLE—CONSTITUTIONAL AMENDMENT (Proposing amendment to multiple sections, Cont.)

1 does not prevent the sale of investments at less than the cost
2 to the fund; however, all losses not offset by gains shall be
3 repaid to the fund from the interest and dividends earned
4 thereafter. The net interest and dividends arising from the
5 fund shall be distributed to the different school districts of
6 the state in a manner prescribed by law.

7 A board of investment consisting of the governor, the state
8 auditor, ~~the state treasurer~~, the secretary of state, and the
9 attorney general is ~~hereby~~ constituted for the purpose of
10 administering and directing the investment of all state funds.
11 The board shall not permit state funds to be used for the
12 underwriting or direct purchase of municipal securities from
13 the issuer or the issuer's agent.

14 Sec. 2. [SCHEDULE AND QUESTION.]

15 The proposed amendment shall be submitted at the 1998
16 general election. If approved, the office of treasurer will
17 be abolished on the first Monday in January 2003. The
18 question proposed shall be:

19 "Shall the Minnesota Constitution be amended to abolish the
20 office of state treasurer effective as of the first Monday in
21 January 2003?

22 Yes
23 No"

Although this constitutional amendment changes several sections, it is a single amendment. If the amendment is to have a delayed effective date, reference to the effective date must be included in the ballot question.

EXAMPLE—REPEAL OF A SUBDIVISION

1 A bill for an act
2 relating to game and fish; . . . ; repealing Minnesota
3 Statutes 20.., section 98.50, subdivision 3.
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
5 Section 1. [REPEALER.]
6 Minnesota Statutes 20.., section 98.50, subdivision 3, is
7 repealed.

EXAMPLE—REPEAL OF A SECTION

1 A bill for an act
2 relating to . . . ; repealing Minnesota Statutes 20..,
3 section 138.04, as amended.
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
5 Section 1. [REPEALER.]
6 Minnesota Statutes 20.., section 138.04, as amended by Laws
7 1997, chapter 14, section 4, is repealed.

This form is used if only a few subdivisions of a section have been published in Minnesota Statutes 20.. Supplement.

EXAMPLE—REPEAL OF A CHAPTER OF SESSION LAWS

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

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.
4 The appropriation is available for the biennium ending June
5 30, 20...

2. 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
5 the Cannon River in Rice County. The sum is available until
6 expended.

3. Annual Standing Appropriation

1 Sec. 6. [APPROPRIATION.]
2 \$20,000 is appropriated annually from the general fund to
3 the commissioner of agriculture for the costs of inspecting
4 wheat.

4. Open and Standing Appropriation of Dedicated Receipts

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

5. Antilapse Provision

1 This appropriation is available until expended.

EXAMPLES—EFFECTIVE DATE PROVISIONS

1. General

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

1 Sec. 10. [EFFECTIVE DATE.]
2 Sections 1 to 9 are effective September 1, 20...

1 Sec. 10. [EFFECTIVE DATE.]
2 Sections 1 to 9 apply to proceedings begun after June 30,
3 20...

Notice that it is not necessary to write "on the day following" or "on September 1." "Following" is preferred over "after"; "final enactment" is preferred over "its/their final enactment."

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, 20...

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, 20...

4. Property Tax Act

1 Sec. 10. [EFFECTIVE DATE.]
2 This act is effective for taxes levied in 20.. and
3 thereafter and payable in 20.. and thereafter.

5. Special Laws

See discussion in section 5.4 and forms in chapter 5.

6. Retroactive Effective Date

1 Sec. 10. [EFFECTIVE DATE.]
2 Sections 1 to 8 are effective retroactively from July 1,
3 20...

7. Conditional Effective Date

1 Sec. ... [HIGHWAY CHANGES; REPEALER; EFFECTIVE DATE;
2 REVISOR'S INSTRUCTION.]
3 (a) Minnesota Statutes 20.., section 161.115, subdivision
4 1, is repealed effective the day after the commissioner of
5 transportation receives a copy of the agreement between the
6 commissioner and the chair of the county board of Ramsey
7 County to transfer jurisdiction of Legislative Route No. 1 and
8 notifies the revisor of statutes under paragraph (b).
9 (b) The revisor of statutes shall delete the route
10 identified in paragraph (a) from Minnesota Statutes when the
11 commissioner of transportation sends notice to the revisor in
12 writing that the conditions required to transfer the route are
13 satisfied.

8. Repeal with Specific Effective Date

1 Sec. ... [REPEALER.]
2 Section .. is repealed effective July 1, 20...

9. Alternate Form

1 Sec. ... Minnesota Statutes 20., section 122A.162, is
2 amended to read:
3 122A.162 [LICENSURE RULES.]
4 The commissioner may make rules relating to licensure of
5 school personnel not licensed by the board of teaching or board
6 of school administrators.
7 [**EFFECTIVE DATE.**] This section is effective September 1,
8 20...

This alternative form may also be used for examples 1, 3, 4, 5, 6, and 7. See discussion and forms in section 4.7.

EXAMPLE—CORRECTING CROSS-REFERENCES

1 Sec. ... [REVISOR'S INSTRUCTION.]
2 In each section of Minnesota Statutes referred to in
3 column A, the revisor of statutes shall delete the
4 reference in column B and insert the reference in column
5 C.

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
8.31, subd. 1	325D.08	325D.07
16B.43, subd. 2	121.936	121.935
62D.01, subd. 1	62D.29	62D.24
136D.75	136D.77	136D.76
136D.76, subd. 2	136D.77	136D.76
354B.20, subd. 10	352.73	352.72

EXAMPLES—RECODIFYING STATUTES

1 Sec. ... [REVISOR'S INSTRUCTION.]
2 If a provision in Minnesota Statutes, chapter 16, is
3 amended by the 2001 regular session and this act is
4 enacted by the 2001 regular session, the revisor of
5 statutes shall codify the amendment consistent
6 with the recodification of Minnesota Statutes,
7 chapter 16, by this act, notwithstanding any law to
8 the contrary.

1 Sec. ... [REVISOR'S INSTRUCTION.]
2 The revisor of statutes shall include in Minnesota
3 Statutes, and edit as authorized by law, the uncoded
4 permanent law relating to Independent School Districts
5 Nos. 287, 916, and 917.

EXAMPLES—RECODIFYING STATUTES (Cont.)

1	Sec. ... [REVISOR'S INSTRUCTION.]	
2	<u>The revisor of statutes shall renumber the provisions</u>	
3	<u>of Minnesota Statutes listed in column A to the</u>	
4	<u>references listed in column B. The revisor shall also</u>	
5	<u>make necessary cross-reference changes in Minnesota</u>	
6	<u>Statutes and Minnesota Rules consistent with the</u>	
7	<u>renumbering.</u>	
8	<u>Column A</u>	<u>Column B</u>
9	<u>15.0411, subd. 2</u>	<u>14.02</u>
10	<u>(third and fourth</u>	
11	<u>sentences)</u>	
12	<u>15.0411, subd. 2</u>	<u>14.03</u>
13	<u>(except the third and</u>	
14	<u>fourth sentences)</u>	
15	<u>15.0412, subs. 1, 1a,</u>	<u>14.04, subs. 1 to 7</u>
16	<u>2, 2a, 3, 4a, 4b</u>	
17	<u>15.0412, subs. 4, 4c,</u>	<u>14.05, subs. 1 to 5</u>
18	<u>4e, 4f, 4g</u>	
19	<u>15.0412, subd, 4h</u>	<u>14.06</u>
20	<u>15.0412, subd. 5</u>	<u>14.07</u>
21	<u>15.0412, subd. 4d</u>	<u>14.15, subs. 1 to 4</u>

EXAMPLES—CHANGING TERMS AND PHRASES

1	Sec. ... [REVISOR'S INSTRUCTION.]	
2	<u>In Minnesota Statutes, sections 121.904, 121.912,</u>	
3	<u>121.914, 121.917, 122.531, 123.71, 124.225, 124.08,</u>	
4	<u>136C.28, and 136C.69, the revisor of statutes shall</u>	
5	<u>change the phrases in column A to the phrases in column</u>	
6	<u>B.</u>	
7	<u>Column A</u>	<u>Column B</u>
8	<u>reserved fund balances</u>	<u>unreserved fund balances</u>
9	<u>appropriated for AVTI</u>	<u>reserved for AVTI equipment</u>
10	<u>equipment</u>	
11	<u>appropriated for AVTI</u>	<u>reserved for AVTI repair</u>
12	<u>repair and betterment</u>	<u>and betterment</u>
13	<u>appropriated for</u>	<u>reserved for unemployment</u>
14	<u>unemployment insurance</u>	<u>insurance</u>
15	<u>appropriated for building</u>	<u>designated for building</u>
16	<u>construction</u>	<u>construction</u>
17	<u>unappropriated statutory</u>	<u>undesignated statutory</u>

1	Sec. ... [REVISOR'S INSTRUCTION.]	
2	<u>In Minnesota Statutes and Minnesota Rules, the revisor</u>	
3	<u>of statutes shall change the terms "fireman" and</u>	
4	<u>"firemen" to "firefighter" and "firefighters"</u>	
5	<u>respectively, wherever the terms appear in respect to</u>	
6	<u>those persons engaged in fighting fires as distinguished</u>	
7	<u>from maintaining fires in boilers, or other machines or</u>	
8	<u>devices.</u>	

1 Sec. ... [REVISOR'S INSTRUCTION.]
2 The revisor of statutes shall change the term
3 "children's health plan" and similar terms to
4 "MinnesotaCare program" and similar terms, wherever in
5 Minnesota Statutes and Minnesota Rules the term
6 "children's health plan" and similar terms appear, except
7 that the revisor shall retain the reference to "children's
8 health plan" in Minnesota Statutes, section 256.9357,
9 subdivision 1.

EXAMPLES—REORGANIZING GOVERNMENT POWERS AND DUTIES

1 Sec. ... [REVISOR'S INSTRUCTION.]
2 (a) Except when used in the phrases to be changed by the
3 revisor under paragraph (b), the revisor of statutes shall
4 change the word "board" or "board's," or similar term or
5 phrase, when it refers to the transportation regulation
6 board, to the term "commissioner," "commissioner's," or
7 "commissioner of transportation," as appropriate, where it
8 appears in:
9 (1) Minnesota Statutes, sections 174A.02, subdivision 3;
10 221.025; 221.031, subdivision 1; 221.041, subdivisions 1, 2,
11 and 3; 221.051; 221.061; 221.071, subdivision 1; 221.081;
12 221.101; 221.121, subdivisions 1, 2, 3, 4, 5, 6, 6a, and 6b;
13 221.122, subdivisions 1 and 3; 221.123; 221.124; 221.151;
14 221.161, subdivisions 2, 3, and 4; 221.165; 221.171,
15 subdivision 1; 221.185, subdivisions 2 and 3a; 221.221,
16 subdivision 2; 221.291, subdivision 5; 221.293; 221.296,
17 subdivisions 3, 4, and 8; and 221.55; and
18 (2) Minnesota Rules, chapters 8855; 8900; 8910; and 8920.
19 (b) The revisor shall change the phrases "board or
20 commissioner," "commissioner or board," "board or the
21 commissioner," "commissioner or the board," "commissioner and
22 the board," "commissioner and board," "board and the
23 commissioner," "board and commissioner," "department and
24 board," "board or department," and "board and the
25 department," when the word "board" refers to the
26 transportation regulation board, to the term "commissioner,"
27 or "commissioner of transportation," as appropriate, where it
28 appears in:
29 (1) Minnesota Statutes, sections 221.011, subdivision 15;
30 221.021; 221.031, subdivision 5; 221.061; 221.081; 221.121,
31 subdivisions 1 and 5; 221.122, subdivision 1; 221.151,
32 subdivision 2; 221.221, subdivisions 1 and 3; 221.261;
33 221.271; 221.281; 221.291, subdivisions 1 and 3; 221.293;
34 221.295; 221.296, subdivisions 3 and 4; and 221.68; and
35 (2) Minnesota Rules, chapter 8850.
36 (c) Except when amended accordingly in this article, the
37 revisor shall change the words "transportation regulation
38 board" to "commissioner of transportation" wherever they
39 appear in Minnesota Statutes and Minnesota Rules.
40 (d) In Minnesota Statutes, the revisor shall renumber
41 sections 174A.02 as 174.64; 174A.04 as 174.65; and 174A.06 as
42 174.66.
43 (e) The revisor shall make other changes in chapter
44 titles; section, subdivision, part, and subpart headnotes;
45 and in other terminology necessary as a result of the
46 enactment of this article.
47 Sec. ... [REVISOR'S INSTRUCTION.]
48 The revisor of statutes shall renumber the sections in
49 Minnesota Statutes, chapters 261, 262, and 263, to comprise
50 one chapter.

EXAMPLE—CONDITIONAL OR CONTINGENT INSTRUCTION

1 Sec. ... [HIGHWAY CHANGES; REPEALER; EFFECTIVE DATE;
2 REVISOR'S INSTRUCTION.]
3 (a) Minnesota Statutes 20., section 161.115, subdivision
4 10, is repealed effective the day the commissioner of
5 transportation receives a copy of the agreement between the
6 commissioner and Dakota County to transfer jurisdiction of
7 Legislative Route No. 52.
8 (b) The revisor of statutes shall delete the route
9 identified in paragraph (a) from Minnesota Statutes when
10 the commissioner of transportation sends notice to the revisor
11 in writing that the conditions required to transfer the route
12 are satisfied.

EXAMPLES—REPEAL AND REENACTMENT

1 Section 1. [260C.451] [AGE LIMIT FOR BENEFITS TO
2 CHILDREN.]
3 For purposes of any program for foster children or
4 children under state guardianship for which benefits are made
5 available on June 1, 20., unless specifically provided
6 otherwise, the age of majority is 21 years of age. [260.40]
7 Sec. 2. [REVISOR'S INSTRUCTION]
8 (a) The revisor of statutes shall publish the statutory
9 derivations of the laws repealed and recodified in this act
10 in Laws of Minnesota and report the derivations in Minnesota
11 Statutes.
12 (b) The revisor of statutes shall correct cross-references
13 in Minnesota Statutes and Minnesota Rules to sections that
14 are repealed and recodified by this act, and if Minnesota
15 Statutes, chapter 257 or 260, is further amended in the 20..
16 (same legislative session), shall codify the amendments in a
17 manner consistent with this act.

EXAMPLES—REPEAL AND REENACTMENT (Reporting of derivations in Minnesota Statutes)

TABLE II ALLOCATION OF ACTS			
<u>Chap.</u>	<u>Art.</u>	<u>Sec.</u>	<u>Coding</u>
1393	18	60C.176, subd. 3	(Formerly 260.171, subd. 4)
1393	18	260C.176, subd. 4	(Formerly 260.171, subd. 5)
1393	18	260C.176, subd. 5	(Formerly 260.171, subd. 5a)

EXAMPLES—RECODIFICATION BY RENUMBERING

1	Sec. 10. [REVISOR'S INSTRUCTION.]	
2	<u>The revisor of statutes shall renumber each section of</u>	
3	<u>Minnesota Statutes listed in column A with the number listed</u>	
4	<u>in column B. The revisor shall also make necessary</u>	
5	<u>cross-reference changes consistent with the renumbering.</u>	
6	<u>Column A</u>	<u>Column B</u>
7	<u>120.01</u>	<u>120A.01</u>
8	<u>120.011</u>	<u>120A.02</u>
9	<u>120.0112</u>	<u>120A.03</u>
10	<u>120.02, subd. 1</u>	<u>120A.04, subd. 1</u>
11	<u>subd. 2</u>	<u>subd. 4</u>
12	<u>subd. 3</u>	<u>subd. 8</u>

1	Sec. 10. [REVISOR'S INSTRUCTION.]
2	<u>In Minnesota Statutes the revisor of statutes shall</u>
3	<u>renumber as chapter 354D the professional and supervisory</u>
4	<u>employee individual retirement account law that is currently</u>
5	<u>coded as chapter 354C and shall appropriately revise any</u>
6	<u>statutory cross-references consistent with that recoding.</u>

Chapter 5

Particular Subjects

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- (b) Omnibus Bills Described
- (c) Omnibus Bills as Committee Bills
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- (e) Education Bills
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5.10 State Land Transfers

5.11 State Parks, Monuments, Recreation Areas, and Waysides

5.12 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(g). 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.

In recent practice, there have been as many as ten omnibus appropriation bills in an odd-numbered year and at least two in an even-numbered year.

(1) The odd-year bills, named for their principal subjects (sometimes each house has a separate name), and citations to 1999 examples of each, are:

- (i) State government, including legislative branch appropriations; Laws 1999, chapter 250;
- (ii) Health and human services; Laws 1999, chapter 245;
- (iii) Higher education; Laws 1999, chapter 214;
- (iv) K-12 education; Laws 1999, chapter 241;
- (v) Environment and natural resources; Laws 1999, chapter 231;
- (vi) Transportation; Laws 1999, chapter 238;
- (vii) Judiciary; Laws 1999, chapter 216;
- (viii) Jobs and economic development; Laws 1999, chapter 223;
- (ix) Agriculture and rural development; Laws 1999, chapter 231; and
- (x) Family and early childhood education; Laws 1999, chapter 205.

(2) The even-year bills with year 2000 citations are:

- (i) One or more supplemental appropriations bills, supplementing the appropriations made in the omnibus bills of the odd year; Laws 2000, chapters 463, 479, 488, and 489; and
- (ii) The bonding bills, including appropriations for building projects in Laws 2000, chapter 492, and for highway projects in Laws 2000, chapter 479.

(3) In recent years there has been a short bill each year for claims against the state; Laws 2000, chapter 365 and Laws 2001, chapter 169. A short bonding bill in the odd-numbered year is also becoming traditional; Laws 2001, First Special Session chapter 12.

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

Omnibus appropriation bills are almost always referred to conference committees.

Omnibus appropriation bills often contain parts of bills considered at an earlier stage in the legislative process. An elaborate bill proposing a new program may be passed 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.

Each 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 house and senate 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 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 recent omnibus bills. Review the examples on pages 140 to 146. 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, usually 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. See Minnesota Constitution, article XI, section 6.

(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 be expressly stated. Minnesota Statutes, section 16A.575.

(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 official responsibility for duties imposed by law to an individual.

(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.

(e) Education Bills

The omnibus early childhood and family education and omnibus kindergarten through grade 12 bills place applicable appropriation provisions in articles including policy for which the money is being appropriated. For example, special education programs are the subjects of Laws 1999, chapter 241, article 2. Article 2 amends special education policy statutory provisions and appropriates money for special education aid. An appropriation provision in such a bill would be drafted as follows:

1	Sec. ... [APPROPRIATIONS.]
2	Subdivision 1. [DEPARTMENT OF CHILDREN, FAMILIES,
3	AND LEARNING.] The sums indicated in this section are
4	<u>appropriated from the general fund to the department of</u>
5	<u>children, families, and learning for the fiscal years</u>
6	<u>designated.</u>
7	Subd. 2. [HEALTH AND SAFETY AID.] <u>For health and safety</u>
8	<u>aid according to Minnesota Statutes, section 123B.57,</u>
9	<u>subdivision 5:</u>
10	<u>\$14,800,000 2000</u>
11	<u>\$14,850,000 2001</u>
12	<u>The 2000 appropriation includes \$1,400,000 for 1999 and</u>
13	<u>\$13,400,000 for 2000. The 2001 appropriation includes</u>
14	<u>\$1,425,000 for 2000 and \$13,425,000 for 2001.</u>

(f) Item Veto of an Omnibus Bill

The Minnesota Constitution provides that "if a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill." Article IV, section 23. Two cases address the question of what is to be considered an "item of appropriation": "Estimates" in riders were not items of appropriation, *Inter Faculty Organization v. Carlson*, 478 N.W. 2d 192 (Minn. 1991); "an assignment of revenue" to a particular program was an item of appropriation, *Johnson v. Carlson*, 507 N.W. 2d 232 (Minn. 1993).

(g) 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. The common thread that runs through the various sections of a law need only be a "mere filament" to withstand the single subject restriction. *Masters v. Commissioner of Dep't of Natural Resources*, 604 N.W.2d 134 (Minn. App. 2000).

Similarly, a title that contains words that "alert readers" and are "reasonably related" to the changes in the Act has been held constitutionally sufficient. *Id.* at 137-38. The Supreme Court has indicated recently, however, that there are limits to the liberal interpretation given the single

subject requirement and the broad discretion that the legislature is afforded in entitling legislation. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293 (Minn. 2000).

The appropriation bills enacted in 2002 used the following language after the phrase "A bill for an act relating to" and before the first semicolon in the title: "appropriations," "operation of state government," "state government" (twice), "education" (twice), and "family and early childhood education." A drafter may wish to review the titles of recent omnibus bills for complete examples.

(h) Matching Grant Provisions

Occasionally, the drafter may intend part of a designated appropriation in a rider to be subject to matching funds from a source other than the state. If this is the case, it is important to clarify that the state appropriation is in fact, "not available until" or "contingent upon" the demonstration, receipt, or commitment of the matching funds, and to specify either the actual dollar amount or ratio (e.g. dollar-for-dollar), of the matching funds to be committed. It is also a good idea to name the commissioner of finance as the agency responsible for determining whether the matching funds have been committed.

1	This appropriation is not available until
2	the commissioner of finance determines that
3	at least \$2,100,000 has been committed
4	from other sources.
1	This appropriation is not available until
2	the commissioner of finance has determined
3	that at least \$7,000,000 has been committed
4	by nonstate sources.
1	This appropriation is contingent on
2	demonstration of an equal amount in nonstate
3	matching funds to the commissioner of
4	finance.
1	This appropriation is contingent on
2	\$3,000,000 of nonstate money for this
3	project.
1	\$3,500,000 the first year and \$3,500,000 the
2	second year of the amounts appropriated are
3	contingent on receipt of an equal
4	contribution from nonstate sources that have
5	been certified by the commissioner of
6	finance. Up to one-half of the match may
7	be given in in-kind contributions.
1	This appropriation is not available until
2	the commissioner of finance has determined
3	that the following amounts have been
4	committed to the project:
5	(1)\$940,000 is available upon receipt of
6	a commitment for an equal amount . . .; and
7	(2)

(i) Onetime vs. Budget Base Appropriations

The following is a typical example of rider language contained in an omnibus appropriations bill:

1 \$200,000 each year is for development of
2 the upper division component within the
3 Arrowhead Community College region through
4 Bemidji State University.

While the intent of this provision may be known to the drafter, it may not be clear to the reader. Is this intended to be a onetime appropriation for the biennium? Or, is it to become part of the agency's permanent budget base funding in the future? In this particular example, the appropriation became part of the agency's base and money was allocated for the program in subsequent bienniums and adjusted for inflation over the years.

Although the general rule is that funding for fiscal years 2004 and 2005 is assumed to continue at the fiscal year 2003 appropriated level unless some other level is specified, it is a good idea when drafting a rider to clarify the intent of an appropriation. Examples of such rider language include:

1 This is a onetime appropriation and is not
2 added to the agency's permanent base.

1 This is a onetime appropriation and does not
2 become part of the base level funding for
3 the 2004-2005 biennium.

1 Of this amount, \$500,000 is a onetime
2 appropriation.

1 Of this amount, \$500,000 each year adds to
2 the agency's budget base.

1 This appropriation shall not become part of
2 the agency's base.

1 This appropriation is for fiscal years 2004
2 and 2005 only.

1 The funding base for this program in fiscal
2 years 2004 and 2005 is \$5,000,000 per year.

1 The base funding for this activity is
2 \$914,000 for fiscal year 2004 and \$861,000
3 for fiscal year 2005.

1 The agency's budget base for fiscal years
2 2004 and 2005 is \$65,601,000 each year.

The omnibus health and human services bill has included a carryover limitation provision, prohibiting certain appropriations from becoming part of the base level funding. Laws 2001, First Special Session chapter 9, article 17, section 12.

1 The appropriations in this act that are
2 allowed to be carried forward from fiscal
3 year 2002 to fiscal year 2003 do not become
4 part of the base level funding for the
5 2004-2005 biennial budget unless
6 specifically directed otherwise by the
7 legislature.

(j) Other Common Riders

A type of introductory rider that commonly follows a summary by fund in appropriations bills may be worded as follows:

1 The amounts that may be spent from the
2 appropriation for each purpose are as
3 follows:

or

1 The amounts that may be spent from this
2 appropriation for each program are specified
3 in the following subdivisions.

Although Minnesota Statutes, section 16A.28, provides that certain unencumbered funds appropriated to a state agency in the first year may carry forward to the second year of the fiscal biennium, an appropriation bill will often contain a rider to that effect. The language of the rider may state "Any unencumbered balances remaining in the first year do not cancel but are available for the second year."

Similarly, the legislature may make appropriations available for either year by adding a rider that reads "If the appropriation for either year is insufficient, the appropriation for the other year is available for it."

Generally, Minnesota Statutes, section 16A.285, allows an agency to transfer funds between programs. Occasionally the legislature will prohibit or limit the transfer of money among activities for certain purposes. Examples:

1 During the 2004-2005 fiscal biennium, grant
2 money must not be transferred to operations
3 within the department of health without the
4 approval of the legislature.

1 The commissioner may transfer up to
2 \$15,000,000 each year to the transportation
3 revolving loan fund.

To prevent an appropriation for a project from lapsing, the legislature may extend the life of the appropriation by express language.

1 This appropriation is from the county
2 state-aid highway fund and is available
3 until spent.

An appropriation bill may contain a general contingent account section to allow supplemental or conditional funding depending on future circumstances and with the approval of another entity. For example:

1 The appropriations in this section may only
2 be spent with the approval of the governor
3 after consultation with the legislative
4 advisory commission pursuant to Minnesota
5 Statutes, section 3.30.

(k) Sunset of Uncodified Language in Rider

A drafter may want to make clear that rider language in an appropriation article expires on a certain date so there is no confusion over the length of time a rider may be effective. The omnibus health and human services bill has included a sunset provision. Laws 2001, First Special Session chapter 9, article 18, section 13.

1 All uncodified language contained in this
2 article expires on June 30, 2003, unless a
3 different expiration date is explicit.

(l) Deficiencies and Reductions

The legislature occasionally adjusts appropriations made in a prior session or act. In some cases, the legislature determines that a prior appropriation was insufficient and will add to it by way of a "deficiency" or "supplemental" appropriation. In other cases, the legislature may reduce a prior appropriation. For examples of deficiency appropriations, see Laws 2000, chapter 488 and Laws 1998, chapter 393. For examples of appropriation reductions, see Laws 2002, chapter 220 and Laws 1992, chapter 513.

There are two ways to draft a provision adjusting a prior appropriation. One way that is generally used for early childhood and K-12 education spending is to amend the earlier law by striking and underscoring to show the changes.

1 Sec. 4. Laws 2001, First Special Session chapter 3, article
2 1, section 17, subdivision 8, is amended to read:
3 Subd. 8. [BASIC SLIDING FEE.] For child care assistance
4 according to Minnesota Statutes, section 119B.03:
5 \$51,999,000 2002
6 ~~\$51,999,000~~ \$48,499,000 2003

1	Section 1. Laws 1997, First Special Session chapter 4,			
2	article 10, section 3, subdivision 2, is amended to read:			
3	Subd. 2. [DEPARTMENT.] For the department of children,			
4	families, and learning:			
5	\$24,360,000	\$24,810,000	.....	1998
6	\$23,978,000	\$24,428,000	.....	1999

The second method, usually used for all other appropriation bills, is to prepare new language and refer to the earlier law. If the dollar amount is to be added to the prior appropriation, clarify near the beginning of the bill that if an appropriation was made for that purpose for that year, the new appropriation is added to it. If the dollar amount is to be subtracted from the prior appropriation, it should appear in parentheses.

1		APPROPRIATIONS	
2		2002	2003
3	Sec. 2. BOARD OF PUBLIC		
4	DEFENSE	-0-	(1,153,000)
5		APPROPRIATIONS	
6		2000	2001
7	Sec. 3. COURT OF APPEALS	-0-	200,000

(m) 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 specially 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 (Minn. 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).

(6) See paragraphs (f) and (g) for a discussion of cases affecting item vetoes and the breadth of titles for omnibus appropriation bills.

5.2 Bonding

(a) Constitutional Considerations

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

The Minnesota Constitution, article XI, 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 the Minnesota 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.

(b) Internal Improvements

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.

(c) Public Purpose

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.

(d) Legislative Findings or Policy Statements

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. See 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.

(e) Caution in Drafting

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.

(f) Local Bonding

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

(g) Method of Drafting Bonding Bills

A basic consideration in all bond law drafting is, "Will someone buy the bonds?" Bond issues are usually managed and the bonds 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 to consult a bond lawyer at an early stage.

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 AUTHORIZATION.]
2	<u>To provide the money appropriated by this act from the bond</u>
3	<u>proceeds fund, the commissioner of finance shall sell and issue</u>
4	<u>bonds of the state in an amount up to \$14,615,000 in the</u>
5	<u>manner, upon the terms, and with the effect prescribed by</u>
6	<u>Minnesota Statutes, sections 16A.631 to 16A.675, and by the</u>
7	<u>Minnesota Constitution, article XI, sections 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 Minnesota 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 147 and 148.

(h) 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 several laws changing the conditions for particular bonds of particular local government bodies. Waivers of debt limits or popular vote requirements are frequent.

Public bond laws are also 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.

(i) Informal Terminology

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.

In addition to crime control problems, the drafter should be aware of the broad public safety and public health policy issues generated by the September 11, 2001, terrorist attack. The legislature in the 2002 legislative session enacted anti-terrorist legislation, Laws 2002, chapter 401. All antiterrorism policies and procedures will be coordinated by a homeland security advisory council. Laws 2002, chapter 402, enacted the bioterrorism bill, which comprehensively deals with health and terrorism issues.

(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, Minnesota Statutes, section 343.36, to the law of obscenity, Minnesota Statutes, sections 617.23 to 617.297. In recent years consumer legislation, much of it found in Minnesota Statutes, chapter 325, has often included regulatory penalty provisions. DWI laws were revised and reorganized into Minnesota Statutes, chapter 169A, during the 2000 legislative session.

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 Minnesota Statutes, chapters 260, 260A, 260B, and 260C and the rules of procedure for juvenile court.

Laws 1999, chapter 139, recodified the juvenile court law into separate chapters: Minnesota Statutes, chapter 260, retains general and organization provisions; Minnesota Statutes, chapter 260A, contains truancy matters; Minnesota Statutes, chapter 260B, now contains all delinquency matters; and Minnesota Statutes, chapter 260C, has all child protection matters.

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 Minnesota Statutes, section 260B.125. Reference to a regular criminal court may be made if the court finds for the prosecution according to an intricate web of inferences relating to public safety.

(b) Law of Criminal Procedure

McCarr and Nordby, *Minnesota Practice, Criminal Law and Procedure*, 3rd edition, volume 7, section 1.1, states:

Criminal proceedings in Minnesota are governed by rules arising from a variety of sources, the sometimes intricate interplay of which should be kept in mind by the conscientious practitioner. The United States Constitution and the Minnesota Constitution, which differ from one another in important respects announce certain minimal rights, privileges, requirements, and limits, which all legislative and judicial actions must honor. The procedural particulars in turn are embodied principally in the Rules of Criminal Procedure, with some statewide additions in the General Rules of Practice for the District Courts, and local variations in Special Rules of Practice adopted in some districts. Legislative enactments occasionally prescribe criminal procedures, but their validity is always subject to question under the separation of powers doctrine. The Rules of Juvenile Procedure control criminal cases involving minors. The Minnesota Rules of Evidence are pervasively important in criminal proceedings, as are (if less conspicuously so) the Rules of Professional Conduct and the Code of Judicial Conduct.

All of these rules and constitutional provisions are subject to interpretation by the Minnesota Supreme Court and Court of Appeals, and even the United States District, Circuit, and Supreme Courts. On occasion these courts—but particularly the Minnesota Supreme Court—will effectively create new procedural rules or modify existing ones. And indeed sometimes specific districts or courts within them will by written policy or tacit understanding refine or simplify procedures to meet their own perceived necessities.

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 history of the uneasy relationship between court provided and statutory rules of procedure is fully reviewed by Pirsig and Tietjens, "Court Procedure and the Separation of Powers in Minnesota," *William Mitchell Law Review* 15 (1989): 141. The more recent developments tend to favor the authority of the courts but the difficult distinction between procedure and substance does not lend itself to a final conclusive statement. Also, criminal procedure can raise the question of authority in an acute form, for example, in disagreement over control of the order of final arguments.

If requested to draft legislation relating to criminal procedure, the drafter should first locate the governing statute or rule. Pursuant to Minnesota Statutes, 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 15.

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

Finally, 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 un-superseded 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 Systems (CJIS), a computerized data communications system which indexes criminal justice information relating to crimes. The systems include the Computerized Criminal History (CCH) and the Midwest Automated Fingerprint Identification Network (MAFIN).
- (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. This division includes the Predatory Offender Registration (POR) program.
- (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) The Minnesota Center for Crime Victim Services (MCCVS) is a division of the Department of Public Safety.

- (i) The center's mission is to be the statewide advocate for crime victims. The center provides for compensation to individuals for losses incurred as a result of crime, gives grants to local public and nonprofit agencies to provide shelter and direct advocacy to victims and seeks to raise awareness of victim rights and services statewide.
- (ii) MCCVS has recently been redesigned to provide more comprehensive service to victims throughout the entire state. Its work is carried out through three units: The grants unit; the communication/training unit; and the reparations unit.
- (iii) Assisting the center's efforts through citizen participation and appointment are the following advisory councils and task force:

- Battered Women and Domestic Abuse Advisory Council
- Commissioner's Crime Victims Task Force
- General Crime Advisory Council
- Inter-Agency Task Force on Domestic Violence and Sexual Assault Prevention
- Minnesota Crime Victim and Witness Advisory Council
- Sexual Assault Advisory Council
- Violence Against Women Act Planning Committee

(iv) Matters relating to victims are codified in Minnesota Statutes, chapter 611A.

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

(d) Division of Capitol Complex Security. Laws relating to security for the state capitol and surrounding government buildings, as well as the security staff, are found in Minnesota Statutes, chapter 299E.

(e) Division of Alcohol and Gambling Enforcement. This division administers and enforces (1) the liquor taxation, manufacture, distribution, licensing, and sale provisions of Minnesota Statutes, chapters 297G and 340A, and (2) the gambling laws under Minnesota Statutes, chapter 299L.

(f) Division of the Fire Marshal. Minnesota Statutes, chapter 299F, empowers the state fire marshal with various investigative, licensure, and law enforcement powers relating to fire and explosives safety.

(g) Office of Pipeline Safety. Minnesota Statutes, chapter 299J, authorizes inspection, testing, and other oversight responsibilities for pipelines as delegated by the federal government.

(h) Emergency Response Commission. Minnesota Statutes, chapter 299K, establishes and authorizes the commission to coordinate and implement federal law for responding in the interests of public safety to the release of reportable quantities of hazardous substances.

(i) Division of Emergency Management. Minnesota Statutes, chapter 12, obligates the division to respond to a natural disaster, bioterrorism, or other public health emergency.

(2) OFFICE OF THE ATTORNEY GENERAL.

The Criminal Prosecution and Sex Offender Commitment 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. The division handles many criminal appeals. 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 260B, to the commissioner. See Minnesota Statutes, section 260B.198. 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 hearings and release unit 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 unit for hearings and release.

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, sections 611A.51 to 611A.68.

(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 611.23 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 626.863, and Minnesota Rules, parts 6700.0100 to 6700.2704.

(11) MINNESOTA SENTENCING GUIDELINES COMMISSION.

Minnesota Statutes, sections 244.01 to 244.24, establishes a sentencing guidelines commission composed of members of the judiciary, other members of the criminal justice system, and the public.

The Minnesota Sentencing Guidelines Commission is an ongoing policy-making body created by the legislature in 1978. It developed and continues to maintain a model for rational and consistent sentencing standards to reduce disparity in sentencing practices throughout the state in terms of length of imprisonment as well as imprisonment versus probation and local incarceration; to increase proportionality in sanctions; and ensure more equitable and uniform sentencing for convicted felons.

Through its staff, the commission collects, prepares, analyzes, and distributes information on local and state sentencing practices and conducts ongoing research and policy evaluation. It also

provides support in the implementation of the guidelines through training, consultation, and referral services.

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 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

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 chapter. 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 169A.43, subdivision 2.

(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. 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, section 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.

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*. 4th ed. vols. 10 and 10A. St. Paul: West Publishing Co., 1999.

McCarr, Henry W. and Jack S. Nordly. *Minnesota Practice, Criminal Law and Procedure*. vols. 8, 9, 9A. St. Paul: West Publishing Co., 2001.

Criminal Procedure

Federal Criminal Code and Rules. 2002 ed. St. Paul: West Publishing Co., 2002.

Guernsey, Shannon, ed. *Minnesota Judges Criminal Benchbook*. St. Paul: Minnesota Supreme Court Judicial Planning Committee, 2001.

LaFave, Wayne R., Jerold H. Israel, and Nancy J. King. *Criminal Procedure*. 6 vols. St. Paul: West Publishing Co., 1999.

Sonsteng, John O. and Robert Scott. *Minnesota Practice, Juvenile Law and Practice*. 2nd ed. vols. 12 and 13. St. Paul: West Publishing Co., 1997.

Sentencing

Dailey, Deb, *Minnesota Sentencing Guidelines and Commentary Annotated*. 2nd edition. St. Paul: CLE Press, 1998.

Federal Sentencing Guidelines Manual. 2002 ed. St. Paul: West Publishing Co., 2002.

Hutchinson, Thomas W., David Yeller, Peter B. Hoffman, and Deborah Young. *Federal Sentencing Law and Practice*. St. Paul: West Publishing Co., 2002.

House Research Publications

Criminal Justice

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

Cleary, Jim and Emily Shapiro. "Minnesota's DWI Laws and Practices." January 2001: A comprehensive overview of the state's DWI laws, including definitions of the laws, descriptions of penalties, and explanations of associated practices. [Research Report, 92 pages]

Hicks, Peg. "Overview of the Maltreatment of Minors Act." December 2001: Provides an overview of the law that establishes a system for reporting possible child abuse and neglect to

government agencies that provide protective services for the child or conduct criminal investigations. [Information Brief, 15 pages]

McKnight, Deborah. "Expungement of Criminal Records." July 2001: Describes the laws and appellate court decisions governing the expungement (i.e., the sealing, destruction, or return to the subject) of criminal records. [Information Brief, 9 pages]

van Dyck, Brenda. "The History of the Alcohol Concentration Limit." November 2001: Provides a short history of attempts to lower the alcohol concentration limit for drunk driving violations in Minnesota and reviews federal sanctions for not doing so. [Information Brief, 4 pages]

Zollar, Judith. "Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws." Updated: October 2001: Describes the criminal laws that prohibit unlawful sexual conduct, the criminal penalties that apply to these offenses, mandatory sentences for certain offenders, and the civil and regulatory laws that supplement the criminal provisions. [Information Brief, 29 pages]

Access to Criminal Justice Materials on the Internet

Minnesota Law Internet addresses:

- **www.revisor.leg.state.mn.us**
This Internet site will link you to session laws, statutes, and status of legislation
- **www.leg.state.mn.us/lrl/lrl.htm**
This Internet site will link you to the legislative reference library and will also connect you with Links to the World. Links to the World connects you to the topic Criminal Justice. This site contains many Internet links to Minnesota and national criminal justice resources.

Internet search engines can link you with a vast body of criminal justice materials on the Internet, including state and federal law and in-depth perspectives on virtually every conceivable criminal justice topic.

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 contains 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.

Note that the Minnesota Constitution does not require the naming to be in any particular form. The naming is most often done in the title or text of the bill, or in both places.

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. The sections apply whether or not the local bill has explicit language on the matter, but the status of the bill is clearer if local approval is either 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."

If a choice exists, the decision to include, or not, a local approval provision in a bill generally occurs in the committees of each body with jurisdiction over local government matters. In such a case, a drafter may seek the counsel of the chief house or senate drafting staff member for the committee. Otherwise, it may be preferable to leave the approval provision out initially because it can always be added but generally is difficult to remove once present.

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. That part 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 and local approval is required by law, this quoted part 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. 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 152 to 154.

(c) Specific Problem Areas

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

Special care should be taken in amending laws applicable to local government units that were enacted prior to the adoption of what is now article XII, section 2 of the 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.

Minnesota Constitution, 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.

(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 Minnesota 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.

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(c) 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 (Minn. 1986). Since the legislature has broad discretion in determining classes, a classification will be sustained unless clearly arbitrary and without reasonable basis. *In re Cold Spring Granite Co.*, 271 Minn. 460, 136 N.W.2d 782 (1965); *Elwell v. County of Hennepin*, 301 Minn. 63, 221 N.W.2d 538 (1974); *Matter of McCannel*, 301 N.W.2d 910 (Minn. 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.2d 138 (Minn. 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 (Minn. 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 (Minn. 1989).

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

Article IV, section 18, of the Minnesota Constitution requires all bills that raise revenue to originate in the house of representatives, but allows the senate to propose and concur with amendments as on other bills. Interpretation of this section and an identical provision in the United States Constitution has established that a bill for "raising revenue" is one whose main purpose is to raise money by taxation to meet the general obligations of government. *Millard v. Roberts*, 202 U.S. 429 (1906); *Curryer v. Daniel*, 25 Minn. 1 (1878). A mere appropriation of public money, though it may lead to the necessity of taxation, is insufficient to characterize the measure as one for revenue. *Curryer*, 25 Minn. at 8. Similarly, bills which "incidentally create revenue," such as penalty or assessment provisions that are levied against property and collected as a tax, are not required to originate in the house. *United States v. Norton*, 91 U.S. 566, 569 (1875); *Millard*, 202 U.S. at 437; *State v. Wheeler*, 131 Minn. 308 (1915).

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. For more information, see Julian Cyril Zebot, "Awakening

a Sleeping Dog: An Examination of the Confusion in Ascertaining Purposeful Discrimination Against Interstate Commerce," *Minnesota Law Review* 86 (2002): 1063; Winkfield F. Twyman, Jr., "Losing Face But Gaining Power: State Taxation of Interstate Commerce," *Virginia Tax Review* 16 (1997): 347.

(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.

1	<u>"... it is not a foreign sales corporation under</u>
2	<u>section 922 of the Internal Revenue Code, as amended</u>
3	<u>through December 31, 1999, for the taxable year."</u>

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 (Minn. 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 (Minn. 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 and purchases made after a specific date. Most estate tax laws should be effective for estates of decedents dying after a specific date. For examples of tax law effective date provisions, see the examples on page 84.

5.6 Organization of State Government

(a) General Considerations

A bill that creates a new agency, board, commission, or department (collectively referred to as an "agency" in this section) to administer a new program or 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. 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 may exist 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, governs the transfer of powers among agencies unless stated otherwise.

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. Effective dates are important for transfers of duties between agencies as well.

Fifth, the drafter should easily be able to locate earlier bills to use as models, as this type of legislation is frequently introduced, if not finally enacted.

(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. Consider whether it should be added to the list of departments of state in Minnesota Statutes, section 15.01.

(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 Minnesota Statutes, 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, sections 15.014 and 15.059.

(5) In addition to Minnesota Statutes, chapter 15, consider whether any aspects of Minnesota Statutes, chapters 14, 16A, 16B, 16C, 43A, and 179A, should apply. If a state agency is created, these chapters generally 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. See Minnesota Statutes, chapter 15A.

(7) State the duties or responsibilities of the agency.

(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 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 in the classified or unclassified service, or do they have a special status? See Minnesota Statutes, chapter 43A.

(13) Provide for administrative rulemaking. See section 5.9 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) State the relationship, as appropriate, to the governor, the legislature, or the Supreme Court, as the ultimate supervisor.

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

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

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

(20) 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 close 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, governs the transfer of powers among agencies.

Second, 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.

Third, care should be taken when dealing with changes regarding the appointment and confirmation of officials. Minnesota Statutes, section 15.066, should be consulted.

(d) Employees

If a bill merges two or more existing agencies, transfers a function of one agency into another, or abolishes an agency, the status of existing positions should be considered. Minnesota Statutes, section 15.039, subdivision 7, provides for the disposition of positions under a transfer of power. If the drafter does not want this default provision to apply, examples of issues that may be considered follow.

- (1) If positions but not employees are transferred, determine what happens to employees.
- (2) If employees 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 employees 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 counties 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. Several counties have merged their auditor and treasurer's offices under special laws.

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. The special laws relating to Ramsey, Hennepin, St. Louis, and Dakota counties are codified in Minnesota Statutes, chapters 384A to 384D.

(b) Cities

City governments fall into two classes, statutory cities and home rule charter cities. Statutory cities were formerly called villages, boroughs, or cities and are organized under Minnesota Statutes, chapter 412. Several optional forms of organization for each city's government are permitted under Minnesota Statutes, 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 Minnesota Statutes, 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 Minnesota Statutes, section 412.018, and related legislation (See Laws 1976, chapter 44, section 1). 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 Minnesota Statutes, 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 several special 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 public land 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 Minnesota Statutes, chapters 365 to 368. Towns 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 Minnesota 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

Minnesota has a unique set of laws relating to metropolitan government in the seven counties including and surrounding the twin cities of Minneapolis and St. Paul. Most of the metropolitan government laws are collected in Minnesota Statutes, chapter 473. Commissions have been established that have authority to deal with certain parks, airports, and sports facilities. The commissions are usually subject to some oversight by the metropolitan council. Metropolitan transit and waste water services are operated directly by the 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). The relationship of the metropolitan council and the commissions to the other local government units and the public at large is frequently reviewed and is likely to have further development.

The governor appoints the metropolitan council and the council appoints the parks and open space commission. 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 Minnesota Constitution, article XII, section 2.

Since very few sections of Minnesota Statutes, chapter 473, contain a list of the affected counties, a bill that amends sections in chapter 473 usually needs a section to identify the local application.

1	Sec. . . . [APPLICATION.]
2	<u>This act applies in the counties of Anoka, Carver, Dakota,</u>
3	<u>Hennepin, Ramsey, Scott, and Washington.</u>

(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. 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) In General

Minnesota has several major retirement and pension plans and a number of minor and special plans, including local police and fire funds operating wholly or partially under local laws or trust funds remaining after consolidation of a local fund into one of the major plans. Before attempting any drafting in this area, a drafter must be familiar with at least the principal retirement and pension programs.

(b) Existing Major Retirement Plans

The major Minnesota public pension plans are as follows:

- (1) The General State Employees Retirement Plan of the Minnesota State Retirement System (MSRS-General), found in Minnesota Statutes, sections 352.01 to 352.76. The plan includes basically all state employees who are in the classified service as well as some unclassified employees.
- (2) The General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), found in Minnesota Statutes, sections 353.01 to 353.46 and sections 353.69 to 353.88. The plan includes all non-public-safety and non-teaching employees of counties, municipalities, school districts, or other political subdivisions.
- (3) Teachers Retirement Association (TRA), found in Minnesota Statutes, chapter 354. The plan includes teachers and administrators in the public schools and Minnesota State Colleges and Universities System (MnSCU) faculty members who elect TRA coverage.

(c) Existing Minor Plans

The minor Minnesota public pension plans are as follows:

- (1) Teachers retirement fund associations in cities of the first class, found in Minnesota Statutes, chapter 354A. The three plans include teachers in Minneapolis (Minneapolis Teachers Retirement Fund Association (MTRFA)), St. Paul (St. Paul Teachers Retirement Fund Association (StPTRFA)), and Duluth (Duluth Teachers Retirement Fund Association (DTRFA)).
- (2) The Minneapolis Municipal Employees Retirement Plan (MERF), found in Minnesota Statutes, chapter 422A. The plan includes employees and officials of the city of Minneapolis employed before 1977.
- (3) The State Correctional Employees Retirement Plan (MSRS-Correctional), found in Minnesota Statutes, section 352.90 to 352.951. The plan includes many of the employees of the State Department of Corrections.
- (4) The State Patrol Retirement Plan, found in Minnesota Statutes, chapter 352B. The plan includes state highway patrol troopers, conservation officers, crime bureau officers, and gambling control officers.

- (5) The Elective State Officers Retirement Plan, found in Minnesota Statutes, chapter 352C. The plan includes former elected officers in the executive branch who were in office before July 1, 1997.
- (6) The Legislator's Retirement Plan, found in Minnesota Statutes, chapter 3A. The plan includes legislators who were first elected prior to July 1, 1997.
- (7) The Unclassified State Employees Retirement Program, found in Minnesota Statutes, chapter 352D. The program includes specifically designated state employees in the unclassified service unless they elect to participate in the regular MSRS plan, all constitutional officers, and legislators who were first elected after June 30, 1997. The program also covers judges who have reached the 24-year service credit cap of Minnesota Statutes, section 490.121, subdivision 22.
- (8) Military Officers Personnel Retirement Plan, found in Minnesota Statutes, section 352.85. The plan includes State Department of Military Affairs personnel who are required to retire under federal law at an age earlier than age 65 or age 66.
- (9) Transportation Department Pilots Retirement Plan, found in Minnesota Statutes, section 352.86. The plan includes State Department of Transportation pilots who are prohibited from performing those duties after age 62 under Transportation Department rules.
- (10) State Fire Marshal Division Employees Retirement Plan, found in Minnesota Statutes, section 352.87. The plan includes State Department of Public Safety, State Fire Marshal Division, personnel who are employed in the position of the deputy state fire marshal, fire/arson investigator.
- (11) The Public Employees Police and Fire Retirement Plan (PERA-P&F), found in Minnesota Statutes, sections 353.63 to 353.68. The plan includes county sheriff's department law enforcement personnel and municipal police and salaried firefighters who are not members of a local police or salaried firefighters relief association. The plan also includes members of former local police or salaried firefighters relief associations which have consolidated with the plan under Minnesota Statutes, chapters 353A and 353B, and which have subsequently merged with that plan.
- (12) The Local Government Correctional Service Retirement Plan (PERA-Correctional), found in Minnesota Statutes, chapter 353E. The plan includes correctional guards and related security personnel of county correctional facilities.
- (13) The Public Employees Defined Contribution Plan, found in Minnesota Statutes, chapter 353D. The plan includes local elected officials who are not PERA-General members, local government physicians, and various emergency medical or ambulance service personnel.
- (14) The Minnesota State Colleges and Universities System (MnSCU) Individual Retirement Account Plan (IRAP), found in Minnesota Statutes, chapter 354B. The plan includes MnSCU faculty members who do not elect TRA or first class city teacher retirement fund association coverage.

- (15) The Higher Education Supplemental Retirement Plan, found in Minnesota Statutes, chapter 354C. The plan provides additional retirement coverage for MnSCU faculty members and administrators.
- (16) The Historical Society, Arts Board and Humanities Commission Retirement Plan, found in Minnesota Statutes, chapter 354D. The plan includes all employees of the Minnesota Historical Society and supervisory or professional employees of the State Arts Board or the Minnesota Humanities Commission.
- (17) Four local police or salaried firefighters relief associations operating under Minnesota Statutes, chapter 423B (Minneapolis Police) or 423C (Minneapolis Fire); Minnesota Statutes, sections 423.41 to 423.62 (Fairmont Police); or Laws 1953, chapter 399, as amended (Virginia Fire). These are the local police and firefighters relief associations that have not consolidated with PERA-P&F under Minnesota Statutes, chapter 353A, and merged into PERA-P&F under Minnesota Statutes, section 353.665.
- (18) Approximately 700 volunteer firefighter's relief associations governed by Minnesota Statutes, chapter 424A.
- (19) The Judges Retirement Plan, found in Minnesota Statutes, chapter 490. The plan covers Supreme Court justices, court of appeals judges, and district court judges.

Another chapter of Minnesota Statutes, chapter 356, contains a variety of 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.

(d) Problem of a Service Credit Purchase

One instance of a drafting problem which often arises in the retirement and pension law area is that of a service credit purchase. Throughout the years, various laws have allowed many individuals or groups of public employees to purchase credit for years of service when they did not contribute to a retirement program. The opportunity provided to purchase service credit under each law existed only for a limited time and often the law authorizing the service credit purchase has been subsequently repealed or expired by its own terms.

A service credit purchase 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 purchase of service credit for a specific individual. However, there is no absolute prohibition and drafting requests for individual service credit purchase authority are made from time to time.

In drafting a bill to authorize a purchase of prior service, the drafter must determine:

- (1) identity of the employee(s) and specific characteristics used to define a class limited to the individual(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 service credit purchase is sought; and
- (4) the statutory reference to the repealed or expired law under which authority for the service credit purchase authority, if any, 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 usual 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 service credit purchase rights presently exist. This occasionally does occur. If applicable service credit purchase authority already exists, this information can be given to the legislator making the bill request and the problem remedied without legislation.

The legislation authorizing the service credit purchase should be carefully checked to ensure that service credit purchase rights are not to be extended to others similarly situated but not intended by the requester, unless this result is actually by the requesting legislator.

For examples of various service credit purchase legislation, see the examples on pages 156 and 157.

5.9 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 rule drafting and publishing functions of the revisor of statutes. Minnesota Statutes, chapter 214, and sections 16A.1283 and 16A.1285, 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 rulemaking procedures, 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

An agency has rulemaking authority only to the extent that the legislature grants it. Courts invalidate agency rules that exceed or conflict with the legislative delegation of rulemaking authority. Consequently if a drafter wants an agency to adopt rules to implement a law, the drafter must ensure that the agency is given, or already has, statutory authority to adopt the rules.

Minnesota Statutes, section 14.02, subdivision 4, defines a rule as "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." If an agency action comes within this definition, it

generally can be adopted only by using the rulemaking procedures of Minnesota Statutes, chapter 14 (sections 14.05 to 14.3895). Merely referring to an agency action as a "policy," "guideline," "bulletin," or similar term does not exempt an agency from compliance with the APA procedures in Minnesota Statutes, chapter 14, if an action meets the definition of a rule.

Because APA rulemaking procedures govern generally, a drafter granting rulemaking authority need not specifically state that "the rules must be adopted under chapter 14" if all of the following conditions apply:

- (1) the entity receiving rulemaking authority meets the definition of "agency" in Minnesota Statutes, section 14.02, subdivision 2;
- (2) the authority being granted meets the definition of a "rule" in Minnesota Statutes, section 14.02, subdivision 4; and
- (3) the exemptions in Minnesota Statutes, section 14.03, do not apply.

If one or more of these three conditions does not exist, there is not a grant of rulemaking authority and the agency will not have to use APA rulemaking procedures. In these cases the drafter should not exempt the grant of authority from Minnesota Statutes, chapter 14, rulemaking requirements.

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 rulemaking authorizations that exempt an agency from the rulemaking procedures that would otherwise apply.

It is usually not advisable to draft such an exemption in broad terms from "chapter 14," "sections 14.001 to 14.69," or similar terms. Minnesota Statutes, section 14.386, establishes the adoption procedure that is meant to apply to exempt rules that the legislature has not specifically directed in law be adopted according to another specified procedure, for example, section 14.388 or 14.389.

A well-drafted exemption should always specify the procedure the agency is to follow in adopting the exempt rule; it should specifically except the rule from compliance with Minnesota Statutes, section 14.386, if that is the drafter's intent; it should specify whether or not the exempt rule is to have the force and effect of law; it should provide a period of effectiveness in appropriate cases; and it should provide for public access to the exempt rule. Minnesota Statutes, section 14.386, addresses these issues and should be used by the drafter as a starting point for drafting the exemption at hand.

Minnesota Statutes, section 14.386, requires the exempt rule to be approved as to form by the revisor, approved as to legality by the office of administrative hearings, and published in the State Register.

Rules adopted under Minnesota Statutes, section 14.386, are effective for a period of two years. The authority for the exemption expires at the end of this period. This provision is intended to enhance legislative oversight of rulemaking exemptions by requiring agencies to seek periodic legislative reauthorization of exemptions.

If the drafter concludes that it is appropriate to require the adoption of the exempt rule subject to Minnesota Statutes, section 14.386, the provision being drafted could simply require the agency to adopt a rule "under section 14.386." If the drafter decides that it is appropriate for the exemption to be permanent, the provision being drafted could require the agency to adopt a rule "under section 14.386, paragraphs (a) and (c)." The provision should also state that, "(t)he rule is effective upon publication of the rule in the State Register, and continues in effect until repealed or superseded by other law or rule."

The good cause exemption in Minnesota Statutes, section 14.388, is a standing grant of statutory authority that an agency may use to adopt certain exempt rules. No additional legislative authorization is required. An agency may adopt, amend, or repeal a rule after satisfying the requirements of Minnesota Statutes, section 14.386, paragraph (a), clauses (1) to (4), if the agency for good cause finds that the normal rulemaking procedures are unnecessary, impracticable, or contrary to the public interest and the contemplated rulemaking is intended to:

- (1) address a serious and immediate threat to the public health, safety, or welfare;
- (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with Minnesota Statutes, sections 14.14 to 14.28;
- (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or
- (4) make changes that do not alter the sense, meaning, or effect of a rule.

Rules adopted under clauses (1) and (2) are effective for a period of two years. The authority for the exemption expires at the end of this period. This provision is intended to enhance oversight of these exemptions by requiring an agency to again seek a determination by the Office of Administrative Hearings that there is still adequate justification for the exemption before the agency may readopt the rule under this section for another two-year period. Rules adopted under clauses (3) and (4) do not expire by operation of law.

Minnesota Statutes, section 14.389, provides an expedited process for adopting rules. This process may be used only when specifically authorized by law. Under this process, an agency publishes notice of its proposed rule in the State Register and mails notice to those who have requested notice. The agency must allow at least 30 days for public comment. At the end of the comment period and after an administrative law judge approves it, the agency may adopt the rule. There is a separate expedited procedure for repealing obsolete rules in Minnesota Statutes, section 14.3895.

(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 may 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 examples of such additional authority would be the general grant of rulemaking authority commonly possessed by large agencies and the standing grant of rulemaking authority available to all agencies under Minnesota Statutes, section 14.06.

(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. The drafter should select a specific rulemaking procedure that is appropriate in the circumstances. For example, the public hearing requirements of Minnesota Statutes, chapter 14, may be appropriate if the agency has a good deal of discretion in determining the nature and intent of the rule revisions, and the issue being addressed is controversial. As discussed in paragraph (f), the exempt rule procedures in Minnesota Statutes, section 14.388, clauses (3) and (4), are always available to the agency to make conforming or technical changes to the rules.

The drafter could also draft statutory language that preempts the rule. This alternative is problematic 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 can be cumbersome and confusing and may easily be ineffective.

(f) Conforming Changes

When the legislature enacts law that amends, repeals, or otherwise affects existing agency rules, that law supersedes the rules to the extent that the law conflicts with the rules. Generally speaking, the agency must then, by rulemaking, change the rules to conform to the legislative enactments, if it wishes to avoid confusion on the part of the public regulated or otherwise affected by the rules. While past practice had been for the legislative drafter to provide a rulemaking exemption to the agency to make these conforming changes, this practice is no longer necessary in most cases because of Minnesota Statutes, section 14.388. In part, this statute allows agencies to adopt, amend, or repeal a rule without following the usual rulemaking requirements if the exemption is being relied upon to incorporate in the rules specific changes set forth in applicable statutes when no interpretation of law is required, or to make changes in the rules that do not alter the sense, meaning, or effect of the rules. The agency must obtain the revisor's form approval of the rule and a legal approval by the office of administrative hearings, and the rule must be published in the State Register.

(g) Examples

Preferred alternatives for ordering changes to rules are as follows:

(1) Subject to general APA rulemaking procedures

1 Sec. ... [RULE CHANGE.]
2 The commissioner shall amend Minnesota Rules, part
3 5432.0050, subpart 1, so that provisional licenses issued
4 under that part are valid for five years and are issued only
5 to qualified applicants. The amendment must be adopted
6 pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(The sections of the APA referred to are the sections establishing the procedure applicable to rules adopted after public hearing.)

(2) Subject to special APA rulemaking procedures

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 commissioner must comply with Minnesota
6 Statutes, section 14.389, in adopting the amendment.

(The sections of the APA referred to are sections establishing an expedited procedure for the adoption of rules.)

5.10 State Land Transfers

Four questions should be answered before preparing a final draft of a bill to authorize a sale, exchange, or other change of title to "state land":

(1) Is the land "state land" over which the legislature has jurisdiction?

Not all entities that are understood to be state entities are subject to legislative control in regard to land owned by the entity. For example, the Minnesota Historical Society is not a state agency like the department of natural resources, because it operates under an 1849 Territorial Charter, which empowers its board to own and dispose of property. Similarly, the University of Minnesota, operating under a charter created in 1851 by territorial law, controls most, but not all, of its land under the authority of the board of regents. Lands granted to the state for a university as a part of the state territorial and enabling acts ("university lands") are however, administered by the commissioner of natural resources, (as successor to the state auditor) pursuant to an 1863 resolution of the board of regents and various acts of the legislature (Minnesota Statutes, section 92.03, subdivision 2). On the other hand, the regents have been given control of "salt spring lands" granted to the state by Congress (Minnesota Statutes, section 92.05).

(2) What state officer or agency has jurisdiction over the land?

Over 90 percent of state-owned land is under the administrative control of the commissioner of natural resources. The commissioners of administration, transportation, and human services, and the board of trustees of the Minnesota state colleges and universities also administer substantial acreages of land for various public purposes. The correct administrator of the state land in question must be named if the act is to be effective.

Statutory powers vary considerably among these agencies, with the commissioner of transportation having the most complete power to acquire and dispose of real property. Some bill drafting requests may be satisfied by supplying the requestor with a statutory citation to a law that authorizes the affected state agency to handle the problem without further legislative act. For example, an asserted title defect caused by state involvement in private land and arising from the farm credit program of the 1920's now referred to as "rural credit program" was resolved to a requestor's satisfaction by reference to Minnesota Statutes, section 46.221, under which the commissioner of natural resources (as successor to the commissioner of commerce, the successor to the department of rural credit) is authorized to issue quitclaim deeds under certain circumstances to resolve title problems. In recent years, the commissioner of natural resources has been delegated authority to resolve recurring problems in regard to such matters as certain erroneous boundary problems (Minnesota Statutes, section 84.0273), certain road easements (Minnesota Statutes, sections 84.63 and 84.631), and flowage and other easements (Minnesota Statutes, section 84.632).

(3) What is the exact legal description of the land?

Without this, the effort may fail because the state officer will be legally bound to sell or buy only the land described in the act. If the legal description is in error, the officer will probably not act, but will seek corrective legislation at the next opportunity. If doubts exist as to the accuracy of the legal description presented to the drafter and time constraints preclude further review of the description's accuracy, language may be included in the bill to authorize the attorney general to make necessary changes to the legal description to correct errors and ensure accuracy.

(4) What is the legal classification of the land?

It is necessary to know the legal constraints surrounding the state's ownership of a parcel of land in order to properly draft legislation relating to it. For example, land granted to the state for the support of public schools, and other federally granted lands such as "swamplands," all of which now are commonly referred to as "trust fund lands," cannot be sold except by public auction under limitations imposed by state constitution (Minnesota Constitution, article X1, section 8). Another large class of state-owned land is that acquired through tax-forfeiture. Most "tax-forfeited" land, the title for which is held "in trust for the taxing districts," is administered by the county board where the land is located. However, the title is in the state and the commissioner of revenue issues the deed when a parcel is sold (Minnesota Statutes, sections 281.18 and 281.25). "Tax-forfeited" land, the title for which has been "freed from the trust in favor of the taxing districts," may no longer be administered by the county, but the title may still be in the state, as is the case for the hundreds of thousands of acres of "consolidated conservation area lands" that are administered by the commissioner of natural resources (Minnesota Statutes, chapter 84A). A helpful and thorough reference to various classes of state lands is "*Minnesota Lands*" by Dana, Allison, and Cunningham, American Forestry Association, 1960.

Most legislative requests for state land related bills arise out of existing constitutional or statutory limitations on sale or acquisition. For example, the constitutional requirement of public auction of trust fund lands poses a practical problem if a boundary is in error or a trespass has occurred and there is substantial agreement among the parties that state land ownership should be changed in some way. The constitutional problem is met by authorizing the commissioner of natural resources to sell the particular parcel of land at public auction, with the qualification that

the private party involved in the matter be reimbursed for the value of the improvements. The practical result is that the private party involved in the matter is almost always the successful bidder. Condemnation has been approved by the court as a constitutional substitute for public auction. *Independent School District of Virginia v. State*, 124 Minn. 271, 144 N.W. 960 (1914). An example of use of condemnation to authorize other uses of trust fund land is in Minnesota Statutes, section 84B.03, subdivision 2, relating to the transfer of state land to the United States for Voyageurs National Park. The validity of this procedure was challenged and upheld in *Essling v. Brubacker*, 55 F.R.D. 360 (1971).

Another cause of requests for land bills are statutory prohibitions against sale because the state land is lakeshore (Minnesota Statutes, sections 92.45 and 282.018), wetland of a certain type (Minnesota Statutes, section 103F.535), or commercial peatland (Minnesota Statutes, section 92.461). These problems are met by negating the statutes in question and authorizing sale under conditions warranted by the facts of the particular case. In the latter case, care should be taken to avoid drafting the bill so as to violate the constitutional prohibition against certain special laws found in Minnesota Constitution, article XII, section 1, particularly the prohibitions against "remitting fines, penalties, or forfeitures" or "granting . . . any special or exclusive privilege." *Peterson v. Humphrey*, 381 N.W. 2d 472 (Minn. App. 1986).

Because of problems arising from state ownership of vast acreages of land which create particular problems for local governments that are not resolvable under existing statutory authority, the legislature is sometimes called on to authorize specific action in regard to a particular tract of land.

In drafting bills authorizing the conveyancing of the state's interest in the land, the drafter should remember existing state policy that minerals and mineral rights are reserved to the state (Minnesota Statutes, sections 93.01, 93.02, 93.03, 94.14, 94.343, 94.344, 94.349, 282.01, 282.12, 282.20, 282.225, and 373.01).

The exchange of state-owned land is constitutionally authorized with the unanimous approval of the governor, attorney general, and state auditor (Minnesota Constitution, article XI, section 10). When performing duties relating to land exchange, these officers are statutorily designated as the land exchange board (Minnesota Statutes, section 94.341). Their duties, the duties of the commissioner of natural resources and statutory procedures relating to land exchange are specified in Minnesota Statutes, sections 94.341 to 94.349. In those relatively rare instances when the legislature is requested to become involved in an exchange of state land, the drafter should remember that the state's constitution requires unanimous approval of the exchange by the land exchange board and that mineral and water power rights must be reserved by the state. The drafter should also bear in mind that "exchange," by definition, as recognized in Minnesota Statutes, section 94.343, means that the lands to be traded by the parties involved must be of substantially equal value.

5.11 State Parks, Monuments, Recreation Areas, and Waysides

State parks are created by session law. Land can also be added to or deleted from state parks by session law. Minnesota Statutes, section 85.012, lists the state parks by assigning each a subdivision, generally in alphabetical order. Each subdivision consists only of the park's name and the county or counties in which the park is located. Each session law that created, added to, deleted from, or otherwise modified the park is then listed in the history note to the subdivision.

This format allows the statute to be brief, avoiding the necessity of printing lengthy land descriptions, while at the same time providing a guide to the reader for finding more specific information.

A session law creating a state park has a unique format. The section is uncoded and usually contains multiple subdivisions. The first subdivision creates the park and specifies the county or counties in which it is located. The headnote of the first subdivision consists of the name of the state park and the county or counties in which it is located, preceded in brackets by a citation to Minnesota Statutes, section 85.012, and the subdivision in that section to which it will be assigned. Subsequent subdivisions, which have regular headnotes, may address issues of acquisition, administration, and other special issues affecting the park. One of the subsequent subdivisions will define the boundaries of the park by giving a legal land description.

A session law adding land to or deleting land from a state park also has a unique format. Again, the section is uncoded. The subdivision that adds or deletes land has a headnote consisting of the name of the state park and the county or counties where the affected land is located, preceded in brackets by a citation to Minnesota Statutes, section 85.012, and the subdivision in that section to which it is assigned. The subdivision then states that it is adding or deleting land from the state park and gives a legal description of the affected land.

Though less frequently created and modified, state monuments, recreation areas, and waysides are treated under Minnesota Statutes, section 85.013, in the same manner as state parks.

5.12 EXAMPLES

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EXAMPLE—OMNIBUS APPROPRIATIONS BILL (Bill subdivisions)

AGENCY AND PURPOSE		APPROPRIATIONS	
		20..	20..
1	AGENCY AND PURPOSE		
2		20..	20..
3	Sec. 2. THE LEGISLATURE		
4	Subdivision 1. House of		
5	Representatives	7,100,000	8,000,000
6	Subd. 2. Senate	5,155,000	5,539,000
7	Subd. 3. Legislative		
8	Coordinating Commission		
9	(a) Legislative Reference Library	258,000	244,000
10	(b) Revisor of Statutes	1,098,000	1,442,000
11	(c) Office of Legislative Research		
12	Science and Technology Project	47,000	47,000

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 20.. \$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	1,821,000	1,897,000
10	Subd. 2. Supreme Court		
11	Contingent	28,000	3,000
12	If the appropriation for either year		
13	is insufficient, the appropriation for		
14	the other year is available for it.		
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 20.., chapter		

In section 2, subdivision 6, note 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 20.., which is the fiscal year in which this appropriation bill is to be enacted.

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		
2	STANDARDS	105,000	104,000
3	Approved Complement—2		
4	The board on judicial standards shall		
5	annually review the compliance of each		
6	district, county, municipal, or		
7	probate judge with Minnesota Statutes,		
8	section 546.27. The board shall notify		
9	the commissioner of finance of each		
10	judge not in compliance. If the board		
11	finds that a judge has compelling		
12	reasons for noncompliance, it may		
13	decide not to issue the notice.		
14	When the commissioner is notified that		
15	a judge is not in compliance, the		
16	commissioner shall not pay the judge's		
17	salary.		
18	The board may cancel a notice of		
19	noncompliance if it finds that a judge		
20	has since complied, but a judge shall		
21	not be paid a salary for the period in		
22	which the notification of noncompliance		
23	is in 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	Minnesota Statutes, 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 4, before *The*, there should be added "For the fiscal biennium ending June 30, 20..."

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 (Procedural rider)

1	Sec. 16. ATTORNEY GENERAL			
2		20..	20..	
3	General	186	184	
4	Federal	5	3	
5	Subdivision 1. General Operations			
6	and Management		4,945,000	4,875,000
7	Subd. 2. Special Contingent		25,000	25,000
8	This appropriation is not			
9	available to pay the costs of			
10	special, legal, accounting, and			
11	investigative personnel			
12	retained in cases arising under			
13	Minnesota Statutes, section			
14	501.12, filed after January 31,			
15	20.., unless the attorney			
16	general decides in a case that			
17	all the beneficiaries are not			
18	adequately represented, that			
19	the purpose of the trust may be			
20	frustrated without state			
21	intervention, and that the			
22	state has a substantial			
23	interest in carrying out the			
24	purpose of the trust.			

In subdivision 2 is a procedural rider that restricts the expenditure of funds.

EXAMPLE—OMNIBUS APPROPRIATIONS BILL (Program budgeting)

1	Sec. 5. NATURAL RESOURCES		
2	Subdivision 1. Total		
3	Appropriation	207,502,000	202,510,000
4		Summary by Fund	
5	General	120,616,000	115,091,000
6	Natural Resources	26,373,000	25,798,000
7	Game and Fish	60,413,000	61,521,000
8	Solid Waste	100,000	100,000
9	The amounts that may be spent from these		
10	appropriations for each program are		
11	specified in the following subdivisions.		
12	Subd. 2. Mineral Resources Management		
13		51,194,000	51,174,000
14	\$378,200 the first year and \$33,741,000 the		
15	second year are for mineral diversification.		

EXAMPLE—OMNIBUS APPROPRIATIONS BILL (New permanent law)

1	Sec. 66. [4.19] [PLANNING PROGRAMS.]
2	<u>Before beginning a study, research, or planning program,</u>
3	<u>a state agency or department shall file with the office of</u>
4	<u>strategic and long-range planning on a form prescribed by the</u>
5	<u>agency, a description of the proposed project, including</u>
6	<u>title, purpose, staff assigned, consultants to be used,</u>
7	<u>cost, completion date, and other information prescribed by</u>
8	<u>the agency as appropriate. The agency shall develop rules</u>
9	<u>to exclude from the filing requirement projects that the</u>
10	<u>agency determines are of minor significance.</u>
11	<u>When the study is completed, a copy shall be filed with the</u>
12	<u>office of strategic and long-range planning. The office of</u>
13	<u>strategic and long-range planning shall review the planning</u>
14	<u>programs of state departments and agencies and submit to the</u>
15	<u>legislature by November 15 of each year a report of findings</u>
16	<u>and recommendations.</u>

Note the proposed coding. This indicates the intention to place the provision in 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 20.. and 20., the staffs of the senate
3 finance committee and the house appropriations committee shall
4 provide detailed information whenever available to requesting
5 agencies or to the commissioner of finance on the activities
6 and objects of expenditures that go into the appropriation
7 totals. This section expires July 1, 20...

In section 61, note that the language has no proposed coding and has an expiration 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 20., section 10.30, is amended
2 to read:
3 10.30 [EMPLOYEES' COMPENSATION REVOLVING FUND REIMBURSEMENT.]
4 In all cases where any state department owes the employees'
5 compensation revolving fund created by sections 176.591 176.601
6 and 176.611 for claims paid by its employees and no direct
7 appropriation is made therefor such department shall reimburse
8 the revolving fund from the ~~funds available to it for supplies~~
9 ~~and expense~~ money appropriated for operation of the department.

In section 69, note the ordinary language in the introductory sentence stating that the provision amends existing law. This is the preferred method of drafting an amendment to permanent law in an appropriations bill.

62 bondholders and the site and facilities or any part of them
63 may be mortgaged to the trustee to secure the payment of the
64 principal of and interest on the bonds when due. The county
65 board of commissioners may make and enter into any and all
66 covenants with the bondholders or trustees which are
67 determined by it to be necessary and proper to assure the
68 marketability of the bonds, the completion of the facilities,
69 the segregation of the revenues, and any other funds pledged
70 and the sufficiency of funds for the prompt and full payment
71 of all bonds and interest. The bonds shall be deemed to be
72 payable wholly from the income of a revenue producing
73 convenience within the meaning of Minnesota Statutes, section
74 475.58.
75 Subd. 5. [PLEDGE OF FULL FAITH.] The county board of
76 commissioners may also pledge the full faith and credit and
77 taxing powers of the county to the payment of not more than
78 \$1,500,000 principal amount of the bonds and the interest on
79 them when due. In that event the board shall adopt an
80 initial resolution stating the amount, purpose, and in
81 general, the security to be provided for the bonds and publish
82 it once each week for two consecutive weeks in the official
83 newspaper. The bonds may be issued without the submission of
84 the question of their issuance to the electors unless, within
85 ten days after the second publication of the resolution, a
86 petition requesting an election signed by more than ten
87 percent of the qualified electors voting in the county at
88 the last general election is filed with the county auditor.
89 If a petition is filed, no bonds shall be issued under this
90 subdivision unless authorized by a majority of the electors
91 voting on the question.
92 Subd. 6. [TAX LEVY.] The county board of commissioners
93 may levy taxes on all taxable property in the county to pay
94 the costs of operation and maintenance of the apartments and
95 covenant and agree to levy taxes, if needed, over the period
96 during which any bonds issued pursuant to subdivision 3 are
97 outstanding. The amount and rate of the taxes are not subject
98 to statutory limits on county tax levies for general fund
99 purposes.
100 Sec. 3. [EFFECTIVE DATE.]
101 Sections 1 and 2 are effective the day following final
102 enactment pursuant to Minnesota Statutes, section 645.023,
103 subdivision 1, clause (a).

In section 1 and subdivisions 1 and 2 of section 2, note that the authorization of bonding is part of a general public program. While the purpose is the key to the bill, it also establishes the purpose as not an "internal improvement" prohibited by the Minnesota Constitution.

In section 2, subdivision 2, note the provision that rentals must be sufficient to pay the debt service. 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.

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. Section 3 provides that the act, a grant of authority, goes into effect without approval by the county to which the authority is granted.

28 operator shall file with the county auditor, under oath, a
29 report in the form and containing the information that the
30 auditor may require. The first report shall be filed on July 1,
31 20., covering the period between the effective date for the
32 county of sections 1 to 8 and June 30, 20., and thereafter on
33 October 1, January 1, April 1, and July 1 of each year
34 covering the preceding quarter. In each report the operator
35 shall state the number of cubic yards of gravel removed during
36 the quarter and compute the amount of the tax due.
37 Subd. 2. [COMPUTATION.] The tax computed in the report must
38 be paid to the county treasurer on the first day of the quarter
39 next following the quarter for which the report is filed.
40 Sec. 4. [FAILURE TO REPORT AND PAY TAX.]
41 If an operator fails to file the report required by section
42 3, subdivision 1, or files an erroneous report, the county
43 auditor shall determine the amount of the tax due and notify
44 the person by certified mail of the amount of the tax. The
45 operator may, within 30 days from the date of mailing of the
46 notice, file a written statement of the objections to the
47 amount of the taxes due. The statement of objections is a
48 petition under Minnesota Statutes, chapter 278, and Minnesota
49 Statutes, sections 278.02 to 278.13, apply to it.
50 Sec. 5. [PROHIBITION.]
51 A person may not remove any gravel from any gravel pit
52 unless taxes due under this act have been paid or objections
53 have been filed as provided in section 4. A violation of
54 this section is a misdemeanor.
55 Sec. 6. [USE OF REVENUE.]
56 Subdivision 1. [DEPOSIT.] All occupation taxes collected
57 under this act shall be deposited in the county treasury and
58 credited as follows:
59 (1) 90 percent to the county road and bridge fund; and
60 (2) ten percent to a county reserve fund for the
61 restoration of abandoned gravel pits.
62 Subd. 2. [EXPENDITURE.] All occupation taxes deposited
63 and credited to the county road and bridge fund or the reserve
64 fund shall be spent by the county only to maintain, construct
65 or reconstruct roads traveled by trucks hauling gravel or to
66 restore abandoned gravel pits. Occupation taxes shall
67 only be spent to restore abandoned gravel pits upon lands to
68 which the county holds title or upon lands forfeited to the
69 state, as trustee for nonpayment of taxes.
70 Sec. 7. [APPLICABILITY TO STATE.]
71 No report need be filed by or occupation tax paid by the
72 state or its contractors when the gravel removed is used to
73 maintain, construct, or reconstruct trunk highways.
74 Sec. 8. [EFFECTIVE DATE.]
75 The provisions of sections 1 to 7 that relate to Kittson
76 County are effective if approved by the members of the board
77 of county commissioners of Kittson County the day after
78 compliance with Minnesota Statutes, section 645.021,
79 subdivision 3. The provisions of sections 1 to 7 that relate
80 to Marshall County are effective if approved by the members
81 the board of county commissioners of Marshall County the day
82 after compliance with Minnesota Statutes, section 645.021,
83 subdivision 3.

EXAMPLES—LOCAL LAW (Approval provisions)

Local law usually contains an approval provision.

(1) Use one of the following forms to direct the governing body and its chief clerical officer to the specific statutory provisions they must follow:

```
1     Sec. ... [EFFECTIVE DATE; LOCAL APPROVAL.]
2     Section ... is effective the day after the governing body
3 of ... and its chief clerical officer comply with Minnesota
4 Statutes, section 645.021, subdivisions 2 and 3.
```

```
1     Sec. ... [EFFECTIVE DATE; LOCAL APPROVAL.]
2     Section ... is effective the day after the governing body
3 of ... and its chief clerical officer timely complete their
4 compliance with Minnesota Statutes, section 645.021,
5 subdivisions 2 and 3.
```

This form makes the act take effect at 12:01 a.m. after the local approval is filed with the secretary of state. Minnesota Statutes, section 645.02, provides that every act is effective at 12:01 a.m. on the day it becomes effective and that local laws are effective after the approval certificate is filed. Nevertheless, it is customary to include an effective date provision that parallels Minnesota Statutes, section 645.02. This serves to remind those affected to comply with the 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     This act is effective for any of the cities of London,
3 Paris, Madrid, and Cairo the day after the act's approval by
4 its city council, but only for the city whose council approves
5 it.
```

EXAMPLES—LOCAL LAW (Approval provisions, Cont.)

(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. ... [EFFECTIVE DATE; LOCAL APPROVAL.]
2   Notwithstanding Minnesota Statutes, section 645.021,
3   subdivision 2, this act is effective only upon its approval
4   by a majority of the voters of the city (county, school
5   district) of ... voting on the question at an election on
6   the question of its approval.
```

or, if appropriate, it may read:

```
1   Sec. ... [EFFECTIVE DATE; LOCAL APPROVAL.]
2   Notwithstanding Minnesota Statutes, section 645.021,
3   subdivision 2, this act is effective only upon its approval
4   by a majority of the electors of the town of ... voting on
5   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. ... [EFFECTIVE DATE; LOCAL APPROVAL.]
2   This act 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 its enactment, and
6   notwithstanding Minnesota Statutes, section 645.021,
7   subdivision 2, the governing body (town board) shall submit
8   the question of approval to the voters of the city (town,
9   county, school district) at the next general election (town
10  meeting) in the city (town, county, school district). If
11  approved by a majority of the voters voting on the question,
    this act is effective.
```

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.

(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:

EXAMPLES—LOCAL LAW (Approval provisions, Cont.)

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 must be:</u>
4	<u>"Shall the 20.. legislative act that authorizes the city of</u>
5	<u>Gotham to provide ambulance service be approved?</u>
6	<u>Yes</u>
7	<u>No"</u>

The ballot question describes 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	<u>Pursuant to Minnesota Statutes, section 645.023,</u>
3	<u>subdivision 1, clause (a) (or (b) or (c)), this act is</u>
4	<u>effective without local approval unless the voters of</u>
5	<u>the city (town, county, school district) of ... request</u>
6	<u>a referendum on its approval. The voters may request a</u>
7	<u>referendum by filing a petition with the governing body (town</u>
8	<u>board) of the city (town, county, school district) of</u>
9	<u>.... The petition must state the text of this act and</u>
10	<u>indicate that those who signed the petition are residents of</u>
11	<u>the city (town, county, school district) of ... and are</u>
12	<u>18 years of age or older. The petition must be signed by a</u>
13	<u>number of persons equal to ten percent or more of the number</u>
14	<u>of persons who cast votes for governor within the city (town,</u>
15	<u>county, school district) of ... at the last election of a</u>
16	<u>governor.</u>

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 LAW (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 the
5 question. Notice of the time and place of the hearing must
6 be published in a newspaper of general circulation in the
7 city (town, county, school district) once in each week for
8 two successive weeks before the hearing. The published
9 notice must be in a form determined by the governing
10 body (town board). The form must be sufficient in size
11 and prominent in format in order to attract the attention of
12 the reader. The notice shall set forth the intent of the city
13 council (town board, county board, school board) to
14 consider approval of this act. The text of sections 1 to
15 . . . of this act must be included in the notice.

EXAMPLES—PENSION SERVICE CREDIT PURCHASE PROVISIONS (Authorizing an individual to purchase service credit)

1 Sec. . . . [PRIOR OUT-OF-STATE TEACHING SERVICE CREDIT
2 PURCHASE BY PUBLIC EMPLOYEES RETIREMENT ASSOCIATION MEMBER.]
3 Subdivision 1. [ELIGIBILITY.] An eligible member is a
4 current active member of the public employees retirement
5 association general plan who became a member of that plan on
6 August 1, 1973, and who was born on December 16, 1944. An
7 eligible member may purchase allowable service credit in the
8 public employees retirement association general plan as
9 specified in this section.
10 Subd. 2. [SERVICE CREDIT PURCHASE AUTHORIZED.] (a)
11 An eligible member specified in subdivision 1 is eligible to
12 purchase up to four years of allowable service credit from
13 the general employees retirement plan of the public employees
14 retirement association for out-of-state teaching service by
15 making payment under Minnesota Statutes, section 356.55 or
16 356.551, whichever is applicable, provided that the out-of-state
17 teaching service was performed for an educational institution
18 that was established and operated by another governmental
19 jurisdiction and that the eligible member is not entitled to
20 receive a current or deferred age and service retirement annuity
21 or disability benefit and has not purchased service credit from
22 another defined benefit public employee pension plan for that
23 out-of-state teaching service.
24 (b) For purposes of paragraph (a), "another governmental
25 jurisdiction" means another state of the United States or a
26 governmental subdivision of another state of the United
27 States.
28 Subd. 3. [APPLICATION AND DOCUMENTATION.] An eligible member
29 under subdivision 1 who desires to purchase service credit
30 under this section must apply with the executive director of
31 the public employees retirement association to make the
32 purchase. The application must include all necessary
33 documentation of the eligible member's qualifications to make
34 the purchase, signed written permission to allow the
35 executive director to request and receive necessary
36 verification of applicable facts and eligibility requirements,
37 and any other relevant information that the executive director
38 may require. Payment must be made before the eligible
39 member's effective date of retirement or before January 1,
40 20., whichever is earlier.
41 Subd. 4. [SERVICE CREDIT GRANT.] Allowable service
42 credit for the purchase period must be granted by the public
43 employees retirement association to the purchasing eligible
44 member on receipt of the required purchase payment amount.

Note that this provision has very narrow application and will not be codified.

EXAMPLES—PENSION SERVICE CREDIT PURCHASE PROVISIONS (Authorizing new members of group to purchase service credit)

1 Sec. . . . [354.541] [PRIOR UNIVERSITY OF MINNESOTA
2 TEACHING SERVICE CREDIT PURCHASE.]
3 Subdivision 1. [SERVICE CREDIT PURCHASE AUTHORIZED.] A
4 teacher who has at least three years of allowable service
5 credit with the teachers retirement association is entitled
6 to purchase up to ten years of allowable and formula service
7 credit for University of Minnesota teaching service by making
8 payment under section 356.55, provided the teacher is not
9 entitled to receive a current or deferred age and service
10 retirement annuity or disability benefit and has not
11 purchased service credit from another defined benefit public
12 employee pension plan for that University of Minnesota
13 teaching service.
14 Subd. 2. [APPLICATION AND DOCUMENTATION.] A
15 teacher who desires to purchase service credit under
16 subdivision 1 must apply with the executive director to make
17 the purchase. The application must include all necessary
18 documentation of the teacher's qualifications to make the
19 purchase, signed written permission to allow the executive
20 director to request and receive necessary verification of
21 applicable facts and eligibility requirements, and any other
22 relevant information that the executive director may require.
23 Payment must be made before the teacher's effective date of
24 retirement.
25 Subd. 3. [SERVICE CREDIT GRANT.] Allowable and formula
26 service credit for the purchase period must be granted by the
27 teachers retirement association to the purchasing teacher on
28 receipt of the required purchase payment amount.

Note that this provision does affect existing permanent law and so the drafting format follows the form for permanent laws.

EXAMPLE—STATE LAND TRANSFERS (Trust fund land sale; trespass correction)

1
2 Sec. 3. [ST. LOUIS COUNTY; TRUST FUND LAND.]
3 Notwithstanding Minnesota Statutes, section 92.45, the
4 commissioner of natural resources may sell in the manner
5 prescribed for trust fund land, under Minnesota Statutes,
6 chapter 92, the following described property:
7 Lot 1 of Block 1 of the plat of Burntside View located in
8 Government Lot 6, Section 23, Township 63 North, Range 13
9 West, St. Louis County.
10 The land and any improvements must be appraised separately.
11 If the purchaser of the property is not John S. Sargent the
12 purchaser must reimburse Mr. Sargent for the value of the
13 improvements. The land sale will resolve an inadvertent
14 trespass that was discovered when a boundary line was
15 resurveyed. The public interest will be best served when this
16 trespass is resolved.

EXAMPLE— STATE LAND TRANSFERS (Lakeshore auction sale)

1 A bill for an act

2 relating to state lands; authorizing public sale of certain

3 tax-forfeited land that borders public water in . . .

4 County.

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

6 Section 1. [PUBLIC SALE OF TAX-FORFEITED LAND BORDERING

7 PUBLIC WATER ; . . . COUNTY.]

8 (a) Notwithstanding Minnesota Statutes, sections 92.45 and

9 282.018, subdivision 1, . . . County [may/shall] sell the tax-

10 forfeited land bordering public water that is described in

11 paragraph (c), under the remaining provisions of Minnesota

12 Statutes, chapter 282.

13 (b) The conveyance must be in a form approved by the

14 attorney general.

15 (c) The land [that may be/to be] sold is located in . . .

16 County and is described as:

17 (1) ;

18 (2)

19 (d) The county has determined that the county's land

20 management interests would best be served if the lands were

21 returned to private ownership.

22 Sec. 2. [EFFECTIVE DATE.]

23 Section 1 is effective the day following final enactment.

EXAMPLE— STATE LAND TRANSFERS (Lakeshore private sale)

1 A bill for an act

2 relating to state lands; authorizing private sale of

3 certain tax-forfeited land that borders public water in

4 . . . County.

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

6 Section 1. [PRIVATE SALE OF TAX-FORFEITED LAND BORDERING

7 PUBLIC WATER; . . . COUNTY.]

8 (a) Notwithstanding Minnesota Statutes, sections 92.45 and

9 282.018, subdivision 1, and the public sale provisions of

10 Minnesota Statutes, chapter 282, County

11 [may/shall] sell by private sale the tax-forfeited land

12 bordering public water that is described in paragraph (c),

13 under the remaining provisions of Minnesota Statutes, chapter

14 282.

15 (b) The conveyance must be in a form approved by the

16 attorney general.

17 (c) The land [that may be/to be] sold is located in

18 County and is described as:

19 (1) ;

20 (2)

21 (d) The county has determined that the county's land

22 management interests would best be served if the lands were

23 returned to private ownership.

24 Sec. 2. [EFFECTIVE DATE.]

25 Section 1 is effective the day following final enactment.

EXAMPLE— STATE LAND TRANSFERS (Land conveyance to city)

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A bill for an act

relating to state lands; requiring the commissioner of natural resources to convey certain land to the city of Akeley for public purposes.

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

Section 1. [CONVEYANCE TO THE CITY OF AKELEY.]

(a) Notwithstanding Minnesota Statutes, sections 84.027, subdivision 10, and 94.09 to 94.16, the commissioner of natural resources shall convey the land described in paragraph (c) to the city of Akeley for no consideration.

(b) The conveyance must be in a form approved by the attorney general and must provide that the land reverts to the state if the city of Akeley stops using the land for the public purpose described in paragraph (d).

(c) The land to be conveyed is located in Hubbard County and is described as follows: Lots 9 and 10 in Block 6, and all of Block 5, of the Plat of Akeley Industrial Gardens.

(d) The city of Akeley intends to use the land for expansion of a city park and for senior citizen housing.

Sec. 2. [EFFECTIVE DATE.]

Section 1 is effective the day following final enactment.

EXAMPLE—STATE PARKS (Creating a state park)

1 A bill for an act
2 relating to natural resources; creating a state park.
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
4 Section 1.[GLENDALOUGH STATE PARK.]
5 Subdivision 1. [85.012] [Subd. 23a.] [GLENDALOUGH STATE
6 PARK, OTTER TAIL COUNTY.] Glendalough State Park is
7 established in Otter Tail County.
8 Subd. 2. [ACQUISITION.] The commissioner of natural
9 resources is authorized to acquire by gift or purchase the
10 lands for Glendalough State Park. The commissioner shall
11 give emphasis to the management of wildlife within the park
12 and shall interpret these management activities for the
13 public. Except as otherwise provided in this subdivision,
14 all lands acquired for Glendalough State Park shall be
15 administered in the same manner as provided for other state
16 parks and shall be perpetually dedicated for that use.
17 Subd. 3. [PAYMENT IN LIEU OF TAXES FOR PRIVATE TRACTS.]
18 (a) If a tract or lot or privately owned land is acquired for
19 inclusion within Glendalough State Park and, as a result of
20 the acquisition, taxes are no longer assessed against the
21 tract or lot or improvements on the tract or lot, the
22 following amount shall be paid by the commissioner of
23 natural resources to Otter Tail County for distribution to
24 the taxing districts:
25 (1) in the first year after taxes are last required to be
26 paid on the property, 55 percent of the last required payment;
27 (2) in the second year after taxes are last required to be
28 paid on the property, 40 percent of the last required payment;
29 and
30 (3) in the third year after taxes are last required to be
31 paid on the property, 20 percent of the last required payment.
32 The commissioner shall make the payments from money
33 appropriated for state park maintenance and operation. The
34 county auditor shall certify to the commissioner of natural
35 resources the total amount due to a county on or before March
36 30 of the year in which money must be paid under this section.
37 Money received by a county under this subdivision shall be
38 distributed to the various taxing districts in the same
39 proportion as the levy on the property in the last year taxes
40 were required to be paid on the property.
41 Subd. 4. [BOUNDARIES.] The following described lands are
42 located within the boundaries of Glendalough State Park:
43 Government Lots 3 and 4 and that part of Lake Emma and its
44 lake bed lying in Section 7; all of Section 18; Government Lot
45 1, the Northeast Quarter of the Northwest Quarter and the
46 Southwest Quarter of the Northwest Quarter of Section 19; all
47 in Township 133 North, Range 39 West. All of Section 13;

EXAMPLE—STATE PARKS (creating a state park, Cont.)

48 Government Lots 1 and 2, the West Half of the Southeast
49 Quarter, the Northeast Quarter and the Southwest Quarter of
50 Section 14; Government Lots 1 and 2, the East 66 feet of the
51 West Half of the Southeast Quarter and the Northeast Quarter
52 of Section 23; Government Lots 1, 2, 3, 4, 5, 6, and 8, the
53 Northwest Quarter of the Northwest Quarter, the East Half of
54 the Southeast Quarter of Section 24; that part of Government
55 Lot 7 of Section 24 lying easterly of the following described
56 line: commencing at the northeast corner of Government Lot 1
57 of Section 25, Township 133 North, Range 40 West; thence North
58 89 degrees minutes 29 seconds West on an assumed bearing along
59 the north line of said Section 25 a distance of 75.00 feet to
60 the point of beginning; thence on a bearing of North 37 feet,
61 more or less, to the shoreline of Molly Stark Lake and there
62 terminating; that part of Government Lot 1 of Section 25 lying
63 northerly of County State Aid Highway No. 16 and westerly of
64 the following described line: commencing at the northeast
65 corner of said Government Lot 1; thence on an assumed bearing
66 of South along the east line of said Government Lot 1 a
67 distance of 822.46 feet; thence North 77 degrees 59 minutes 14
68 seconds West 414.39 feet to the point of beginning; thence
69 North 04 degrees 28 minutes 54 seconds East 707 feet, more or
70 less, to the shoreline of Molly Stark Lake and there
71 terminating; the westerly 50 feet except the northerly 643.5
72 feet of Government Lot 1 of Section 25; Government Lot 1 of
73 Section 26 except the easterly 50 feet of the northerly 643.5
70 feet; all in Township 133 north, Range 40 West. Northwest
Quarter of the Northwest Quarter, the East Half of
71 the Southeast Quarter of Section 24; that part of Government
72 Lot 7 of Section 24 lying easterly of the following described
73 line: commencing at the northeast corner of Government Lot 1
74 of Section 25, Township 133 North, Range 40 West; thence North
75 89 degrees minutes 29 seconds West on an assumed bearing along
76 the north line of said Section 25 a distance of 75.00 feet to
77 the point of beginning; thence on a bearing of North 37 feet,
78 more or less, to the shoreline of Molly Stark Lake and there
79 terminating; that part of Government Lot 1 of Section 25 lying
80 northerly of County State Aid Highway No. 16 and westerly of
81 the following described line: commencing at the northeast
82 corner of said Government Lot 1; thence on an assumed bearing
83 of South along the east line of said Government Lot 1 a
84 distance of 822.46 feet; thence North 77 degrees 59 minutes 14
85 seconds West 414.39 feet to the point of beginning; thence
86 North 04 degrees 28 minutes 54 seconds East 707 feet, more or
70 less, to the shoreline of Molly Stark Lake and there
71 terminating; the westerly 50 feet except the northerly 643.5
72 feet of Government Lot 1 of Section 25; Government Lot 1 of
73 Section 26 except the easterly 50 feet of the northerly 643.5
74 feet; all in Township 133 north, Range 40 West.

This example creates a state park. Note that "amending section 85.012, by adding a subdivision" does *not* appear in the title. See section 5.11.

58 COOK COUNTY.] The Cross River State Wayside is abolished and
59 its lands transferred according to subdivision 1.
60 Sec. 5. [REPEALER.]
61 Minnesota Statutes 20..., section 85.013, subdivision 8, is
62 repealed.

This example adds to state parks. Section 1 renames an existing state park. Note the differences in the headings in sections 3 and 4. The section headnotes follow the usual format. However, in section 3, another headnote directly follows the section headnote, but unlike section 4, is not designated as a subdivision because there is no subdivision 2. The citation to section 85.012 is placed as a heading on the section text, because it has no subdivision headnote. Also note section 4, subdivision 2, which abolishes a wayside and transfers the land to a state park. The statutory subdivision assigned to the wayside in section 85.013 was also repealed in section 5 as a result. See section 5.11.

Chapter 6

Resolutions

6.1 Uses of Resolutions
6.2 Choosing the Correct Form
6.3 Form Requirements
6.4 Amendments, Engrossing, and Enrolling

6.5 Internet Access to Resolutions
6.6 Index of Provisions about Resolutions
6.7 Examples

6.1 Uses of Resolutions

Resolutions have three main uses: to conduct the internal business of one or both houses of the legislature, to express policy or opinions in a nonbinding way, and to propose or ratify constitutional amendments. There are five different types of resolutions: congratulatory, simple, concurrent, memorial, and joint. The five forms are used for different purposes, although the purposes can overlap. Further, there are differences in how the house of representatives and senate handle resolutions.

Congratulatory resolutions are the ones most often requested. They are usually used to congratulate constituents or public persons on outstanding achievements. Typical congratulatory resolutions are for scouts, school athletic teams, and retirements.

Simple resolutions are used for the internal business dealings of a single house, such as adopting rules or authorizing payments. Another use of the simple resolution is for formal statements by one house. A simple resolution can be used instead of a congratulatory resolution if the requester wants the congratulation to be more public. Some types of simple resolutions that are regularly requested are commemorations of members who have died in the past year and observances of a special day.

Concurrent resolutions are used for business matters that require the agreement of both houses, such as adopting or amending the joint rules, setting committee deadlines, setting revenue targets, scheduling a joint session, or setting adjournment dates.

Memorial resolutions, also called memorials, are used to make any statement that asks another government official or body to act. The typical memorial resolution is directed to Congress and asks for a change in law or federal policy. Requests for federal constitutional amendments, federal rule changes, state departmental actions, or actions by the governor are all appropriate matters for memorial resolutions. Memorial resolutions must be in bill form and follow bill procedure.

Joint resolutions are of two kinds. The older type, a resolution adopted by a joint convention of the two houses, is extremely rare. The newer type, authorized by joint rule 2.07, provides a vehicle for proposing or authorizing constitutional amendments without presentment to the governor.

6.2 Choosing the Correct Form

The first thing to be decided in taking a resolution request is which type of resolution to use. Members and staff often need advice about the choice of forms. Many provisions of rules and law, and one section of the Minnesota Constitution, relate to the choice of a form of resolution for a particular type of legislative statement.

Congratulatory resolutions are house documents. They are governed by house rules 1.11 and 4.02. They do not have to be introduced in or adopted by the house. Current practice is to draft them as resolutions of the house rules committee, although the committee does not really act on them. They need only the signatures of the requester, the speaker, and the majority leader, and they can be drafted, signed, sealed, and sent to a recipient even if the house is not in session. If a house member requests a private congratulation, the usual practice is to draft a congratulatory resolution. If a house member wants a document for introduction, a simple resolution can be drafted.

The senate rules do not provide a separate form or procedure for congratulatory resolutions, so for senators they are always drafted as simple resolutions. They are introduced and referred to the committee on rules and administration. They are not considered by the committee. Rather, the senate word processing office prints a copy on ceremonial paper, affixes the gold seal of the senate, and sends it to the secretary of the senate to be authenticated by his signature and the signatures of the chair of the committee on rules and administration and the chief author, who presents it to the person congratulated.

A common problem is that members want a congratulation to come from both houses and to be produced quickly. Unfortunately, the only forms of resolution that involve both houses require floor action. The only speedy two-house congratulation is a house congratulatory resolution with additional signature lines for senate members. The slower solution, during session, is to draft identical simple resolutions for both houses.

Simple resolutions. There are no provisions that discuss simple resolutions per se, but all provisions that talk about "resolutions" generally govern simple resolutions as well as all the others. See the index on pages 172 and 173. If a member wants a document that can be introduced, and if the content of the document does not require it to be a memorial, concurrent, or joint resolution, then it can be drafted as a simple resolution.

When the rules specifically call for a house resolution or a senate resolution, the simple resolution is the form to use. Senate rule 7 provides that the senate's biennial budget resolution must be "in the form of a senate resolution," and house rule 4.03 provides that its budget resolution must be "in the form of a house resolution." See the example on page 178.

House resolutions have one important restriction on content, stated in house rule 4.02: "A resolution must not authorize expenditure from any source other than the money appropriated by the Legislature to the House."

The simple resolution form is used for "unnumbered resolutions" concerning internal business in the house of representatives.

Concurrent resolutions are governed first by the Minnesota Constitution, article IV, section 24: "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." Resolutions that are concurrent but about legislative business or adjournment thus do not require presentment. They also do not have to have three readings (house rule 4.02, senate rule 2) or follow bill procedure (senate rule 6).

A document having to do with the business of both houses is often drafted as a concurrent resolution. A few specific types of business—budget resolutions, session deadlines, and adjournment—are governed by special provisions of law and rules:

Adjournment: Minnesota Constitution, article IV, section 24; senate rule 6

Budget resolutions: Minnesota Statutes, section 16A.102; house rule 4.03, senate rule 7

Session deadlines: joint rule 2.03

See the examples on pages 178 and 187 for the correct form and content of these resolutions.

A concurrent resolution can be used to congratulate, or to offer condolences, if the two houses want to introduce a document and to act together.

Memorial resolutions. Memorial resolutions are best defined in house rule 4.02: "A statement of facts being forwarded for action to a governmental official, agency, or body or other similar proposal is a memorial and must be introduced in the same form and take the same course as a bill." This means that, for the house, any statement asking for action from any other person or body at any level of government — or even outside government — must be drafted as a memorial.

Senate rule 6.1 is similar but not as comprehensive: "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... must follow the same procedure as bills before being adopted." The senate's rule would not cover resolutions addressed to anyone outside government. A resolution addressed to television producers would have to be in memorial form in the house, but could be in simple form in the senate.

Both rules require memorials to meet the same committee deadlines as bills. Requesters should be discouraged from trying to bypass the rules by having memorial resolution matter drafted in simple or concurrent form. A drafting formula that is sometimes used to address a national issue in a simple resolution is a resolution "expressing the sense of the House of Representatives" or "expressing the sense of the Senate" that the Congress should do something. That form can be a mechanism for expressing one house's view on a matter before Congress without being limited by session deadlines. Such a resolution must not contain a transmittal clause, or it becomes a memorial. See the example on page 182.

A request to Congress for a Constitutional convention or a ratification of an amendment to the United States Constitution may be drafted as a memorial resolution, but it may also be drafted as a joint resolution.

For a list of other provisions that govern memorial resolutions, see the index on page 172.

Joint resolutions are specifically discussed in senate rule 6 and joint rule 2.07. Senate rule 6.1 provides that joint resolutions "must follow the same procedure as bills before being adopted." Joint rule 2.07 requires joint resolutions to be enrolled, but orders that certain joint resolutions not be presented to the governor and simply be deposited with the secretary of state. The specific resolutions are

those asking Congress to call a constitutional convention

those ratifying amendments to the United States Constitution

those proposing amendments to the Minnesota Constitution

those prescribing the compensation of judges.

Joint rule 2.07 makes it clear that at least those four matters can be drafted as joint resolutions, although they can be drafted in other ways too.

The four matters exempted from presentment in the rule are those not subject to presentment according to federal or state constitutional provisions. For example, the compensation of judges is exempt from the governor's approval under *State ex rel. Gardner v. Holm*, 241 Minn. 125, 62 N.W. 2d 52 (1954).

Proposals of amendments to the Minnesota Constitution have in the past been drafted as bills, and still can be. While bills for that purpose are enrolled and presented to the governor, they are not subject to the governor's veto authority. Proposals for constitutional amendments can also be drafted as joint resolutions if the requester wants to avoid presentment altogether.

Avoiding presentment in other matters is controversial. The redistricting process has prompted a series of cases: In 1931, the house ordered by resolution that a vetoed redistricting plan be filed with the secretary of state. The Minnesota Supreme Court held that the governor should have no veto power in the matter and that the redistricting plan should be given effect; the U.S. Supreme court disagreed. (*State ex rel. Smiley v. Holm*, 184 Minn. 228, 238 N.W. 494; rev 285 U.S. 355, 52 S. Ct. 397, 76 L. ed. 795)

For a list of other provisions that affect joint resolutions, see the index on page 172.

6.3 Form Requirements

Titles. Resolution titles are simple. They contain only an opening phrase and a subject.

Congratulatory and simple resolutions have opening phrases that specify one house or the other: "A house resolution" or "A senate resolution".

Concurrent resolutions have opening phrases that specify the house that acts on the resolution first: "A house concurrent resolution" or "A senate concurrent resolution".

Memorial resolutions, like bills, go to both houses, so they have the opening phrase "A resolution".

Joint resolutions also go to both houses and are in bill form, but they need special treatment with regard to presentment, so they need to be distinguished from memorial resolutions. They open with the words "A joint resolution".

The subject line states the resolution's purpose very briefly, as in these examples: "commemorating Earth Day" or "urging Congress to limit steel dumping." The subject line of a memorial resolution is not required to say "memorializing," although it often does. It may say "urging" or "requesting" or any other word that describes the action.

Preambles, or "Whereas" clauses. Concurrent resolutions and simple resolutions about business generally have no preambles, or lists of "whereas" clauses, but most other resolution types have them. They list the reasons why one or both houses have decided to take the action in the resolving clause. If someone is being congratulated on an achievement, the preamble will describe it, usually in an elaborate way. If congressional action is being urged, the preamble will explain the problems that call for that action.

Because "whereas" clauses are all subordinate clauses, strictly speaking they should not contain independent sentences, but it can be hard to keep this rule.

Resolving clauses. Resolutions have no enacting clause; they have resolving clauses instead. The forms for the different types of resolutions are as follows:

House congratulatory resolutions:

"BE IT RESOLVED by the Committee on Rules and Legislative Administration of the House of Representatives of the State of Minnesota..."

House simple resolutions:

"BE IT RESOLVED by the House of Representatives of the State of Minnesota..."

Senate simple resolutions for internal business:

BE IT RESOLVED by the Senate:

Other Senate simple resolutions:

"BE IT RESOLVED by the Senate of the State of Minnesota..."

House concurrent resolutions:

"BE IT RESOLVED by the House of Representatives of the State of Minnesota, the Senate concurring..."

Senate concurrent resolutions

"BE IT RESOLVED by the Senate of the State of Minnesota, the House of Representatives concurring..."

Memorial resolutions or new-style joint resolutions"

"BE IT RESOLVED by the Legislature of the State of Minnesota..."

Old-style joint resolutions:

"BE IT RESOLVED by the House of Representatives and the Senate of the State of Minnesota in joint convention..."

The rest of the resolving language simply tells what the body is doing in this resolution. If there is more than one paragraph in the resolving language, the second and subsequent clauses begin "BE IT FURTHER RESOLVED." Concurrent resolutions are an exception: if they have more than one paragraph, no secondary resolving clause is needed.

Transmittal clauses. Many resolutions contain a direction to some officer to send copies to specific persons or offices. The direction is in the form of a secondary resolving clause. House simple resolutions direct the chief clerk to send the copies; senate resolutions direct the secretary of the senate; memorial resolutions direct the secretary of state; old-style joint resolutions direct the secretary of the joint convention.

The transmittal clause directs that *a copy* or *copies* be sent. In memorial resolutions, the transmittal clause reads "copies of this memorial" rather than "copies of this resolution." When old resolution text is reused, the drafter should check a small item in the transmittal clause: the use of the phrase *enrolled copy*. In past years, forms for transmittal clauses all directed that *enrolled copies* be sent. Not all resolutions, however, are enrolled, so the direction did not make sense and the form was changed. A transmittal clause should just ask for *copies*.

The transmittal clause is omitted from simple resolutions about the business of one house, from concurrent resolutions, and from new-style joint resolutions.

See the examples on pages 179 to 194 for other details of transmittal clauses.

Presentation form. For house congratulatory resolutions, the revisor's office prepares the copies that are intended for formal presentation to the recipient. The presentation paper imposes some limitations; the language and the signature lines have to fit within the border of either the letter-size or the legal-size sheets, with room for the house seal. There are few legal limitations on congratulatory resolutions, so some liberties can be taken with form requirements in order to do what the requester wants. Extra signature lines are often requested. Odd formats like verse form or centered lines are possible.

6.4 Amendments, Engrossing, and Enrolling

Resolutions that are introduced in one house only are rarely debated, and members may give notice of intent to debate them. But they can be debated, and they can be amended. Some amendments are not allowed: the rules of both houses specify that a resolution must not be changed to a bill or vice versa.

Memorial resolutions are more often debated and amended. Page and line amendments for resolutions are in the same form as for bills. Delete everything amendments have one difference: Because resolutions have no enacting clause, the direction to delete reads, "Delete everything after the title and insert:"

Joint rule 2.04 specifies that a memorial or resolution passed in one house can be amended in the other house, just as a bill can be.

Like amendments to bills, amendments to resolutions are engrossed in one house before the resolution is sent to the other house.

Memorial resolutions and joint resolutions are enrolled (joint rule 2.07). Except for the specific types of joint resolutions listed in that rule, memorials and joint resolutions are presented to the governor.

6.5 Internet Access to Resolutions

Drafting research for resolutions is easier if the drafter is aware that the legislative information system treats resolutions differently from bills.

House congratulatory resolutions do not receive house file numbers of any kind. Because they are not introduced, they cannot be retrieved through the Legislature's Internet system for legislation and bill tracking. The same is true of house resolutions on internal business, referred to as "unnumbered resolutions."

Simple resolutions are introduced and are numbered "HR" or "SR." With an HR number, a searcher can retrieve a simple resolution's title, text, and revisor number. With an SR number, a searcher can retrieve a title, but not text. With a subject, a searcher can find the SR or HR number. A search on "HR*" or "SR*" in the bill number field will generate a complete list of simple resolutions for the biennium.

Concurrent resolutions are numbered "HC" or "SC." Text and revisor numbers for house concurrent resolutions are available online. At present, senate concurrent resolution text is available if the resolution has been sent to the house, but not otherwise. For a complete listing, search "HC*" or "SC*" in the bill number field or the word "concurrent" in the short description field.

Memorial resolutions are numbered as house files or senate files just as bills are, and all the information available for bills is available for them. Memorial resolutions are published in the printed session law volumes, numbered as "Res. 1" and so on, but they are not included in the lists of Laws chapters posted on the Internet.

For all these reasons, research about resolutions can be done more easily in the revisor's internal bill tracking system.

6.6 Index of Provisions about Resolutions

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 - no bill procedure, Const. art. IV sec. 24, SR 6
 - no presentment, Const. art. IV sec. 24, SR 6
- altering, gross misdemeanor, MS 3.185
- amendments, by second house, JR 2.04
- authorizing payment of money,
 - roll call vote, HR 3.30, JR 2.02, SR 51
- authors
 - five in senate, SR 3
 - 35 in house, HR 1.12
- budget resolutions
 - in house, HR 4.03
 - in senate, SR 7
 - revenue targets, MS 16A.102
- changing to bill, prohibited, HR 4.02, SR 6
- concurrent resolutions
 - adjournment, Const. art. IV sec. 24, SR 6
 - authorizing payment, see Authorizing payment
 - budget resolutions, see Budget resolutions
 - introduction by member or committee, SR 3
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 - revisor of statutes, MS 3C.11
 - sale, administration department, MS 16B.53
- drafting, revisor of statutes, duties, MS 3C.03
- engrossing, in senate, SR 44
- enrollment
 - joint resolutions, JR 2.07
 - memorials, JR 2.07
 - senate generally, SR 44
- entry in journal, house, HR 3.01
- form approval, HR 4.01
- introduction
 - in house, HR 1.10
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- joint resolutions
 - for constitutional amendments, SR 6, JR 2.07
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 - committee of the whole in senate, SR 23
 - depositing with secretary of state, JR 2.07
 - enrollment, JR 2.07
 - notice of intent to debate, HR 2.21
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 - veto, Const. art. IV, sec. 24
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- memorial resolutions
 - authors, limit of 35, HR 1.1
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 - committee of the whole, SR 23
 - contents constituting memorial, HR 4.02
 - enrollment, JR 2.07
 - introduction by member or committee, SR 3
 - notice of intent to debate, exceptions, HR, 2.21
 - presentment, Const. art. IV sec 24, JR 2.07
 - referral to committee, SR 6
 - three readings, SR 2
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 - no bill procedure, SR 6
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- order of business, HR 1.03
- presentment
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- referral to committee, SR 4, 6
- re-referrals, HR 1.30
- resolutions requiring approval of governor
 - bill form, HR 4.02
 - notice of intent to debate, HR 2.21
 - three readings, SR 2
- revenue targets, MS 16A.102
- secretary of state, depositing with, JR 2.07
- session deadlines, concurrent resolutions, JR 2.03

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 - authorizing payment of money,
 - roll call vote, HR 3.30, JR 2.02, SR 51
 - introductions by member or committee, SR 3
 - no bill procedure, SR 6
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 - no three readings because no presentment, SR 2
 - notice of intent to debate, SR 6
- referral to committee, SR 6

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EXAMPLE—SIMPLE RESOLUTION (Internal operation of the house)

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COMMITTEE ON RULES AND LEGISLATIVE ADMINISTRATION

FACILITIES RESOLUTION

BE IT RESOLVED, by the House of Representatives of the State of Minnesota, that during the time between adjournment *sine die* in 20.. and the convening of the House of Representatives in 20.., the Chief Clerk and Chief Sergeant at Arms under the direction of the Speaker shall maintain House facilities in the Capitol Complex. The House chamber, retiring room, hearing and conference rooms, and offices shall be set up and made ready for legislative use and reserved for the House and its committees. Those rooms may be reserved for use by others that are not in conflict with use by the House. The House chamber, retiring room, and hearing rooms may be used by the Territorial Pioneers, YMCA Youth in Government, Girls' State, Young Leaders Organization, National Forensic League, and 4-H Leadership Conference.

Date adopted: _____

Signed: _____

....., CHAIR

Resolutions on internal business of the house of representatives are not introduced but are adopted by the rules committee.

EXAMPLE—SIMPLE RESOLUTION (Internal operation of the house)

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COMMITTEE ON RULES AND LEGISLATIVE ADMINISTRATION

PARKING RESOLUTION

BE IT RESOLVED, by the House of Representatives of the State of Minnesota, that it retains the use of parking lots AA, B, C, P, O, N, and X, and the state office building parking ramp for members and employees of the House of Representatives during the time between adjournment *sine die* in 20.. and the convening of the House of Representatives in 20... The Sergeant at Arms is directed to manage the use of the lots and ramp while the House of Representatives is adjourned. The Controller of the House may continue to deduct from the check of any legislator or legislative employee a sum adequate to cover the exercise of the parking privilege.

Date adopted: _____

Signed: _____

....., CHAIR

EXAMPLE—SIMPLE RESOLUTION (Internal operation of the house)

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COMMITTEE ON RULES AND LEGISLATIVE ADMINISTRATION

JOURNAL RESOLUTION

BE IT RESOLVED, by the House of Representatives of the State of Minnesota, that the Chief Clerk is directed to correct and approve the Journal of the House for the last day of the Regular Session.

BE IT FURTHER RESOLVED that the Chief Clerk is authorized to include in the Journal for the last day of the Regular Session any proceedings, including subsequent proceedings and any legislative interim committees or commissions created or appointments made to them by legislative action or by law.

Date adopted: _____

Signed: _____

....., CHAIR

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, that:
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 20.. recommendations on:
13
14
15
16
17
18 (3) The expenses of the commission shall be divided equally
19 between the Senate and the House of Representatives and paid
20 from the Legislative expense funds of the Senate and House of
21 Representatives following approval of a budget for that
22 purpose by the Committee on Rules and Administration of
23 the Senate and the Committee on Rules and Legislative
24 Administration of the House of Representatives.

Note the simplified form used in this draft. Different provisions are divided into separate paragraphs and each paragraph is numbered. "BE IT FURTHER RESOLVED" is unnecessary. 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:
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
8 until the adoption of Permanent Joint Rules by the Senate and
9 the House of Representatives.
10 The rules referred to above are amended as follows:
11

EXAMPLE—CONCURRENT RESOLUTION (Joint convention of both houses)

1
2 A house concurrent resolution

3 providing for a joint convention of the Senate and the
4 House of Representatives to elect members of the Board of
5 Regents of the University of Minnesota.

6 BE IT RESOLVED by the House of Representatives, the Senate
7 concurring, that:

8 (1) The House of Representatives and the Senate shall meet
9 in joint convention on, at in the
10 chamber of the House of Representatives to elect members to
11 the Board of Regents of the University of Minnesota.

12 (2) The Education Committee of the Senate and the Higher
13 Education Committee of the House of Representatives in a joint
14 meeting shall prepare nominations and report them at the
15 meeting of the joint convention.

EXAMPLE—CONCURRENT RESOLUTION (Joint rules)

1 A senate concurrent resolution

2 adopting Joint Rules of the Senate and House of
3 Representatives.

4 BE IT RESOLVED by the Senate of the State of Minnesota, the
5 House of Representatives concurring, that:

6 The Joint Rules of the Senate and the House of
7 Representatives for the ..d Legislature shall read as follows:

8 **ARTICLE I: JOINT CONVENTIONS**

9 **1.01** [HOW GOVERNED.] The Speaker of the House shall preside
10 at all Conventions of the two houses of the Legislature and
11 shall call the members to order. The Chief Clerk of the House
12 shall be the Secretary and the Sergeant at Arms of the House
13 shall be the Sergeant at Arms of the Convention.

14 **1.02** [PRESIDENT'S DUTIES.] The President of the Convention
15 shall preserve order and decorum. The President may speak on
16 all points of order in preference to other members and shall
17 decide questions of order, subject to an appeal to the
18 Convention by any member. The President shall rise to put a
19 question but may state it while seated.

20 **1.03** [PRESIDENT'S RIGHT TO VOTE.] The President shall have
21 the right to vote in all cases except appeals from the
22 President's decisions. The President shall vote last on all
23 questions.. . . .

The resolution shows the complete text of the rules and should show any amendments with strikeouts and underscoring.

EXAMPLE—CONCURRENT RESOLUTION (Revenue targets)

1

1	A house concurrent resolution	
2	relating to adoption of revenue targets under Minnesota	
3	Statutes 20.., section 16A.102, subdivision 2.	
4	BE IT RESOLVED by the House of Representatives, the Senate	
5	concurring, that the following revenue targets be adopted under	
6	the requirements of Minnesota Statutes 20.., section 16A.102,	
7	subdivision 2:	
8		Fiscal Years Fiscal Years
		20.. and 20.. 20.. and 20..
9	(1) the maximum share of	.. percent .. percent
10	personal income to be	
11	collected in taxes and other	
12	revenues	
13	(2) the division of the share	
14	between	
15	state services	.. percent .. percent
16	local services	.. percent .. percent
17	(3) the appropriate	.....
18	mix of rates	.....
19		.....

EXAMPLE—CONCURRENT RESOLUTION (Adjournment of Legislature)

1	A house concurrent resolution	
2	relating to adjournment until 20...	
3	BE IT RESOLVED by the House of Representatives, the Senate	
4	concurring, that:	
5	(1) Upon its adjournment, 20.., the House of	
6	Representatives may set its next day of meeting for	
7	....., 20.., at 12:00 noon, and the Senate may set its	
8	next day of meeting for, 20.., 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—JOINT RESOLUTION (Proposing an amendment to the Minnesota Constitution)

```
1           Joint resolution
2     proposing an amendment to the Minnesota Constitution,
3     article .., section ...
4     BE IT RESOLVED by the Legislature of the State of Minnesota
5     that the following amendment to the Minnesota Constitution,
6     article .., section .., is proposed to the people.  If the
7     amendment is adopted, the section will read:
8     .....
9     .....
10    BE IT FURTHER RESOLVED that the proposed amendment shall be
11    submitted to the people at the 20.. general election.  The
12    question submitted shall be:
13    "Shall the Minnesota Constitution be amended to provide
14    that.....
15    .....?
16                Yes.....
17                No....."
```

Note that all the amendments being proposed are included in the first resolving clause. It is not necessary to use a separate resolving clause for each section being amended.

EXAMPLE—JOINT RESOLUTION (Prescribing the compensation of judges)

```
1           A joint resolution
2     prescribing the compensation of judges;.....
3     BE IT RESOLVED by the Legislature of the State of Minnesota
4     that .....
5     BE IT FURTHER RESOLVED that the Secretary of State of the
6     State of Minnesota is directed to prepare a copy of this
7     resolution and transmit it to the Chief Justice of the Supreme
8     Court of the State of Minnesota.
```

Chapter 7

Amendments

- 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
 - (c) Bills from the Other House
- 7.4 The Amending Technique
 - (a) "Page and Line" Amendments
 - (b) "Delete Everything" Amendments
 - (c) "Partial Delete" Amendments
 - (d) Senate Floor Amendments; Tense
- 7.5 Amendments to Amendments
- 7.6 Amendments and the Engrossing Process
- 7.7 Examples

7.1 Introduction

Senate rule 33.2 expresses the basic requirements for drafting amendments:

"In drawing an amendment to a bill or resolution reference must be made first to the number of the bill, then to the page, and then to the line or lines where language is to be stricken or inserted."

The house of representatives has no formal rule similar to senate rule 33.2 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 other 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.

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: "Senator moves to amend ...F. No. as follows:"

In the house, the motion to amend begins with the language: "..... moves to amend ...F. No. as follows:". The blank space is filled with the member's name 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 208.

(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.

For examples of committee reports containing amendments, see the examples on pages 208 to 215.

(c) Floor Amendments

A motion to amend a bill on the floor of the house is in the same form as a motion to amend in a committee.

For example:

1 moves to amend H.F. No. 1271 as follows:
--

When a senate floor amendment is prepared on the legislature's data processing system, the motion word is typed in the past tense, "moved," so that the data can be transferred into the senate journal without change. The motion is read to the senate in the present tense, "moves."

For examples of floor amendments see pages 216 and 219.

(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 220 to 225.

7.3 The Document Being Amended

(a) Identifying the Document Being Amended

The drafter must carefully identify, and get a copy of, the most current version 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?

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 Senate Subcommittee

(1) SUBCOMMITTEE REPORTS.

In the senate, if a bill has been amended in a subcommittee, the drafter of an amendment for the full committee must discover whether there is a committee engrossment. If a committee engrossment is being used, new amendments should be drafted to it.

If there is no committee engrossment, the amendment should be drafted to the subcommittee report, either through changes to the amendments adopted by the subcommittee, or by amending the report to reflect changes to the bill itself.

For example:

```
1   Senator ..... moves to amend S.F. .... as
2   follows:
3
4   Amend the report from the Subcommittee on ..... as follows:
5   Page 1, after line 10, insert:
6   "Page 3, line 7, delete "5" and insert "7"
7   Page 1, line 15, after "district," insert "city, county,"
```

(2) DELETE EVERYTHING AMENDMENTS.

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 a "delete everything" amendment has been prepared, the drafter can assume that amendments should refer to this amendment.

(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 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 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 AND UNOFFICIAL ENGROSSMENTS.

In the senate, committee amendments to a house file that has been amended in a prior senate committee are drawn to the prior committee report and to the bill as introduced, as appropriate.

In the house, committee amendments to a senate file that has been amended in a prior house committee are drawn to the unofficial engrossment of the senate file.

In the senate, every committee amendment to a house file is incorporated into an unofficial engrossment when the house file is considered on the floor. Floor amendments should be drafted to the unofficial engrossment. Senate rule 48.

For example:

```
1 Senator ..... moved to amend H.F. No. ....,
2 the unofficial engrossment, as follows:
```

In the house, committee amendments to senate bills must also be unofficially engrossed. Proposed floor amendments are then drafted to the unofficial engrossment. House rule 1.15.

(3) RULE 45 AMENDMENTS.

The senate operating under its substitution rule, rule 45, 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 45 amendment. Although amendments are then made to the house file, the pages and lines of the house file have been made identical to 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 45 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 45 amendment is included in an example on page 210.

An example of proper opening language to amend a house bill that has been amended by the senate under rule 45 is:

```
1 Senator ..... moved to amend H.F. No. ...., as
2 amended pursuant to Rule 45, adopted by the Senate .....,
3 20.., as 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 and the senate author wants to yield to the house position and strike the rule 45 amendment, the motion is as follows:

1 Senator moved that the amendment made to H.F.
2 No. ... by the Committee on Rules and Administration in the
3 report adopted, 20.., pursuant to Rule 45 be
4 stricken.

(4) HOUSE DELETE EVERYTHING AMENDMENTS.

The house gives the chief author the option to proceed on the senate file as it came from the senate or to offer a delete everything amendment to put the language of the companion house file into the senate bill.

Following is an example of proper opening language to amend a senate bill that has been amended by the house to insert the house language.

1 moves to amend S.F. No., as amended, as
2 follows:

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 underscored 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 by each 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. 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 specified words, figures, or punctuation marks that are not current law, in a line (Page 2, line 2, delete "center or other");
- (e) 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");
- (f) Delete the same word, figure, or punctuation mark, that is not current law, in several lines (Page 8, lines 4, 6, 8, 11, and 13, delete the period and insert a semicolon);
- (g) Delete repeated word, figure, or punctuation mark, that is not current law, in same line (Page 8, line 4, delete "district" in both places);
- (h) 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);
- (i) Delete a section (Page 12, delete section 4);
- (j) Delete multiple sections in numerical order (Pages 9 to 12, delete sections 4 to 6); and
- (k) Delete a subdivision (Page 4, delete subdivision 6), if there is only one subdivision 6 on the page.

When the amending operation shows the words, figures, or punctuation marks 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 that is not underlined in a bill, other than appropriation rider language. 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. See example (a).

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 (Page 4, line 12, 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," or "Renumber the sections 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.

Drafters sometimes include a direction to "amend the title accordingly" in an amendment. This is a direction to the revisor to make all necessary amendments to the title when the amendments are engrossed into the bill. This direction should be used sparingly because the drafter is in the best position to provide all necessary title amendments.

(b) "Delete Everything" Amendments

Amendments that are complete substitutes for the body and title of bills 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.

(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.

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) Delete a subdivision and insert a new subdivision (example: Page 4, delete subdivision 5 and insert:).

(d) Senate Floor Amendments; Tense

Senate floor amendments that are prepared on the legislature's word processing equipment are typed in the past tense for easy transfer to the senate journal although they are read on the senate floor in the present tense. Senate committee amendments should use the present tense. See the examples on pages 216 and 217.

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 Senator ..... moved to amend the Jones amendment to H.F.  
2 No. 182, adopted by the Senate January 15, 20.., 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. The references are to the pages and lines of the Jones amendment.

Drafting is more complex when material is quoted in the first amendment. For example, an amendment reading:

```
1 Senator Jones moved 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 Senator ..... moved to amend the Jones amendment to H.F.  
2 No. 182, adopted by the Senate January 15, 20.., 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"
```

Double quotation marks are used to identify quoted language in all cases.

See the example on page 219.

When amending both the base document and another amendment already passed on the house floor, the amendment may look like the following:

```
1 ..... moves to amend H.F. No. 3840, the first
2 engrossment, as amended by the Johnson amendment, as follows:
3 Page 14, line 11 of the Johnson amendment, delete "1.3" and
4 insert "1.25"
5 Page 27, line 3, delete "2.3" and insert "1.7"
```

7.6 Amendments and the Engrossing Process

The process of drafting amendments is an integral part of the engrossing process. Only if an amendment is "engrossable" is it really correct. Therefore, chapter 8, on engrossing, should be consulted.

7.7 Examples

Motion in Committee (senate form), 208

Motion in Committee (house form), 208

Senate Committee Reports

Page and line amendment; no title amendment, 208

Delete everything amendment with page and line title amendment, 209

Rule 45 amendment, 210

House File, as amended by a prior senate committee, 211

House Committee Reports

Page and line amendment; no title amendment, 212

Delete everything amendment with a delete everything title amendment, 213

Senate File, as amended by a prior house committee, 214

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Senate Floor Amendments

Delete everything amendment with delete everything title amendment, 216

Page and line amendment; page and line title amendment, 217

House file amended by Rule 45 amendment, 217
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Amendment to Amendment (Simple), 219

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House concurring in the senate amendment, 220

Senate receding from its amendment, 221

Delete everything amendment; delete everything title amendment, 222

Page and line amendment; no title amendment, 224

Senate Conference Committee Report

Page and line amendment; no title amendment, 225

EXAMPLE—MOTION IN COMMITTEE (Senate form)

1 Senator moves to amend S. F. No. 1000 as follows:
2 Page 1, line 19, after the period, insert "A member of the
3 legislature may not serve on the subcommittee."

EXAMPLE—MOTION IN COMMITTEE (House form)

1 moves to amend H. F. No. 1000 as follows:
2 Page 1, line 19, after the period, insert "A member of the
3 legislature may not serve on the subcommittee."

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

1 **Senator Smith from the Committee on Metropolitan and Local**
2 **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 20.., section
6 471.88, subdivisions 2, 5, 8.

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

9 Page 2, line 11, delete "\$3,000" and insert "\$5,000"
10 Page 2, line 16, delete "\$3,000" and insert "\$2,000"
11 Page 2, after line 18, insert:
12 "Sec. 4. [EFFECTIVE DATE.]
13 This act is effective the day following final enactment."
14 And when so amended the bill do pass. Amendments adopted.
15 Report adopted.

16
17 (Committee Chair)

18 January 19, 20..
19 (Date of Committee recommendation)

Only the amendment portion would be prepared by the drafter. The committee report is prepared by the engrossing secretary for the senate.

EXAMPLE—SENATE COMMITTEE REPORT (Rule 45 amendment)

1 **Senator Black 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 45, the Committee on Rules and
10 Administration recommends that H.F. No. 1561 be amended as
11 follows:
12

13 Delete all the language after the enacting clause of H.F. No.
14 1561 and insert the language after the enacting clause of S.F.
15 No. 1417, the first engrossment; further, delete the title of
16 H.F. No. 1561 and insert the title of S.F. No. 1417, the first
17 engrossment.

18 And when so amended H.F. No. 1561 will be identical to S.F.
19 No. 1417, and further recommends that H.F. No. 1561 be given its
20 second reading and substituted for S.F. No. 1417, and that the
21 Senate File be indefinitely postponed.

22 Pursuant to Rule 45, this report was prepared and submitted
23 by the Secretary of the Senate on behalf of the Committee on
24 Rules and Administration. Amendments adopted. Report adopted.

This report, required by senate rule 45, is drafted by the revisor of statutes.

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

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

3 H.F. No. 2224, A bill for an act relating to the city of
4 Nashwauk; increasing police relief pensions and widows'
5 benefits; amending Laws 1943, chapter 196, sections 4, as
6 amended; 8.

7 Reported the same back with the following amendments:

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

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

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

17 This Committee action taken, 20..

18 Chair

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 20., 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
13 holding of precinct caucuses and legislative district or
14 county conventions required by chapter 202A. A charge for
15 the use of the facilities may be imposed in an amount that
16 does not exceed the lowest amount charged to any other
17 public or private group.

18 Sec. 2. Minnesota Statutes 20., section 202A.65,
19 subdivision 3, is amended to read:

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

25 Sec. 3. [EFFECTIVE DATE.]
26 This act is effective the day following final enactment."

27 Delete the title and insert:

28 "A bill for an act
29 relating to elections; making public facilities available
30 for precinct caucuses; fixing the charge for their use;
31 providing for the filing of certain nominating petitions;
32 amending Minnesota Statutes 20., section 202A.65,
33 subdivision 3; proposing coding for new law in Minnesota
34 Statutes, chapter 202A."

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

36 This Committee action taken, 20..
37, Chair

EXAMPLE—HOUSE COMMITTEE REPORT (Senate file, as amended by a prior house committee)

1 from the Committee on to which was
2 referred:
3 S. F. No. 1438, A bill for an act relating to public
4 employment; ratifying certain labor agreements and proposals;
5 modifying public employee compensation provisions; amending
6 Minnesota Statutes 2000, sections 3.855, subdivision 3;
7 15A.0815, subdivision 1, by adding a subdivision; 136F.07;
8 36F.40, subdivision 2; 79A.15; repealing Minnesota
9 Statutes 2000, section 43A.18, subdivisions 4a, 5.
10 Reported the same back with the following amendments to the
11 unofficial engrossment:
12 Page 1, line 10, delete "and includes" and insert "but does
13 not include

The report always includes the title of the bill as introduced in the house. The report amends the unofficial engrossment of the prior house committee report.

EXAMPLE – HOUSE COMMITTEE REPORT (Minority Report)

1	MINORITY REPORT	
2		May 18, 20..
3	We, the undersigned, being a minority of the Committee on	
4	Human Services, recommend that H. F. No. do pass with the	
5	following amendments:	
6	Delete everything after the enacting clause and insert:	
7	"Section 1. Minnesota Statutes 20.., section 256B.431, is	
8	amended by adding a subdivision to read:	
9	<u>Subd. 37. [DESIGNATION OF AREAS TO RECEIVE METROPOLITAN</u>	
10	<u>RATES.] For rate years beginning on or after July 1, 2003,</u>	
11	<u>nursing facilities located in areas designated as metropolitan</u>	
12	<u>areas by the federal Office of Management and Budget using</u>	
13	<u>Census Bureau data shall be part of the metropolitan array for</u>	
14	<u>purposes of calculating a median, determining a historical base</u>	
15	<u>reimbursement rate, or otherwise establishing a statistical</u>	
16	<u>measure of nursing facility payment rates, in order to:</u>	
17	<u>(1) determine future rate increases under this section,</u>	
18	<u>section 256B.434, or any other section; and</u>	
19	<u>(2) establish nursing facility reimbursement rates for the</u>	
20	<u>new nursing facility reimbursement system developed under Laws</u>	
21	<u>2001, First Special Session chapter 9, article 5, section 35."</u>	
22	Delete the title and insert:	
23	"A bill for an act	
24	relating to human services; designating certain nursing	
25	facilities as metropolitan facilities for purposes of medical	
26	assistance reimbursement; amending Minnesota Statutes 20..,	
27	section 256B.431, by adding a subdivision."	
28		Signed
29	_____	_____
30	_____	_____
31	_____	_____
32	_____	_____
33	_____	_____
34	_____	_____
35	_____	_____
36	_____	_____

Minority reports may also be done as page and line amendments.

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

1 Senator 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 of
5 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
10 UNITS.] The apartment units must be constructed in close
11 proximity to existing county nursing home facilities and
12 administered together with the existing facilities as part of an
13 overall program for the care of aged and infirm persons. The
14 board of commissioners may rent the apartment units to persons
15 applying for entrance to the county nursing home, or to other
16 elderly persons of low- and moderate-income who may require use
17 of 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 for
23 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 Statutes,
26 sections 445.45 to 445.50 and chapter 475, except that in
27 authorizing the bonds the board of commissioners shall:
28 (1) adopt an initial resolution stating the amount, purpose
29 and, in general, the security to be provided for the bonds; and
30 (2) publish the resolution once each week for two consecutive
31 weeks in the official newspaper.
32 The bonds may be issued without the submission of the question
33 of their issuance to the electors unless within 30 days after the
34 second publication of the resolution a petition requesting the
35 election signed by more than ten percent of the qualified
36 electors voting in the county at the last general election is
37 filed with the county auditor."
38 Delete the title and insert:
39 "A bill for an act relating to Chisago County; authorizing
40 the issuance of general obligation bonds to finance the cost of
41 facilities for the county nursing home; providing for the
42 administration and rental of the facilities."
43
44 The motion prevailed. #did not prevail. So the amendment was
45 #not adopted.

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

1 Senator 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, 2010."
4 Amend the title as follows:
5 Page 1, line 3, after "valid" insert "; extending the
6 expiration of certain licenses"

EXAMPLE—SENATE FLOOR AMENDMENT (House file amended by Rule 45 amendment)

1 Senator moved to amend H.F. No. 1991, as amended
2 pursuant to Rule 45, adopted by the Senate March 29, 20.., 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 reinstate
7 the stricken language

EXAMPLE—SENATE FLOOR MOTION (Striking Rule 45 amendment)

1 Senator 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, 20.., pursuant to Rule 45, be stricken.

EXAMPLE—SENATE FLOOR AMENDMENT (Unofficial engrossment)

1 Senator moved to amend H.F. No. 1616, the
2 unofficial engrossment, as follows:
3 Page 1, line 17, strike "four" and insert "six"
4 Amend the title as follows:
5 Page 1, line 4, after the semicolon, insert "increasing the
6 number of citizen board members;"

In the opening language, note the reference to the unofficial engrossment when that is being amended.

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

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

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

1 moves to amend H. F. No. 438, the first
2 engrossment, as follows:

3 Page 2, line 28, delete "This act" and insert "Section 1"
4 Page 2, after line 30, insert:
5 "Sec. 3. [LEOTA, TOWN OF; DETACHED BANKING FACILITY;
6 AUTHORIZATION.]
7 With the prior approval of the commissioner of commerce, a
8 bank doing business in this state may establish and maintain not
9 more than one detached facility in the town of Leota in Nobles
10 County. A bank desiring to establish a detached facility shall
11 follow the approval procedure prescribed in Minnesota Statutes,
12 section 47.54. The establishment of a detached facility in the
13 town of Leota is subject to Minnesota Statutes, sections 47.51
14 to 47.57."

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 Amend the title as follows:
5 Page 1, line 4, after the semicolon, insert "increasing the
6 number of citizen board members;"

EXAMPLE—AMENDMENT TO AMENDMENT (Simple)

1	Senator	moved to amend the Jones amendment to
2	H. F. No. 182 as follows:	
3	Page 1, line 11, delete	" <u>quality of life</u> " and insert " <u>the</u>
4	<u>amount of energy essential to residential customers</u> "	
5	Page 1, line 13, after	" <u>encouraged</u> " insert " <u>and the quality</u>
6	<u>of life protected</u> "	
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 old amendment.

Note that all lines of the new amendment are numbered.

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

1	.....	moves to amend H. F. No. 1702 as follows:
2	Page 1, after line 13, insert:	
3	"Sec. 2. Minnesota Statutes 20.., section 330.02, is amended	
4	to read:	
5	330.02 [BOND.]	
6	Every auctioneer, before making sales, shall give a corporate	
7	surety bond to the county state <u>in a the</u> penal sum of not less	
8	than \$1,000 nor more than \$3,000 to be fixed by the treasurer	
9	and with sureties approved by the treasurer <u>\$5,000, conditioned</u>	
10	that he <u>the auctioneer</u> will pay all sums required by law and in	
11	all things conform to the laws relating to auctioneers. The	
12	treasurer shall endorse his approval upon such bond, and file it	
13	in his office. The bond must be approved and filed as provided	
14	<u>in chapter 574.</u> "	
15	Renumber the sections in sequence	
16	Amend the title as follows:	
17	Page 1, after line 2, insert	"modifying bond requirements;"
18	Page 1, line 3, delete	"section" and insert "sections"
19	Page 1, line 4, before the period, insert	"; 330.02"

Note the directive to renumber the sections. In the course of engrossing, this directive will be carried out.

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

10 CONFERENCE COMMITTEE REPORT ON H.F. NO. 2466

11 A bill for an act

12 relating to privacy of data on individuals; definitions,
13 determination and emergency classification; amending
14 Minnesota Statutes 20., sections 15.162, subdivision
15 2a; 15.1642, subdivisions 3, 5; repealing Minnesota
16 Statutes 20., section 15.1642, subdivision 4.

17 May 18, 20..

18 The Honorable
19 Speaker of the House of Representatives

20 The Honorable
21 President of the Senate

22 We, the undersigned conferees for H.F. No. 2466, report that
23 we have agreed upon the items in dispute and recommend as
24 follows:

25 That the Senate recede from its amendments and that H.F. No.
26 2466 be further amended as follows:
27 Delete everything after the enacting clause and insert:
28 "Section 1. Minnesota Statutes 20., section 15.162,
29 subdivision 2a, is amended to read:
30 Subd. 2a. [CONFIDENTIAL DATA ON INDIVIDUALS.] "Confidential
31 data on individuals" means data which is (a) made not public by
32 statute or federal law applicable to the data and is
33 inaccessible to the individual subject of that data; or (b)
34 collected by a civil or criminal investigative agency as part of
35 an active investigation undertaken for the purpose of the
36 commencement of a legal action, provided that the burden of
37 proof as to whether such investigation is active or in
38 anticipation of a legal action is upon the agency. Confidential
39 data on individuals does not include arrest information that is
40 reasonably contemporaneous with an arrest or incarceration. The
41 provision of clause (b) shall terminate and cease to have force
42 with regard to the state agencies, political subdivisions,
43 statewide systems, covered by the ruling, upon the granting or
44 refusal to grant an emergency classification pursuant to section
45 15.1642 of both criminal and civil investigative data, or on
46 July 31, ~~1978~~ 2006, whichever occurs first.
47 Sec. 2. Minnesota Statutes 20., section 15.1642,
48 subdivision 5, is amended to read:
49 Subd. 5. [EXPIRATION OF EMERGENCY CLASSIFICATION.] All
50 emergency classifications granted under this section and still

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

51 in effect shall expire on July 31, ~~1978~~ 2006. No emergency
52 classifications shall be granted after July 31, ~~1978~~ 2006.
53 Sec. 3. [15.1643] [INTERNATIONAL DISSEMINATION PROHIBITED.]
54 A state agency or political subdivision shall not transfer or
55 disseminate private or confidential data on individuals to the
56 private international organization known as Interpol.
57 Sec. 4. [REPEALER.]
58 Minnesota Statutes 20., sections 144.151, subdivisions 8 and
59 9; and 144.175, subdivision 2, are repealed.
60 Sec. 5. [EFFECTIVE DATE.]
61 Sections 1, 2, and 4 are effective the day following final
62 enactment. Section 3 is effective July 1, 20..."
63 Delete the title and insert:
64 "A bill for an act

65 relating to privacy of data on individuals; continuing
66 confidentiality of certain investigative data;
67 continuing certain emergency classifications of data;
68 prohibiting the release of certain data to the
69 international organization known as Interpol; amending
70 Minnesota Statutes 20., sections 15.162, subdivision 2a;
71 15.1642, subdivision 5; proposing coding for new law in
72 Minnesota Statutes, chapter 15; repealing Minnesota
73 Statutes 20., sections 144.151, subdivisions 8, 9;
74 144.175, subdivision 2."

1 We request adoption of this report and repassage of the bill.
2 House Conferees: (Signed)
3
4
5 Senate Conferees: (Signed)
6
7

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

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

2 A bill for an act

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

7 May 18, 20..

8 The Honorable
9 President of the Senate

10 The Honorable
11 Speaker of the House of Representatives

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

15 That the Senate concur in the House committee amendment
16 adopted May 6, 20.., and the House recede from the amendments it
17 adopted May 12, 20.., and that S.F. No. 274 be further amended
18 as follows:

19 Page 6, after line 14, insert:

20 "Subd. 7. [85.012] [Subd. 6] [BIG STONE STATE PARK;
21 DELETION.] The following area is deleted from Big Stone State
22 Park: The Northeast Quarter of the Northwest Quarter of Section
23 20 in Township 123 North, Range 48 West and that part of
24 Government Lot 2, Section 10, Township 122, Range 47 lying south
25 of Highway No. 7 and west of the following described line:
26 Commencing at a point on the westerly boundary line of
27 Government Lot 2, Section 10, Township 122, Range 47 that is
28 189.75 feet due South of the intersection of the Westerly
29 boundary line of Government Lot 2 and the Southerly right of way
30 line of Trunk Highway No. 7; thence due East 853.3 feet to an
31 iron stake; thence deflect to the left at a delta angle of 71
32 degrees 41 minutes 371.9 feet to the intersection of the line
33 with the Southerly right of way line of Trunk Highway No. 7,
34 which is the starting point of the line above referred to;
35 thence in a Southwesterly direction back along the line just
36 described for a distance of 1081.4 feet to the shores of Big
37 Stone Lake."

A signature page requesting adoption of the report and repassage of the bill would follow this page. As a senate conference committee report, senate conferees are listed first, then house conferees.

Chapter 8

Engrossing

- | | |
|--|------------------------------------|
| 8.1 The Engrossing Process | 8.3 Examination of an Engrossment |
| 8.2 Origin and Action upon Documents by the Engrossing Process | 8.4 Unengrossable Amendments |
| (a) Motions in Committee | 8.5 Identification of Engrossments |
| (b) Floor Amendments | 8.6 Unofficial Engrossments |
| (c) Conference Committee Reports | 8.7 Examples |

8.1 The Engrossing Process

Engrossing is the process of incorporating into a bill the amendments adopted by the house or senate. Each drafter needs to understand engrossing in order to understand the practical effects of amendments.

Engrossing is done by the revisor 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 amendments adopted, and anything more than minor adjustments by them may raise a 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 or unofficial engrossment, if there is one. After the committee report has been adopted, it is sent to the revisor's office for engrossing.

(b) Floor Amendments

Floor amendments are drafted to the original bill, 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. If the bill passes, the adopted amendments are attached to the bill in the order in which they were adopted and sent to the revisor's office for engrossing. The floor amendments are integrated into the bill in the order in which they were adopted. 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 233 and 234 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.

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 specific direction but are required by general changes (such as correct the internal cross-references and renumber the sections in sequence);
- (3) additional amendments are not necessary to fully accomplish any amendment's intent; and
- (4) no changes have been inadvertently incorporated into 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 drafting assistants, supervisors, 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 the amendments are not mergeable, the later amendment overrides the previously adopted amendment.

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 text that was changed or deleted by a previously adopted amendment. (Exception: an amendment to strike 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 is proposed to 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 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 "1," "2," "3," 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.

8.6 Unofficial Engrossments

Any senate file which has been amended on the floor of the house, except at the time of final passage, and any senate file which has been reported to the house with amendments by a house standing committee, must be unofficially engrossed and reprinted. Amendments to unofficial engrossments of a senate file may be offered by members on the floor of the house.

Similarly, the senate unofficially engrosses senate amendments to house files and amends unofficial engrossments on the floor.

8.7 Examples

House Committee Report on a Senate File, 229	Floor Amendment, 233
	(1) Bill before engrossing, 234
Senate Committee Report on a Senate File, 230	(2) Bill after engrossing, 234
Copy of Bill Sent to Revisor with the Committee Report Attached, 231	Veto Override, House File, 235
	Veto Override, Senate File, 237
Committee Report Amendments Engrossed, 231	
Conference Committee Report, 232	
(1) Text before engrossing, 233	
(2) Text after engrossing, 233	

EXAMPLE—HOUSE COMMITTEE REPORT ON A SENATE FILE

```
1 ..... from the Committee on Commerce to which was
2 referred:
3 S.F. No. 971: A bill for an act relating to insurance;
4 providing financial requirements for nonprofit health service
5 plan corporations; amending Minnesota Statutes 20.., section
6 62C.09, subdivision 3.
7 Reported the same back with the following amendments:
8 Page 1, line 17, strike "calendar" and insert "fiscal"
9 Page 1, line 18, delete "dental" and insert "medical"
10 Page 1, line 20, after "specified" insert "benefits" and
11 after "and" insert "limits for average"
12 Page 1, line 21, after "benefits" insert "of not greater
13 than $1,000 per year per insured"
14 With the recommendation that when so amended the bill pass.
15
16
17
18 This Committee action taken ....., 20..
19 ....., Chair
```

EXAMPLE—SENATE COMMITTEE REPORT ON A SENATE FILE

1 Senator from the Committee on Agriculture and
2 Natural Resources, to which was referred

3 S.F. No. 344: A bill for an act relating to
4 natural resources; appropriating money to the Department of
5 Natural Resources to install a box culvert under a highway
6 in Stearns County; providing a waterway connection between
7 certain lakes to enable watercraft to cross from one lake
8 to the other.

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

9 Page 1, lines 9 and 10, delete "the Department of Natural
10 Resources" and insert "Stearns County"

11 Amend the title as follows:
12 Page 1, line 3, delete "the Department of Natural
13 Resources" and insert "Stearns County"

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

16
17 (Committee Chair)

18
19 (Date of Committee recommendation)

EXAMPLE—COPY OF S.F. NO. 344 SENT TO REVISOR WITH COMMITTEE REPORT ATTACHED

1 A bill for an act

2 relating to natural resources; appropriating money to
3 the Department of Natural Resources to install a box
4 culvert under a highway in Stearns County; providing a
5 waterway connection between certain lakes to enable
6 watercraft to cross from one lake to the other.

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

8 Section 1. [APPROPRIATION.]
9 \$47,000 is appropriated from the general fund to the
10 Department of Natural Resources to install a 12-foot by ten-
11 foot concrete box culvert, approximately 90 feet in length,
12 under Stearns County state-aid highway 71, providing a waterway
13 connection between Big Cedar Lake and Little Cedar Lake in
14 Stearns County that enables boats, pontoons, and recreational
15 watercraft up to ten feet in width, to cross between the lakes.
16 The sum is available until spent.

S.F. No. 344 before engrossing the senate committee report on the preceding page.

EXAMPLE—COMMITTEE REPORT AMENDMENTS ENGROSSED

1 A bill for an act

2 relating to natural resources; appropriating money to
3 Stearns County to install a box culvert under a highway
4 in Stearns County; providing a waterway connection
5 between certain lakes to enable watercraft to cross
6 from one lake to the other.

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

8 Section 1. [APPROPRIATION.]
9 \$47,000 is appropriated from the general fund to Stearns
10 County to install a 12-foot by ten-foot concrete box culvert,
11 approximately 90 feet in length, under Stearns County
12 state-aid highway 71, providing a waterway connection between
13 Big Cedar Lake and Little Cedar Lake in Stearns County that
14 enables boats, pontoons, and recreational watercraft, up to
15 ten feet in width, to cross between the lakes.

S.F. No. 344 after engrossing

EXAMPLE—CONFERENCE COMMITTEE REPORT (Cont.)

S.F. No. 49 before engrossing.

1 lender may in the case of loans for business or agricultural
2 purposes charge on any loan or discount made or upon any
3 note bill or other evidence of debt interest at a rate of
4 not more than ~~five~~ four percent in excess of the discount
5 rate on 90-day commercial paper in effect at the Federal
6 Reserve Bank in the Federal Reserve District encompassing
7 Minnesota.
8 For the purposes of this subdivision the term

S.F. No. 49 after engrossing. New language of the report has been inserted in the proper place.

1 lender may in the case of loans for business or agricultural
2 purposes charge on any loan or discount made or upon any
3 note bill or other evidence of debt interest at a rate of
4 not more than ~~five~~ 4-1/2 percent in excess of the discount
5 rate on 90-day commercial paper in effect at the Federal
6 Reserve Bank in the Federal Reserve District encompassing
7 Minnesota.
8 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 20.., section 128A.03,
4 subdivision 3, is amended to read:
5 Subd. 3. The ~~councils shall expire and terms,~~
6 compensation and removal of members of the councils shall be
7 as provided in section 15.059. The councils expire on
8 December 31, 20..
9 Sec. 2. [EFFECTIVE DATE.]
10 Section 1 is effective the day following final enactment."

11 Amend the title as follows:
12 Page 1, delete lines 4 and 5, and insert "; amending
13 Minnesota Statutes 20.., section 128A.03, subdivision 3."

EXAMPLE—FLOOR AMENDMENT (Cont.)

H.F. No. 187 before engrossing the amendment on the preceding page.

1	A bill for an act
2	relating to education; braille and deaf schools;
3	providing for appointment of advisory councils;
4	proposing coding for new law in Minnesota Statutes,
5	chapter 123.
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. [123.45] [ADVISORY COUNCILS; SPECIAL
8	SCHOOLS.]
9	<u>The governor shall appoint an advisory council for each</u>
10	<u>school for the visually or hearing impaired.</u>

H.F. No. 187 after engrossing

1	A bill for an act
2	relating to education; braille and deaf schools;
3	providing for appointment of advisory councils;
4	amending Minnesota Statutes 20., section 128A.03,
5	subdivision 3.
6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
7	Section 1. Minnesota Statutes 20., section 128A.03,
8	subdivision 3, is amended to read:
9	Subd. 3. The councils shall expire and terms,
10	compensation and removal of members <u>of the councils</u> shall be
11	as provided in section 15.059. <u>The councils expire on</u>
12	<u>December 31, 20..</u>
13	Sec. 2. [EFFECTIVE DATE.]
14	<u>Section 1 is effective the day following final enactment.</u>

EXAMPLE—VETO OVERRIDE, HOUSE FILE

1 The attached bill, H.F. No passed the house of
2 representatives and the senate in conformity with the rules of
3 each house and the joint rules of the two houses and was
4 presented to the governor on, 20... The
5 governor did not sign it, but returned it with objections on
6, 20.., to the house of representatives. The
7 objections were entered in the journal of the house
8 of representatives. The house proceeded to reconsider the
9 bill. Upon reconsideration, it was repassed on,
10 20.., by a vote of two-thirds or more of the house of
11 representatives. The vote of the house of representatives was
12 determined by yeas and nays and the names of the persons
13 voting for or against the bill were entered in the journal of
14 the house of representatives. The bill, together with the
15 objections of the governor, was then sent to the senate.

16
17 James M. Whistler
18 Speaker of the House of Representatives

19
20 Frederick E. Church
21 Chief Clerk, House of Representatives

22 The attached bill, H.F. No, having passed the house
23 of representatives notwithstanding the veto of the governor,
24 was received by the senate on, 20... It was
25 reconsidered and repassed by a vote of two-thirds or more of
26 the senate on, 20... The vote of the senate
27 was determined by yeas and nays and the names of the persons
28 voting for or against the bill were entered in the journal of
29 the senate. The house of representatives was then advised of
30 the action of the senate.

31
32 George Bellows
33 President of the Senate

34
35 John S. Sargent
36 Secretary of the Senate

37 The attached bill, H.F. No. ..., having passed the house
38 of representatives and the senate notwithstanding the
39 objections of the governor, has become law. It is transmitted
40 to the secretary of state of the state of Minnesota to be
41 deposited as a law of the state of Minnesota, the
42 governor's veto to the contrary notwithstanding.

EXAMPLE—VETO OVERRIDE, HOUSE FILE (Cont.)

43	Dated this ... day of ..., in the year of Our Lord two
44	thousand and
45	.....
46	James M. Whistler
47	Speaker of the House of Representatives
48	.....
49	George Bellows
50	President of the Senate
51	.....
52	Frederick E. Church
53	Chief Clerk, House of Representatives
54	.....
55	John S. Sargent
56	Secretary of the Senate
57	Filed
58	.....
59	Mary Cassatt
	Secretary of State

EXAMPLE—VETO OVERRIDE, SENATE FILE

1 The attached bill, S.F. No. ..., passed the senate and
2 the house of representatives in conformity with the rules of
3 each house and the joint rules of the two houses and was
4 presented to the governor on, 20... The
5 governor did not sign it, but returned it with objections on
6, 20.., to the senate. The objections were
7 entered in the journal of the senate. The senate proceeded to
8 reconsider the bill. Upon reconsideration, it was repassed on
9, 20.., by a vote of two-thirds or more of the
10 senate. The vote of the senate was determined by yeas and
11 nays and the names of the persons voting for or against the
12 bill were entered in the journal of the senate. The bill,
13 together with the objections of the governor, was then sent to
14 the house of representatives.

15
16 George Bellows
17 President of the Senate

18
19 John S. Sargent
20 Secretary of the Senate

21 The attached bill, S.F. No. ..., having passed the
22 senate notwithstanding the veto of the governor, was received
23 by the house of representatives on, 20... It was
24 reconsidered and repassed by a vote of two-thirds or more
25 of the house of representatives on, 20... The
26 vote of the house of representatives was determined by yeas
27 and nays and the names of the persons voting for or against
28 the bill were entered in the journal of the house of
29 representatives. The senate was then advised of the action of
30 the house of representatives.

31
32 James M. Whistler
33 Speaker of the House of Representatives

34
35 Frederick E. Church
36 Chief Clerk, House of Representatives

37 The attached bill, S.F. No. ..., having passed the senate
38 and the house of representatives notwithstanding the
39 objections of the governor, has become law. It is transmitted
40 to the secretary of state of the state of Minnesota to be
41 deposited as a law of the state of Minnesota, the governor's
42 veto to the contrary notwithstanding.

EXAMPLE—VETO OVERRIDE, SENATE FILE (Cont.)

43	Dated this ... day of, in the year of Our Lord two
44	thousand and
45	.....
46	George Bellows
47	President of the Senate
48	.....
49	James M. Whistler
50	Speaker of the House of Representatives
51	.....
52	John S. Sargent
53	Secretary of the Senate
54	.....
55	Frederick E. Church
56	Chief Clerk, House of Representatives
57	Filed
58	.....
59	Mary Cassatt
	Secretary of State

Chapter 9

Practical Aids to Research and Drafting

9.1 Finding Minnesota Law

- (a) Laws of Minnesota
- (b) Minnesota Statutes
- (c) Computer Searches of Statutes

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

9.1 Finding Minnesota Law

(a) Laws of Minnesota

Laws of Minnesota is published annually by the revisor of statutes approximately three months after adjournment and is often referred to as the "session laws." It contains all the acts of the legislature as passed in each year's legislative session. See the explanation at the beginning of each volume for information about its use. It contains a subject index and various tables.

The tables are compiled for publication 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 session law 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.

A cumulative Table 1 dating back to Laws 1945 is available from the revisor's office and on the Web.

(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 in numerical order 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 or numbering 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) SENATE AND HOUSE FILES ENACTED OR VETOED.

Table 3 in each year's session laws lists senate and house files enacted or vetoed in that legislative year. The table lists senate and house files numerically followed by the session law chapter numbers assigned to the files. Files vetoed by the governor are listed, as are individual line items of appropriation vetoed by the governor.

(4) SPECIAL LAW TABLES.

Special law tables in the session laws (Tables 4, 5, and 6 in odd-numbered years; Tables 4 and 5 in even-numbered years) show uncoded laws relating to local government units. The laws are listed in the tables if there is an express statement in the special law that local approval is required or not required or if for any reason the local government unit has filed a certificate of local approval with the secretary of state. The tables are updated to include the dates of filing the local approval certificates with the secretary of state in compliance with Minnesota Statutes, section 645.021. Local government units affected are shown alphabetically with a brief description of the legislation affecting them. When drafting local legislation, always check the local law tables and the cumulative local law table discussed under "(b) Minnesota Statutes."

(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 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. Volumes 12 to 14 of the statutes contain a subject index. A user's guide at the beginning of the index explains how to use it. Volume 15 contains court rules.

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.

(1) LOCAL, SPECIAL LAW TABLE.

A cumulative local, special law table is found in Table I 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.

(2) ALLOCATION OF ACTS TABLE.

Table II in the statutes lists enactments newly codified and published for the first time in the edition. The table lists the new codified acts in order of chapter number in the year passed, followed by the final assignment of statutory coding denoting their locations in the edition.

(3) ORGANIZATION AND STRUCTURE OF STATE GOVERNMENT TABLE.

Table III in the statutes outlines the organization and structure of state government. It lists the statutory citation that governs each named official, department, board, agency, or other unit of state government. Some miscellaneous regional agencies are also listed.

(4) INTERNAL CROSS-REFERENCE TABLE.

Table IV 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 or to add a revisor's instruction to correct the references.

(5) STATUTORY AUTHORITY FOR ADMINISTRATIVE RULES.

Administrative rules adopted under the authority of Minnesota Statutes are listed in Table V of the statutes. The table shows the sections in the statutes that provide statutory authority, followed by a list of the rules for which the authority is provided. The text of the cited rules can be found in Minnesota Rules, a separate publication.

(c) Computer Searches of Statutes

Drafters sometimes need to find all the places in the statutes where a particular word, phrase, or concept is treated. Computerized searches of the statutes text can help with that task, but drafters need to know the differences between the available tools.

A number of search engines available on the Internet will reach the text of Minnesota Statutes, but information about how these tools behave is often hidden from the user. Drafters are better off using search tools created within the Minnesota Legislature.

Search tools are available on the Statutes Web page. All are restricted to text within sections; they ignore chapter titles. They also ignore first-grade headings (the headings that serve as subject dividers in the printed statutes) because those headings are not included in the Internet statutes database. More information about the exact behavior of the Web search tools is available on the Examples and Explanations page, linked from the search screen.

A different search tool is available within the revisor's office. That program searches on all text in the statutes database, including chapter titles and first-grade headings; for that reason it may be the better tool for editorial projects. Word searches and phrase searches are available. Contact the staff of the revisor's office to have one of these searches run.

Most of all, drafters should remember that it will probably take several types of searches to find all instances of a concept in the statutes. Because an idea can be expressed in many different words, or even with cross-references rather than words, drafters should make use of several searches and use the statutes index to get the search coverage they need. The staff of the Legislative Reference Library are good sources of help with search design.

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 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 of time.

(c) House and Senate Index and Bill Status System

The Minnesota Legislation and Bill Tracking System developed by the house of representatives, the 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 that, as introduced, amend a specific section of Minnesota Statutes, the session laws, and the constitution. Terminals are available in many legislative offices including the legislative reference library.

(d) House and Senate Journals

The journals of the house of representatives and the 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, an index of all bills introduced under broad topics, author index, and companion bill comparison table. The senate journal includes a miscellaneous section and the house journal includes a section on motions, resolutions, and miscellaneous parliamentary actions.

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. Do not hesitate to borrow from statutes or bills of other states. “State Legislatures Internet Links” to the bills and statutes of all states can be found on the Web site of the National Conference of State Legislatures, at: www.ncsl.org/public/leglinks.cfm. Also, printed state statutes from around the country can be found at the Minnesota State Law Library.

General researchers and subject specialists at the following national organizations could also help you locate pertinent statutes or bills. The journals and reports published by these organizations can be found in the Minnesota Legislative Reference Library.

National Conference of State Legislatures (NCSL). Phone: 303-364-7700; Web site: www.ncsl.org

NCSL collects information of importance to the states, publishes print and electronic reports on various state issues, and drafts model legislation. It also provides a research staff of subject specialists to assist member states’ legislative staff members.

Council of State Governments (CSG). Phone: 859-244-8000 (headquarters), 630-810-0210 (Midwestern Office) Web site: www.csg.org

The Council of State Governments is a joint organization of all branches of state governments. It researches and publishes reports on state programs and problems. *Suggested State Legislation*, a compilation of draft legislation from state statutes on topics of current importance to the states, is published annually. Their information service serves state government researchers.

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 45,000 books and pamphlets, 500 active periodical subscriptions, and 31 newspaper subscriptions. It participates in statewide and nationwide library lending networks. Reference librarians have access to both free and fee-based electronic databases and can provide background information or fact-checking on any topic. Library staff can locate needed information for you, supply searching advice, or provide group or individual Internet searching classes.

Contact information:

Reference: Phone 651-296-8338, e-mail refdesk@library.leg.state.mn.us

Circulation: Phone 651-296-3398, e-mail circdesk@library.leg.state.mn.us

Library Web site: www.leg.state.mn.us/lrl/lrl.htm

Library Intranet (available to legislative users only): venus.library.leg.state.mn.us/intranet

LRL is the depository for state government publications, including consultants reports and reports mandated by the legislature. All reports are included in their online catalog.

There are several ways to be notified of new materials in the library. *Just In*, a selected list of recent acquisitions, is published monthly. The library's current awareness service, *Inside Issues*, provides notification to subscribers of new materials in topical areas they choose. Ongoing

distribution of the tables of contents of recently received periodicals is also available. Contact the library for additional information and to sign up for these services.

Legislative history assistance is provided by staff in the library's tape room. Contact them for information on house and senate committee minutes, audiotapes of legislative committee meetings and floor sessions, and copies of house and senate bills from previous biennia.

Contact information:

tape room: Phone 651-296-0767, e-mail taperoom@library.leg.state.mn.us

Legislative History Web site: www.leg.state.mn.us/leg/leghist/histstep.htm

Highlights of the library's collection include:

- Newspaper clippings by subject, by district, by state agency, or by individual's name: 1969 to date.
- Electronic access to full text of the *Star Tribune* and *St. Paul Pioneer Press* through Newslibrary. (Available to legislative staff through the library's intranet, at venus.library.leg.state.mn.us/intranet)
- Extensive reference collection, with a focus on state-level statistics and state-by-state comparisons.
- *Links to the World*: Library staff maintain subject-based links to relevant public policy Internet sites. www.leg.state.mn.us/lrl/links/links.htm
- *Resources on Minnesota Issues*: electronic guides to information in the library and the Internet on pertinent legislative issues. venus.library.leg.state.mn.us/lrl/issues.asp
- Online magazine indexes with many full text articles. (Available to legislative staff through the library's intranet, at venus.library.leg.state.mn.us/intranet)
- Full coverage of Minnesota state documents, including consultants reports.
- Reports mandated to the legislature, cataloged and indexed by key word, agency, and mandate.
- Speech materials: famous speeches, quotations, and guides to effective presentations.
- Legal materials: USCA, MSA, Minnesota and federal rules and regulations.
- Legislative Manuals: 1887 to date
- Minnesota session laws since 1871, statutes since 1927, and house and senate journals since 1909.
- Bills introduced: house and senate since 1957.
- Senate and house committee books. Call tape room staff for details on older materials.
- Tape recordings of floor and committee debate. Call tape room staff for details on older materials.

The legislative reference librarians can direct you to the indexes, bibliographies, and directories that will help you locate 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.

Chapter 10

Clarity in Drafting

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10.11 <i>That</i> and <i>Which</i>	10.31 Noun Strings
10.12 Serial Commas and Ambiguity	10.32 Nominal Style
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This chapter is about readability or "plain language" issues in bills. It also treats some matters of substantive clarity. (On substantive clarity, see also chapter 2.) It is not 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 and understand.

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*, pp. 2-4; Charrow, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 97, 101-110; Dickerson, *Fundamentals*, pp. 26-31.

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, except in the Uniform Commercial Code, 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 for Document Designers*, pp. 17-19; Charrow, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 148-150.

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.

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.

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

10.7 Voice

What are active voice and 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? 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 Shall, Must, and other Verbs of Command

(a) Duties

Active voice: To impose a duty to act, drafters have a choice between two auxiliary verbs: *shall* or *must*. Both *shall* and *must* are statutorily defined as mandatory, in Minnesota Statutes, section 645.44. Here are two examples of their use:

The commissioner shall evaluate the report.

The commissioner must evaluate the report.

Either way, the sentence should be in the active voice, and the subject of the sentence should be a human being or a legal entity on whom a duty can be imposed.

Passive voice: No matter which verb is used, imposing duties with the passive voice is risky because the sentence might not make clear who has the duty to act. However, if the context makes clear who has to do it, a drafter can impose a duty in the passive voice with *must*:

The application must be processed when the comment period has elapsed.

(This assumes that a previous sentence makes it clear who has the duty to process the application.)

Drafters should avoid using *shall* in the passive voice. See *Statements of Law*, under this topic.

Determining duties: Not every sentence that has a human subject takes a *shall*. When drafters use *shall* to impose duties, they should be certain that what they are creating is really a duty. Consider the sentence, "The board shall take any action it considers useful in overseeing investments." Does it really make sense to order the board to do what it wants to do? The statement makes more sense if it is drafted with *may*, as a permission. To test for this type of problem, try substituting *must* or *has the duty to* and see if the sentence still makes sense.

Statements of Law and Requirements or conditions (under this topic) are other types of sentences with human subjects that do not take *shall*.

(b) Prohibitions

Shall not or must not: To impose a duty not to act—a prohibition—the drafter has the same two choices: *shall* or *must*, combined with *not*:

The commissioner shall not impose an additional fee for late applications.

A person must not operate a motor vehicle in violation of motor vehicle noise rules adopted by the pollution control agency.

Passive voice: Drafters should avoid using *shall not* in the passive voice. See *Statements of Law*, under this topic.

If context makes it clear who has the duty not to act, or who is subject to the prohibition, drafters can impose prohibitions in the passive voice with *must*:

Vented freestanding room heaters must not be installed in bedrooms or sleeping quarters. . . .

(This assumes that it does not matter who is acting; no one is allowed to install such a heater in a bedroom.)

May not: Prohibitions can also be drafted with *may not*, but passive *may not* needs special care. See *Permissions*, under this topic.

(c) Permissions

May: To permit an action, or to give someone discretionary authority, drafters should use *may*. *May* is statutorily defined as permissive, in Minnesota Statutes, section 645.44. Longer forms like *is authorized to* are not needed.

The commissioner may order the property seized.

To test whether *may* is really the right verb to use, a drafter should ask the question: Do I really intend to give this person the *discretion* to do this or not to do it? In sentences that give alternatives, *may* feels natural but can be ambiguous. For example, consider the following sentence:

The board may amend the list of wastes by adopting a resolution or by following the normal rulemaking procedure.

Does this mean that the board is free to decide to amend or not to amend? Or does it mean that the board *must* amend, but is free to choose one way to amend or the other? If the drafter really intends the latter meaning, *shall* or *must* is the better choice. *May* should be used only to leave someone free to do a thing or not.

Like *shall* and *must*, *may* in the passive voice is risky. To make clear who has the permission or authority, it is better to write in the active voice and to say that some person may seize the property than to say that it "may be seized."

Also, a passive *may* is susceptible to misreading. For example, consider the sentence, "An application submitted after the June 30 deadline *may be rejected*." Is this sentence just alerting the reader that a late application might not be approved, or is it specifically permitting the reviewer to reject it?

May not: To say an action is not permitted, drafters have at least two choices. They can express a negative permission by using *may not* or they can express a prohibition by using *shall not* or *must not*. (See *Prohibitions* under this topic.)

Essential employees may not strike.

An employee must not strike unless written notice of intent to strike is served on the employer and the commissioner.

Drafters should be aware, though, that passive *may not*, like passive *may*, can be misread by readers not accustomed to the conventions of legal drafting or not acquainted with the principles of statutory interpretation. For example, consider the sentence, "If an aid application is not received by the June 30 deadline, it may not be approved for the fall quarter."

Drafters know that in laws or rules the only appropriate uses of verbs are to require or prohibit acts, grant or deny permissions, or establish standards or requirements, and they know that mere statements of possibility have no place in law. However, not all readers know these limitations. Since in general English *may* can mean possibility as well as permission, a student who wants to apply for aid might understand the example sentence as a mere warning that a late application might not get timely money. Even though the aid-granting agency will probably understand what the drafter meant—that the agency is not permitted to give money to a late applicant—at least part of the audience could be misinformed.

To avoid such misreadings of *may not be*, drafters have several choices. They can replace *may not be* with *must not be*. They can put the negative element in the main verb as shown in the following pair of examples:

If an aid application is not received by the June 30 deadline, it must not be approved for the fall quarter.

If an aid application is not received by the June 30 deadline, it must be rejected for the fall quarter.

Finally, they can adopt the advice in section 10.7 and recast the sentence in the active voice.

If an aid application is not received by the June 30 deadline, the agency may not approve the application for the fall quarter.

To avoid any misreading that involves the *may* of possibility, some drafters refrain entirely from using *may not*, either in the passive or the active voice, and substitute a prohibition with *shall not* or *must not*.

(d) Statements of Law

To say what the law is—that is, to make a statement that is true by operation of law—drafters should use *is* or *are*, not *shall be*. For example, a drafter should write that a person *is eligible* for a grant under certain conditions, not that the person *shall be eligible*. Negative statements work the same way: a drafter should write that a person *is not eligible* for a grant under certain conditions, not that the person *shall not be eligible*. The practice of using *shall* to state a legal result is discussed by drafting authorities as an error called the "false imperative."

Shall be and *shall not be* in any context are potentially ambiguous. Consider the following sentence: "A member of the investment board shall be a member of the guaranty association." Does *shall be* in this sentence mean *is* or does it mean *must be*? In other words, does this sentence constitute a requirement that a member of the investment board first be a member of the guaranty association, or is it a declaration that a board member automatically becomes a guaranty association member?

Because *shall* with *be* can be read two ways, and because the passive voice always involves the use of a form of *be*, drafters should avoid using *shall*, or *shall not*, in the passive voice.

(e) Requirements or Conditions

Must: To create requirements or conditions—statements about what people or things must be rather than what they must do drafters should use *must*, not *shall*:

To be eligible for nomination, a person must be at least 21 years old.

A motor vehicle must be equipped with a horn.

Must is preferred because requirements or conditions usually need a form of *be*, and *shall* combined with *be* is often ambiguous. See *Statements of Law*, under this topic.

Must not: A requirement or condition can also be stated negatively, and in that case the drafter should write *must not*:

The nominee must not have been a registered lobbyist at any time within three years before nomination.

Need not or is not required to: To show that something is not required, drafters should use *need not or is not required to*:

If fewer than seven people object to the rule, a hearing need not be held.

If fewer than seven people object to the rule, a hearing is not required.

(f) Definitions

To define a term, drafters should use *means*, not *shall mean*.

"Farm tractor" means a tractor designed and used primarily as a farm implement. . . .

In the introduction to a series of definitions, drafters should say that the terms "have the meanings given them" rather than "shall have the meanings given them."

(g) Rights and Entitlements

To create a right, drafters should use *is entitled to*, not *shall be entitled to*; to negate a right, *is not entitled to*.

The member is entitled to be compensated for expenses attributable to service on the board.

(This assumes that it is also clear from some other sentence who has the duty to compensate the member.)

(h) Conditional Clauses

In conditions, drafters should not use *shall* at all. Formulas like "If it shall have been established" can become "If it has been established . . ." or better, "If (someone with the duty) has established . . ."

(i) Other Verbs

Drafters are often tempted to use other verbs, such as *can*, *should*, or *will*. The best advice is to avoid alternatives and stick to the models given above. Some drafting authorities do discuss *should* (Dickerson, for example) and *will* (state rule-drafting manuals), but little agreement exists among the authorities. It is not certain how readers will understand the alternative verbs or how courts will construe them.

(j) Summary Recommendations

What follows is a short rule that drafters can apply to help them use *shall* and *must* consistently with our recommendations.

Either *shall* or *must* may be used if all of the following conditions are satisfied:

- (1) The statement imposes a duty or prohibition.

- (2) The subject of the sentence is a human being or legal entity.
- (3) The duty or prohibition is imposed in the active voice.

If all conditions are not met, use *must* to impose a duty, prohibition, obligation, requirement, status, or condition.

10.9 Ambiguous Words

Ambiguity in drafting is a serious problem. It deserves attention, and it warrants detailed advice about how drafters can avoid it. The information here supplements the material in chapter 2 on the statutory interpretation of ambiguous words and phrases.

Semantic ambiguity—the type of ambiguity that occurs when a single word has more than one meaning—is most easily avoided by defining any term that people might disagree about. For example, the parties to *Frigalment Importing Co. v. International Sales Corp.* (190 F. Supp. 116, S.D.N.Y. 1960) disagreed over the meaning of "chicken." Did the word "chicken" in their contract include only broilers and fryers, or did it include stewing chickens as well? A definition would have helped, if only the parties to the contract had realized they needed one.

A greater danger, though, is that we will disagree over the meaning of very common and very small words, words we never think about defining. For example, *may* and *may not*, and *shall* with forms of *be*, can cause a number of problems. They are discussed in section 10.8. The choice of *and* or *or* in a list is discussed in section 10.20.

The following sections discuss several more situations in which drafters risk using ambiguous wording.

10.10 Ranges of Numbers, Days, Dates, and Ages

Some other small words that cause trouble are the words we use to specify ranges of numbers, ages, and dates: *to*, *through*, *between*, and *from*.

When specifying a set that begins at A and ends at B, the drafter should make clear whether the named end points are included.

For ranges of sections in bills, statutes, or rules, it is acceptable and traditional to use a form such as "sections 1 to 20" because the laws on statutory interpretation make clear what the range means. They specify that in ranges of sections, the form "sections x to x" includes the first and last numbers and all sections between them. See Minnesota Statutes, section 645.48.

However, in other instances, the solution is not so easy; *to* is not synonymous with *through*.

For ranges of days, the drafter should avoid the use of *to* altogether. The phrase "Monday through Friday" includes all of Friday, but the phrase "Monday to Friday" includes all of Thursday and is ambiguous as to whether Friday is included. To be certain that Friday is included, the drafter should say "Monday through Friday." To exclude Friday, the drafter should write "Monday through Thursday."

For ranges of dates, Reed Dickerson gives the following advice:

Don't say

From July 1, 2002, to. . .
Between July 1, 2002, and. . .
To (or until or by) June 30, 2002. . .

Say

After June 30, 2002, and before. . .
After June 30, 2002, and before. . .
Before July 1, 2002. . .

Ranges of ages are equally slippery. Here is more of Dickerson's advice:

Don't say

between the ages of 17 and 45

Say

17 years old or older and under 46

Don't say

who is more than 17 years old

Say

who has passed his 17th birthday

[*or* 17 years old or older]

unless you mean

who is 18 years old or older

Remember that Minnesota Statutes, sections 645.13, 645.14, and 645.15, also affect the computation of time.

10.11 *That and Which*

A possible source of ambiguity is the word *which* used without commas. The general rule is that *that* should be used to introduce restrictive clauses (those that are necessary for meaning), and *which*, with commas, should be used to introduce nonrestrictive clauses (those not necessary for meaning). If a drafter uses *which* without commas, a reader may be unable to tell whether the clause is necessary for meaning. The drafter will need to decide whether to change *which* to *that* or add commas. Often the best solution is to redraft the sentence entirely.

For example, in the sentence—

A report which is required to be available for inspection must be in a form convenient for photocopying

—which of the following is meant?

1. A report, which is required to be available for inspection, must be in a form convenient for photocopying.

(In other words, all the reports have to be made available and all have to be in a certain form. This could be redrafted as *The office must make the report available for inspection and must preserve it in a form convenient for photocopying.*)

2. A report that is required to be available for inspection must be in a form convenient for photocopying.

(In other words, the reports that have to be made available are the only ones that have to be preserved in a certain form; others do not. This could be redrafted as *If a report is required to be available for inspection, it must be in a form convenient for photocopying.*)

10.12 Serial Commas and Ambiguity

The revisor's office uses a style that calls for a comma before the conjunction in a series. (See "Commas" in chapter 12.) A drafter should think carefully, though, before adding a comma to a sentence written by someone else. In rare cases, such a sentence may be ambiguous. Here is an example:

The commissioner shall assign to the case two managers, a program specialist and a family visitor.

How many people are being assigned to the case? Without a comma, the sentence can be read to mean two or four people. Make certain that the original drafter meant four people before adding the comma. (If the drafter meant two people, rewrite the sentence.)

10.13 Ambiguity at the Sentence Level

(a) The Placement Problem

Often ambiguity is the result of unclear sentence structure or poor placement of phrases or clauses. For example, a sign about refunds at a local hardware store reads "Store credit only after 90 days." Does this mean that after 90 days, the customer can receive a refund only in the form of store credit? Or is the point that store credit is not available as a form of refund until 90 days have elapsed? The placement of *only* makes the reader unsure.

Phrases that specify time also need to be placed carefully. Consider this example:

The public school district 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 before August 15.

Are services to be made available before August 15, or is the district to inform the school before August 15? Placing the words *before August 15* at the head of the sentence or after *inform the nonpublic school* would make it clearer that the date is a deadline for supplying the information.

(b) Modifiers of Nouns

Combinations of nouns and their modifiers are often a cause of trouble. A modifier is a word or group of words that tells more about another word's meaning. In the examples that follow, 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 name of the accused*

Questions can arise when there are more nouns than modifiers, or more modifiers than nouns, or when modifiers do not appear right next to the nouns they modify.

Consider these three examples, all taken from Bryan Garner's *Advanced Legal Drafting*:

"solid wall or fence"

Does *solid* modify just *wall*, or both *wall* and *fence*? In other words, does the phrase mean *solid wall* or *solid fence* or is the drafter distinguishing between a *solid wall* and a *fence*, which is usually not solid (in the sense of "without holes")?

"charitable and educational institutions"

Does this mean *charitable institutions and educational institutions*, or does it mean *institutions that are both charitable and educational*? One way to make the meaning clearer is to draft in the singular, so as to be able to write "a charitable and educational institution" or "a charitable or an educational institution."

"to prevent piracy of original works by Americans"

Does this mean original *works by Americans* or *piracy by Americans*? *By Americans* might not be modifying the nearest noun.

A special problem with the placement of modifiers is the situation covered by the rule of last antecedent (see section 2.5). In the phrase "forms, reports, and other submissions that must be filed for review" do the words *that must be filed for review* apply to the words *forms* and *reports*, or do they only apply to other *submissions*?

The rule of last antecedent says that ambiguities like these are to be resolved by taking the problem phrase as applying only to the last item in the series. A court, however, is as likely to ignore the rule as to use it. (See *State v. Turchick*, 436 N.W. 2d 108 (Minn. App. 1989)), in which the court interpreted the phrase "headphones and earphones which are worn on both ears" without any reference to the rule.)

10.14 Sentence Length

Sentences in the law are often long, and they seem to grow longer every time they are amended. Long sentences are not necessarily 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*, pp. 174, 182-183. Charrow, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 157-160.

10.15 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, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 162-164.

10.16 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*, pp. 182-183; Charrow, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 178-179.

When conditions have several components, and especially when they include both *and* and *or*, be sure to use numbers and white space to make clear how the pieces relate to one another. Otherwise, the sentence may be ambiguous, as in the following example from *Clear and Effective Legal Writing*:

If a client is receiving alimony or is receiving child support and has been divorced for more than one year, then this section of the rule does not apply.

The drafter can resolve the ambiguity by using the list form. This sentence might be rewritten in two different ways:

This section does not apply if the client:
(1) is receiving either alimony or child support; and
(2) has been divorced for more than one year.

This section does not apply if the client:
(1) is receiving alimony; or
(2) is receiving child support and has been divorced for more than one year.

10.17 Provisos

The phrase *provided that* often gives drafters a tool for gluing afterthoughts onto the end of a sentence. Drafters should avoid that temptation.

Example: (an unnecessary *provided that*)

The board may revoke a supervised release if the supervised person 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 person to enter the first available community program.

Example: (a clearer version, without *provided that*)

The board may revoke supervised release if the supervised person fails to enter a program. If no community program is available at the time of supervised release, the board may order the supervised person to enter the first available community program.

10.18 Sentences within Sentences

Do not write lists in which sentences are attached to phrases or clauses.

For example, don't write:

Subd. 2. [EXCLUDED STOCK.] "Excluded stock" for a brother-sister controlled group means:
(1) stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees;
(2) stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock;
(3) stock in a member corporation that is held by a nonprofitable educational or charitable organization.

If only one item has an inserted sentence, you can move that item to the end of the list. That will solve the problem temporarily, but an amendment may add a new item and make the sentence an interrupter again. You can also move the sentence to a paragraph after the list and refer to the item that the sentence applies to: "In clause (2), a bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock." That will add an internal reference and internal references should be minimized. You can turn the sentence into an independent clause by deleting the period and inserting a semicolon. The best solution is to turn your list of sentence parts into a list of sentences, so that the inserted sentence can be left next to the item it explains:

Subd. 2. [EXCLUDED STOCK.] (a) "Excluded stock" for a brother-sister controlled group has the meanings given in this subdivision.
(b) It means stock in a member corporation held by an employee's trust if the trust is for the benefit of the employees.
(c) It means stock in a member corporation owned by an employee of the corporation, but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement is not considered one that restricts or limits the employee's right to dispose of the stock.
(d) It means stock in a member corporation that is held by a non-profitable educational or charitable organization.

10.19 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 160/100, 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*, pp. 41 and 211-215; and Charrow, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 173-175.

10.20 *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 adapted from Reed Dickerson's *The Fundamentals of Legislative Drafting*, 2nd ed., 1986, 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.

10.21 Tables

Use tables when you need to present many numbers, as in appropriations, approved complements, and revisor's instructions. 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*, pp. 95-98.

10.22 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) The seller shall first determine the most similar container type for which the seller has established a price for that product. From that container type the seller shall select the nearest size that is 50 percent or less larger than the new size, or if the seller 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 the seller's base price the seller's 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, the seller 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.

10.23 Consistent Terms

Throughout your draft, use one term consistently to mean one thing. This rule seems easy to follow, but the following definition shows how thoroughly it can be broken:

. . . Unless the context clearly indicates a different meaning, "warehouse" may be used interchangeably with "elevator," "storage house," or "facility."

The same problem appears here:

Community water *supplies* which serve a population of 10,000 or more individuals . . . shall analyze for total trihalomethanes in accordance with this part, *Systems* serving 75,000 or more individuals shall begin sampling and analysis not later than January 1, 1982.

Drafters make variations like these unconsciously. Variations often show up near the beginnings of sentences, which 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.

10.24 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; Mellinkoff, *Legal Writing: Sense and Nonsense*, p. 137; Redish, *Beyond Readability*, p. 16.

10.25 Familiar Words

Use speaking vocabulary, not writing vocabulary, as much as you can without being slangy. The partial 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*, pp. 209-213; and Redish, *How to Write Regulations*, pp. 250-251.

Use the lists, but remember the principle; prefer the most familiar words. Remember also that the listed terms are not absolute prescriptions. The situation may require a different word.

10.26 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, each, every, some	a, an, the
such, said, same	a, an, the, it, that, them (or some other word or nothing)
above, aforesaid, aforementioned, beforementioned, hereby, herein, hereinafter, hereinbefore, herewith, therefor, therein, thereinafter, thereinbefore, thereof	Name a specific section or part
thereupon, whereupon	when, at that time
to wit	namely

10.27 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 attains the age of 21 years	the 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 the course of	during
excessive number of	too many
for the duration of	during

10.28 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*, pp. 165-169; also see section 2.6 and the discussion of the canons of construction.

10.29 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 is 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.

10.30 Initialisms

One type of jargon that is extremely common in government writing is the initialism. An initialism is a set of initials that is a short form of a term, like EAW for "environmental assessment worksheet." Initialisms can be hard to read; they force the uninitiated reader to go back to the definitions and to make repeated mental substitutions. Drafters should generally avoid them.

Especially avoid creating new initialisms merely to make drafting easier. If you don't want to write the phrase "home improvement loan application form" over and over, don't call it a HILAF. Instead, define a short substitute like "application form" or just "form."

In particular, drafters should avoid using several different initialisms and acronyms (pronounceable initialisms, like AIDS) in the same draft. Even when those terms are explained, the resulting draft is an alphabet soup that can baffle a reader. A sentence that reads, "The EAW must be submitted by the RGU for approval by the EQB," is not likely to be clear to anyone outside the committees and agencies involved.

If initialisms must be used, they should be explained. They can be defined in a definition section, or near the place of use, like this: "'MTBE' means methyl tertiary butyl ether." They can also be explained by giving the term in full, followed by the abbreviation in parentheses, at the first use of the abbreviation within a section, like this: "methyl tertiary butyl ether (MTBE)."

10.31 Noun Strings

A string of four or five nouns is hard to read because it masks the relationships between words. You may need more words in order to make their relationships clear, as these examples show:

Don't Use

Use

electronic financial terminal
authorization application

application for the right to use an
electronic financial terminal

Flesch scale analysis readability
score

Flesch test score, or
readability score on the Flesch scale

early childhood program
alternative case loads

case loads for early childhood
programs

See Charrow, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 184-185; Felker, et al., *Guidelines for Document Designers*, pp. 63-65.

10.32 Nominal Style

Many verbs have related nouns; *decide* is related to *decision*; *complain* to *complaint*; *speak* to *speech*. An idea can often be expressed with either a verb or a related noun. For example, you can *complain* or *make a complaint*.

Writing that uses verbs (verbal style) is usually brief and clear. Writing that uses nouns (nominal style) can be too formal and wordy.

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, Charrow, and Erhardt, *Clear and Effective Legal Writing*, pp. 169-171; Felker, *Guidelines for Document Designers*, pp. 35-38.

10.33 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 of 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.

Chapter 11

References

11.1 Minnesota Statutes	11.3 Minnesota Rules
(a) In Titles	11.4 State Constitution
(b) In Text	11.5 Federal Laws and Regulations
(c) Long Citation Strings	(a) Forms of Reference
(d) Difficult Cases	(b) Popular Names and Scattered Law
(e) To Proposed New Law	(c) Regulations
(f) To Include Future Amendments	11.6 Safety Codes
(g) To Exclude Future Amendments	11.7 Court Rules
(h) In Text Not Coded in Minnesota Statutes	11.8 Other Materials
11.2 Laws of Minnesota	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 20.., 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 20.. 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.

" . . . as provided by section 14.31."

For examples of references to units smaller than a section, see the examples on page 272.

(c) Long Citation Strings

Where text contains a citation string, such as "section 123.45, subdivision 1, paragraph (a), clause (1), item (i), subitem (A)," to avoid lengthy citations, the words "item" and "subitem" in references may be dropped as shown in the following example: "section 123.45, subdivision 1, paragraph (a), clause (1)(i)(A)." However, the words "item" and "subitem" should still be used in references to "this item" or "this subitem." When the reference is made to another item or subitem within the same clause or item, the words should still be used in references such as "item (ii)" or "subitem (A)," and the like.

(d) Difficult Cases

Existing law often deviates from the rules in chapter 4 that determine what text is a paragraph, clause, item, or subitem. Sometimes even new drafting does so. Those deviations can create problems when a drafter has to refer to a section of law that varies from the rules. Sometimes the drafter will renumber, reletter, or reword the existing law to make it conform to the conventions. Often, though, the existing law should be left alone because it is very complex or because too many cross-references would need changing.

When drafters have to work with these structures, they will need to know how to refer to such nonconforming pieces. Here are some recommendations on how to do so:

1. If there's any hint in existing law as to what the unit is called, stick with that name. Despite the rest of these rules, use what's there.
2. If there's no hint, find the first letter or number in the group to which the unit belongs. If the first letter or number appears directly after a section headnote, subdivision number, or subdivision headnote, the unit in question is a paragraph.
3. If the section headnote, subdivision number, or subdivision headnote has words between it and the first number or letter in the group, the numbered or lettered parts are clauses if they contain any sentence fragments. If they do not contain sentence fragments, they are paragraphs.
4. If it's within a clause, it's an item.
5. If it's within an item, it's a subitem.
6. If it doesn't follow any of these rules, the drafter will have to use his or her best judgment.

(e) To Proposed New Law

Proper forms for a reference to a section of a bill which is proposing a new section to be added to Minnesota Statutes are:

- (1) to the bill's section number: " . . . as provided by section 22"; or
- (2) to the proposed coding of the section: " . . . as provided by section 123.562"

When in a proposed or existing coded section and citing a section proposed to be coded, the reference should be to the proposed statutory section number.

1 Section 1. [169A.20] [DRIVING WHILE IMPAIRED.]
2 It is a crime for any person to drive, operate, or be in
3 physical control of any motor vehicle within this state or on
4 any boundary water of this state while under the influence of
5 alcohol, a controlled substance, or a hazardous substance.
6 Sec. 2. Minnesota Statutes 20.., section 629.471, is
7 amended to read:
8 629.471 [MAXIMUM BAIL ON MISDEMEANORS.]
9 For offenses under ~~section~~ sections 169.09 and 169A.20, the
10 the maximum cash bail is quadruple the highest cash fine that
11 may be imposed for the offense.

When in an uncoded section of the bill and citing any other coded or uncoded section in the bill, the reference should normally be to the bill section number. Uncoded sections generally include effective date sections, application sections, transition sections, temporary provisions, special laws, instructions to the revisor, and other uncodified material.

1 Section 1. Minnesota Statutes 20.., section 123.456,
2 is amended to read:
3 123.456 [LEAVE FOR CIVIL AIR PATROL SERVICE.]
4 From July 1, 2002, to June 30, 2004, an employer shall
5 grant a leave of absence ~~without~~ with pay to an employee
6 for time spent rendering service as a member of the civil
7 air patrol. For purposes of this section, "employer"
8 means a person or entity that employs ~~20~~ 25 or more
9 employees at one site
10 Sec. 2. [GRANT PROGRAM CREATED.]
11 A grant program is created to reimburse employers
12 for payments made to employees who take leave under
13 section 1
14 Sec. 3. [EXPIRATION.]
15 The amendments in section 1 to Minnesota Statutes,
16 section 123.456, expire effective June 30, 2004.

(f) 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.

(g) 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.

" . . . as provided by Minnesota Statutes 2000, 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.

(h) In Text 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."

" . . . 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 2001, 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, 2000" or " . . . as provided by Statutes at Large, volume 38, page 730, section 123" or " . . . as provided by Public Law 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(a) of *A Uniform System of Citation*, 17th 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, 20.., . . ."

All references should be to the official compilation *United States Code*, not to the unofficial *United States Code Annotated* or *Federal Code Annotated*.

(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 (20..)." The abbreviation "C.F.R." or "CFR" should not be used. Only when a rule is not yet published in the *Code of Federal Regulations* should reference be made to the *Federal Register*. An example of the correct form is ". . . as provided by Federal Register, volume 46, page 23405 (20..)." 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 that 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, 2000." 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 may 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, 272

References to Minnesota Rules, 273

References to Federal Law, 274

References to Safety Standards,

First reference, 274

Second and later references, 275

General Format, 275

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 items and subitems:** this item
item (i)
this subitem
subitem (A)
- **To a range of sections:** sections 645.01 to 645.31
- **To several sections and subdivisions:** section 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 subpart 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

EXAMPLE—REFERENCES TO FEDERAL LAW

Compiled form

- . . . as provided by United States Code, title 14, section 1401, subsection (c), paragraph (4), subparagraph (g), as amended through December 31, 20..

Uncompiled form (used for specific section appearing on a single page)

- . . . as provided by Statutes at Large, volume 38, page 730, section . . .

Uncompiled form (used for inclusive reference to entire bill or portion of it)

- . . . as provided by Statutes at Large, volume 38, pages 220 through 236

Public law

- . . . as provided by Public Law 89-110

Internal Revenue Code

- . . . as provided by section 482 of the Internal Revenue Code of 1986, as amended through December 31, 20..

EXAMPLE—SAFETY STANDARDS (First reference)

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,
4 D.C.: 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
9 incorporated by 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
13 the American Society for Testing and Materials (Philadelphia,
14 1981).

EXAMPLE— SAFETY STANDARDS (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
2 recommendations" means "Safety Recommendations for Sensitized
3 Ammonium Nitrate Blasting Agents," issued by the U.S.
4 Department of Interior, Bureau of Mines, as Information
5 Circular 8179 (Washington D.C., Government Printing Office,
6 1963).
```

```
1     Subd. 4. [SAFETY PRACTICES.] Safety recommendations as
2 described in section 19 shall be followed on all pyramid
3 projects.
```

EXAMPLE— SAFETY STANDARDS (General format)

```
1     . . . on pages 10 through 14 of "Empire Building," by James
2 J. Hill, issued by the United States Department of Commerce as
3 Pamphlet No. 666 (Washington, D.C.: United States Government
4 Printing Office, 1983). . . . in section 42.42 of "Life, the
5 Universe, and Everything," issued by the State Department of
6 Ultimate Questions (Saint 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.

Chapter 12

Punctuation, Mechanics, Style

Authorities

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 other parts of the manual or to more extensive reference works.

To answer questions about usage, readers should consult those works in a particular order:

(1) For questions about forms of abbreviation, readers should turn first to this manual, then to the latest edition of *The Chicago Manual of Style*.

Unless *The Chicago Manual of Style* shows otherwise, abbreviations that are initial letters, in full capitals, are spelled without periods and spaces. Examples: AIDS, CPA, RICO, HIV.

(2) For other usage questions, readers should consult first, this manual, then the latest edition of *Merriam-Webster's Collegiate Dictionary*, which may be accessed at www.m-w.com (or *Webster's Third New International Dictionary* if the word does not appear in the *Collegiate*), then, the latest edition of *The Chicago Manual of Style*.

(3) For guidance about questions of word usage not covered by those three authorities, drafters may consult works such as *Fowler's Modern English Usage*, Third Edition, *The New York Times Manual of Style and Usage*, *Merriam-Webster's Dictionary of English Usage*, and the *American Heritage Dictionary*, as well as *Stedman's Medical Dictionary*, *Black's Law Dictionary*, Seventh Edition, and other specialized reference works.

This chapter contains the following entries in alphabetical order:

abbreviations	dashes	money	slashes
addresses	data	numbers	spelling
apostrophes	dates	official titles	state parks
assure, ensure, and insure	ensure	paragraphs	strikeouts
be	fractions	parentheses	subdivisions
brackets	geographic names	percentages	symbols
capitalization	hyphens	periods	tables
clauses	initials	place names	temperature
coding	insure	punctuation	that
colons	is/are	quotation marks	time of day
commas	italics	roads	underscoring
compound words	lists	saint or st.	which
	measurements	semicolons	word division

Abbreviations

Avoid abbreviations. When in doubt about whether to abbreviate a word, spell it out or check with the revisor's office. See the discussion in chapter 10 and (10) below.

In particular, avoid using initials as a substitute for an official name. For example, write "Executive Office for Immigration Review" or "the office." Do not write "the EOIR." Full names are especially important for publications being incorporated by reference. For examples, see chapter 11, References.

Do not use the abbreviations *e.g.*, *i.e.*, *et al.*, *et seq.*, and *etc.* Do not abbreviate any part of a citation to Minnesota Statutes or Minnesota Rules.

The following are exceptions to the general rules:

(1) **An abbreviation may be used if it is part of a proper name**, as in "Cargill, Inc." The abbreviation No. may be used in the names of school districts or roads, such as "Independent School District No. 625."

(2) **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) **Abbreviations may be used in tables, illustrations, and similar material.**

(4) **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) **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. If your original reads "Within the S.W. 1/4 of section 19, township 105N, range 32W," leave the compass points in the form.

(6) **In U.S. place names, abbreviate *Saint*.**

(7) **State names may be abbreviated in addresses.** Use the abbreviations approved by the postal service, such as "MN" for Minnesota. See Addresses.

(8) **In technical material, units of measurement may be abbreviated.**

(9) **The symbols for the chemical elements**, such as H and Au, may be used in text as well as in equations, formulas, and tabular matter.

(10) A general exception: abbreviations may be used when they make reading easier, not harder, for the document's most likely audiences. Examples of abbreviations that make reading easier are those that are familiar to the general public from use in newspapers, such as "AIDS" rather than "acquired immune deficiency syndrome" and "DNA" rather than "deoxyribonucleic acid." Cases in which abbreviations make reading harder are discussed in chapter 10.

Abbreviations should be explained if used. They can be defined in a definition section, or see chapter 10.

For the correct form of an abbreviation not found in this manual, see Authorities, above.

For plural forms of abbreviations, see Apostrophes.

Addresses

Write mailing 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 the following address: Director, State Building
Construction Division, Department of Administration, Administration
Building, 50 Sherburne Avenue, St. 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," "Minnesota House of Representatives session," "United Nations meeting"; and
- (2) words more descriptive than possessive, that is, words not indicating ownership, as in "teachers college" or "Proofreaders Manual."

If an existing name is usually written without an apostrophe, don't add one.

When you are *creating a new name* for an official body and the first word of the name ends in an *s* sound and looks like a regular plural, let it remain a plural. It is not necessary to add an apostrophe to make it a possessive plural. Example: excavators association. Drafters should try to use word forms without the *s* when the *s* may be unnecessary. For example, "attorney's fees" and "attorneys' fees" are both correct, but "attorney fees" eliminates the apostrophe question. When you are adding the name of an existing named organization, always use the official name of the organization without regard to the advice in this manual.

Use apostrophes in the plurals of abbreviations and in plurals formed from letters and figures: M.D.'s C.P.A.'s TV's; VCR's; p's and q's; 747's; size 7's. (Many publications omit such apostrophes, but they are needed to make full-capitals headnotes intelligible and should therefore be used throughout revisor publications for consistency.)

Use an apostrophe in phrases like "30 days' notice." See discussion at *The Chicago Manual of Style*, section 6.21.

Assure, Ensure, and Insure

Assure, *ensure*, and *insure* are often equally correct, but sometimes context calls for only one of the three.

When the subject is insurance law, use *insure*.

. . . a master policy issued to a creditor to insure its debtors in connection with first real estate mortgage loans. . .

When the meaning is to remove doubt from a person's mind, use *assure*.

A county must also assure the commissioner of health that the requirements of sections 62J.71 to 62J.73 will be met.

In other cases, the words are very nearly interchangeable. Here are some examples, all correct.

The responsible authority shall establish procedures to *assure* [or *ensure* or *insure*] that requests for government data are received and complied with in an appropriate and prompt manner.

The presiding officer may fashion and issue any protective orders necessary to *assure* [or *ensure* or *insure*] proper handling of the data by the parties.

The division shall *assure* [or *ensure* or *insure*] that other state emergency plans are coordinated and consistent with the comprehensive state emergency operations plan.

Be

On forms of the verb "to be" see Data.

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 2000, chapter 785, section 4, subdivision 8.

but

house rules
rules of the house
senate rule 7.1
rules of the senate

In the layout of each section, capitalize "Subdivision" and "Subd."

Example:

Subdivision 1.
Subd. 2.

(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 official names of rivers, lakes, creeks, streams, counties, universities, colleges, streets, highways, community organizations, parks, wildlife refuges, government agencies, school districts, political subdivisions, and laws, as well as the names of people, places, and institutions. They do not include titles of individual civic officers, such as governor or commissioner, except when the titles precede the names.

The official names of entities should always be used even if they are not consistent with our style preferences. For example, use Committee on Children, Families and Learning, not the Committee on Children, Families, and Learning.

Capitalize the principal words of all state, uniform, and federal acts.

Examples:

Administrative Procedure Act	Metropolitan Council
African-American	Minnesota Historical Society
Building Construction Division	Minnesota House of Representatives
Bureau of Criminal Apprehension	Minnesota Senate
Carlos Avery Wildlife Refuge	Minnesota State Colleges and Universities (MnSCU)
Caucasian	Mississippi River
Como Park	Moorhead State University
Consumer Price Index	National Guard
Council on Black Minnesotans	Normandale Community College
Department of Agriculture	Office of the Secretary of State
Elm and Mississippi Streets	Park Street
Floyd B. Olson Memorial Highway	Red River Valley
Gilbertson Stream	State Capitol
Governor Floyd B. Olson	State Office Building
Head Start	Uniform Commercial Code
Heartbreak Creek	United Nations
Hennepin County	United States Armed Forces
Houghton Mifflin Company	United States Navy
Independent School District No. 625	United Way
marked Interstate Highway 94	University of Minnesota
Medicare, Medicaid	Weaver Lake
(but: medical assistance)	Willow River State Park

For additional information on road and highway designations, see Roads.

UNCAPITALIZED WORDS.

(1) **Do not capitalize words referring to an agency, a political subdivision, or a place if they are not part of a proper name.** Do not capitalize the words even when they stand for proper nouns. Do not capitalize titles of individual civic officers, such as governor or commissioner when they do not precede the name of the person.

Examples:

the armed forces	the navy
the county	the office
the department	the secretary
the governor	the secretary of state
the highway	the senate
the house, the house of representatives	the state of Minnesota
the legislature	the university

(2) **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, or other state administrative creations. If an act is given a proper name by law, capitalize it, for example, the "Uniform Fiduciaries Act."

(3) **Lowercase "state" in the phrase "state of Minnesota" and elsewhere. Do not capitalize the words "federal" or "legislature."**

(4) **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. 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 20.., section 100.01, subdivision 1, is amended to read:

(3) Place a colon after an expression that introduces a series of items. You may place a colon after an expression that introduces a series of items in run-in, untabulated form if the introducing expression is itself a sentence.

Example: List with a colon.

The petition must contain the following information: the name of petitioner, the names of adverse parties, a statement of the grievance, and references to relevant documents.

Examples: Lists without colons.

The petition must contain the name of petitioner, the names of adverse parties, a statement of the grievance, and references to relevant documents.

The petition must contain (1) the name of petitioner, (2) the names of adverse parties, (3) a statement of the grievance, and (4) references to relevant documents.

(4) Place a colon between the place of publication and the publisher's name in a citation. See the chapter on References.

(5) The items in a tabulated list need not always be parts of one sentence; they can be independent sentences. The sentence that introduces the list should end in a colon. Full sentences should have their first words capitalized and end in periods.

Example:

The designation must use one of the following terms:

(a) "Fee paid" or "employer-paid fee" must be used if the employer has agreed to pay the entire fee directly to the agency.

(b) "Fee reimbursed" must be used if the applicant must pay the fee to the agency and be paid back later by the employer.

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, 20...

(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.

Warning: If you are making changes to someone else's draft, be cautious about inserting serial commas. Adding a comma may resolve an ambiguity that really should be corrected by the drafter. See page 255.

The official names of entities should always be used even if they are not consistent with our style preferences. For example, use Committee on Children, Families and Learning, not the Committee on Children, Families, and Learning.

(3) Use a comma to set off the year following the month and day.

Example:

Before June 30, 20..,

Omit the commas around the year when no day is given.

Example:

The exemption expires in March 20.. unless the agency reapplies.

(4) Use commas to separate the parts of references. For examples, see References.

Compound Words. See Hyphens

Dashes

Avoid the use of dashes in text material in bills. It is nearly impossible to show that a dash has been stricken in the amendment process.

Data

Data can take either a plural verb (are) or a singular verb (is). Both forms are now standard in English. For background information, see the entry for *data* in *Merriam-Webster's Tenth Collegiate Dictionary*.

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, 20.., the commissioner

In September 20.. and every month after that

Ensure. See Assure, ensure, and insure

Fractions. See Numbers

Geographic Names

For abbreviations in place names, see Abbreviations. For correct spellings and forms of geographic names, consult the U.S. Geological Survey Web site (geonames.usgs.gov).

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 *Merriam-Webster's Collegiate Dictionary*. If that gives no answer 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"; but, "The job is part time and the license is valid for 60 days."

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 "2003-2004"). Do not use a hyphen in any other case as a substitute for the word *to* or *through*.

Initials. See Abbreviations

Insure. See Assure, ensure, and insure

Is/Are. See Data

Italics

Italics cannot be used in bills.

Lists

See sections 10.18, 10.19, and 10.20.

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 through 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, 0.04, 0.007

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.

Ranges of ages, times, or dates, temperatures or other numbers, such as "1999 to 2001" are difficult to draft clearly. Before you use "to" in a range of numbers, give it careful thought. See section 10.10.

In references to time periods that begin in one year and end in the next, use a hyphen rather than "to." Write the ending figure in full; don't abbreviate it; for example, the 2003-2004 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, 0.04 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 Capitalization and section 4.6(c)(5) on Dividing Bills and Sections for examples of this rule.

Place Names. See Geographic names

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," "entitled," or "known as."

(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. If you must use a word in a special sense, define it so that it will not need quotation marks.

Roads

Use the following capitalization rules for the names and numbers of streets and roads.

- (1) Capitalize only specific (named or numbered) rights-of-way (treat as a "proper noun" that names a place).
- (2) Use "No." only when referring to rights-of-way described with a statutorily assigned number. Capitalize "No."
- (3) Do not capitalize route names when used generically (i.e., unnamed and unnumbered), such as "legislative routes," "trunk highways," "city streets," and "memorial bridges."

Examples:

Constitutional Route No. 70, Legislative Route No. 71, Route No. 392.
Capitalize and use "No." when referring to a route described in Minnesota Statutes, section 161.114, 161.115, 161.117, or 161.12.

Trunk Highway marked 169 **OR** marked Trunk Highway 169. Capitalize but do not use "No." when referring to a trunk highway by its highway sign number, which is usually not its statutory route number.

County State-Aid Highway 5, County Road J, Elm Street, 12th Street SE (and so forth). Capitalize, but do not use "No." for any right-of-way not described in Minnesota Statutes, section 161.114, 161.115, 161.117, or 161.12.

P. H. McGarry Memorial Drive. Capitalize the various memorial routes listed in Minnesota Statutes, section 161.14 (no need to use "No.").

Saint or St. See Abbreviations

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 20.., section 257.071, subdivision 3, 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 commission may call a meeting of the board whenever necessary; it 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, and provided that*. Again, don't overuse this construction.

Example:

Applications must be submitted before January 1, 20..; however, the board may grant an extension for good cause.

(4) Use a semicolon to separate equal elements that contain commas.

Example:

In 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, to decide spelling questions use the latest edition and printing of the *Merriam-Webster's Collegiate Dictionary*, including the on-line version at www.m-w.com. If the word cannot be found there, use *Webster's Third New International Dictionary*. 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 "*labeling*."

State Parks

There are special rules for bills and statutes sections involving state parks and similar lands. In 1969, the revisor was instructed to code all the state parks in one section. Minnesota Statutes, section 85.014 preserves the instruction language and explains how the revisor is to treat parks (in Minnesota Statutes, section 85.012), and also state monuments, recreation areas, and waysides (in Minnesota Statutes, section 85.013). The actual land descriptions for these lands are passed as session laws and are not coded.

A bill creating a new state park, monument, recreation area, or wayside has a unique format.

Example:

Section 1. GLENDALOUGH STATE PARK.

Subdivision 1. [85.012] [Subd. 23a.] [GLENDALOUGH STATE PARK.]
Glendalough State Park is established in Otter Tail County.

Additional subdivisions are in standard form. They talk about the location of the land and the way it is to be purchased.

The published statutes sections listing the lands also have a special form. Unlike other subdivisions, a subdivision in one of those sections is not a full sentence. It contains nothing but the name of the park or other creation and its county, in the following form:

Example:

Subd. 36. Lake Louise State Park, Mower County.

The subdivisions are ordered in alphabetical order by name; names beginning with "St." are alphabetized as though spelled out.

For more information, including the rules for creating new subdivisions, see section 5.11.

Strikeouts

In amendments, strike out material that is intended to be removed from the text of existing statutes or 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

Generally, do not use symbols such as #, &, @, *, or %. Occasionally they may be used in tables.

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."

That

That should be used to introduce a restrictive relative clause—that is, a clause that is essential to the meaning of the noun it follows. A restrictive clause does not need to be set off by commas. For example, in this sentence—

An entity *that is required to be licensed* must submit an application to the commissioner.

—the words *that is required to be licensed* are necessary to let the reader know who has to submit the application. *Which* should be used to introduce a nonrestrictive relative clause—that is, a clause that is not essential to the meaning of the noun. A nonrestrictive clause is set off by commas.

Examples:

The board must prescribe a registration form, *which must include the name and address of the lobbyist*.

The application, *which must be submitted within five working days following the hearing*, must be reviewed by a tax analyst.

The italicized words are not necessary to let the reader know which form or application is meant.

If *which* is used without commas, the sentence may be ambiguous.

Example:

A report which is required to be available for inspection must be in a form convenient for photocopying.

—which of the following is meant?

1. A report, which is required to be available for inspection, must be in a form convenient for photocopying.

(In other words, all the reports have to be made available and all have to be in a certain form. This could be redrafted as *The office must make the report available for inspection and must preserve it in a form convenient for photocopying.*)

2. A report that is required to be available for inspection must be in a form convenient for photocopying.

(In other words, the reports that have to be made available are the only ones that have to be preserved in a certain form; others do not. This could be redrafted as *If a report is required to be available for inspection, it must be in a form convenient for photocopying.*)

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

Which. See That

Word Division. See Hyphens

Chapter 13

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 .

1. Drafting of Laws And Other Legal Documents

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