MINNESOTA
REVISOR'S MANUAL

with

Styles and Forms
2013 Edition

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FOREWORD

This 2013 edition of the Revisor's Manual replaces the manual printed in 2002. 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 greatly 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, Research and Fiscal Analysis, and the Legislative Reference Library. 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.

We hope this manual will be a valuable resource to you in 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 Organization and Use of the 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 ORGANIZATION AND USE OF THE MANUAL

This manual is designed to serve two functions. First, it is meant to be a primer on legislative drafting. Inexperienced drafters should carefully work their way through the entire manual to get a better understanding of the task at hand. Second, it is also designed to be a reference manual for more experienced drafters who need quick answers or information on discrete drafting topics. The chapter analysis at the beginning of each chapter, the chapter tabs, and the index are all designed to help drafters get to the specific information they are seeking. In chapters 2 and 4, there are sample bill and amendment drafts that highlight the various components of the document and direct the user to a page in the manual where the specific discussion of that component begins. These samples will help the drafter quickly find answers to the most common drafting form and style questions.

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2.1 GENERAL DRAFTING PRINCIPLES

A drafter working through the details in this manual may find it useful to refer to general principles that are the framework of legislative drafting. This introduction is a summary of those principles.

(a) Understand the problem.

A drafter should understand the problem being addressed before drafting its solution. This may involve gathering background information from the requester and other sources so that the drafter understands the requester's intent, as well as the facts and circumstances that give rise to the request. Drafters are sometimes given a solution to a problem and are then expected to draft a bill or amendment to implement that solution. Sometimes, the problem is more complicated than originally indicated, and sometimes the proposed solution is not adequate to fully address the problem. By independently collecting and analyzing the background information and discussing

the problem with the requester, the drafter is able to refocus the request. Once the real problem is isolated and understood, the appropriate solution can then be drafted and presented to the requester. Sometimes this involves identifying for the requester the issues that must be addressed and the choices for resolving them. Other times it involves making the choices that seem reasonable and appropriate and highlighting them for the requester's consideration and approval.

(b) Identify possible constitutional issues.

A drafter should draft a bill or amendment so that its substance and form are constitutional. The drafter should have a general knowledge of the United States Constitution, especially articles I, II, and VI and its amendments, and the Minnesota Constitution, especially article IV. Sometimes, constitutionality is a debatable matter, but the drafter should be able to spot potential constitutional issues in a bill or amendment, advise the requester of those issues, and be prepared to suggest ways to resolve them.

(c) Comply with legislative rule and custom.

A drafter should draft a bill or amendment so that its substance and form satisfy legislative rule and custom. The drafter should have a general understanding of the Permanent Rules of the Senate, the Permanent Rules of the House of Representatives, and the Permanent Joint Rules of the Senate and House of Representatives. Acquiring knowledge of applicable legislative custom and practice is more difficult because there is no comprehensive source that can be consulted on such matters. This institutional knowledge is acquired over time as the drafter gains knowledge and experience working through specific drafting issues and consulting with colleagues. Specific legislative rules and custom and practice are discussed throughout the manual in the context of the particular drafting issue being discussed.

(d) Examine the legal context.

A drafter should draft a bill or amendment with knowledge of its legal context and the probable relationship of the old law with the new law. While it becomes easier for a drafter to follow this principle as subject matter expertise and drafting experience are gained, there are some useful tools to assist the drafter in acquiring this knowledge. For a good summary of these practical aids, see chapter 11.

(e) Consider construction.

A drafter should draft a bill or amendment with knowledge of the constitutional, statutory, and common law principles on the construction of statutes. These principles are discussed in the context of specific drafting considerations presented throughout the manual, as well as in general terms in chapter 7. The drafter should also periodically review Minnesota Statutes, chapter 645, Interpretation of Statutes and Rules.

(f) Preserve the legal fabric.

A drafter should select all appropriate provisions of law to amend or repeal and place new provisions in their proper place, by proper coding if they are general and permanent, in order to preserve the fabric of statutory law. The practical aids in chapter 11 provide some guidance to the drafter. The drafter should carefully review the organization and content of the statutory law

being affected in the bill. This requires more than a search for specific provisions of law to amend or repeal by relying on tables, indexes, and narrow computer searches. Only after reviewing the context of the intended change will the drafter be able to discern the fabric of the affected statutory law.

(g) Seek out peer review.

A drafter should ask a colleague to review and comment on the bill or amendment. This peer review is an important quality control measure for legislative drafters. This review often helps the drafter determine if the draft is clear, consistent, and complete. It is sometimes difficult for the drafter to make these determinations because it requires a degree of detachment from the draft that is not easily attained. Peer review will also help the drafter avoid common spelling, punctuation, and grammatical errors that may be overlooked as the drafter focuses attention on the substantive issues the request presents.

2.2 APPLYING CERTAIN DRAFTING STANDARDS AND RECOMMENDATIONS

The standards in this manual represent the best advice of the revisor's office, but that does not mean that they should be followed slavishly. Apart from the standards on legal defects, such as ambiguity and title defects, the drafter should consider whether there are reasons, times, and situations that call for deviating from a standard. This is especially true for some of the style and readability advice in chapter 8 and some of the usage advice in chapter 9. When drafting new language, whether in a bill draft or an amendment, the drafter should incorporate the relevant standards and recommendations in the manual, unless there is a specific reason to deviate from them. However, both in this context and otherwise in the amending process, the question arises whether it is also appropriate to make additional changes to existing provisions of law that the drafter intends to be nonsubstantive in nature and to conform the language to the standards and recommendations contained in this manual. In these situations the drafter should proceed cautiously for the following reasons:

- In a bicameral legislature, a bill must pass both bodies in identical form, and the companion bill process is an expeditious way of achieving this goal. Amendments are often offered to a senate or house file to conform the bill to its companion in the other body. A drafter who makes additional nonsubstantive changes to an amendment obstructs this goal.

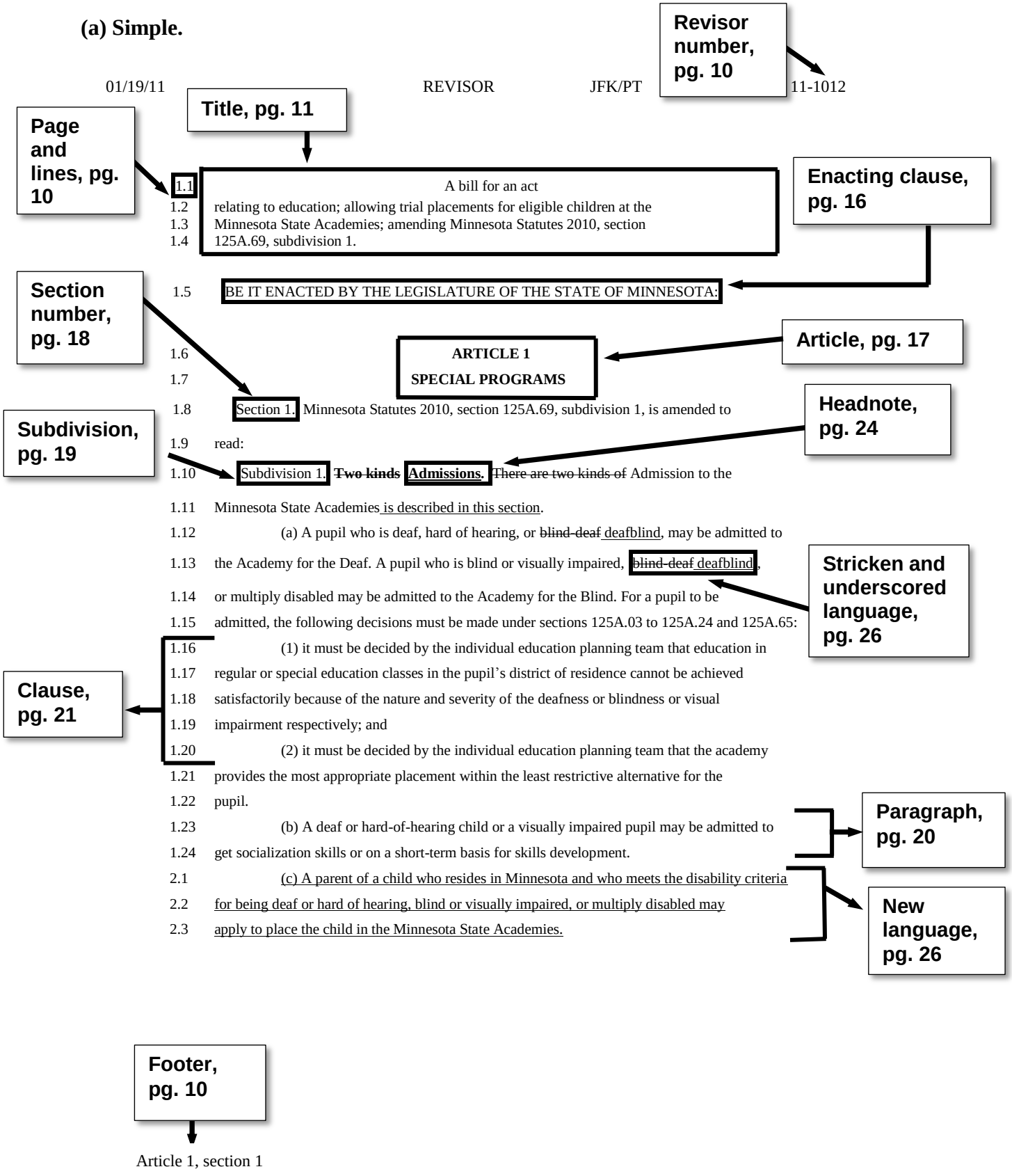
- Changes made to conform the draft to the standards and recommendations of this manual or to "modernize" the language of the law may invite a court to conclude that a change altered the sense, meaning, or effect of the law even though that was not the intent of the drafter. *See Geldert v. American National Bank*, 506 N.W.2d 22 (Minn. Ct. App. 1993)(court must assume that legislature intended to effect statutory change).

- If existing law is heavily edited while substantive changes are also being proposed in a bill or amendment, it becomes more difficult for a reader to distinguish the substantive from the nonsubstantive. Combining them may create the impression that the changes being proposed to existing law are more significant than they actually are.

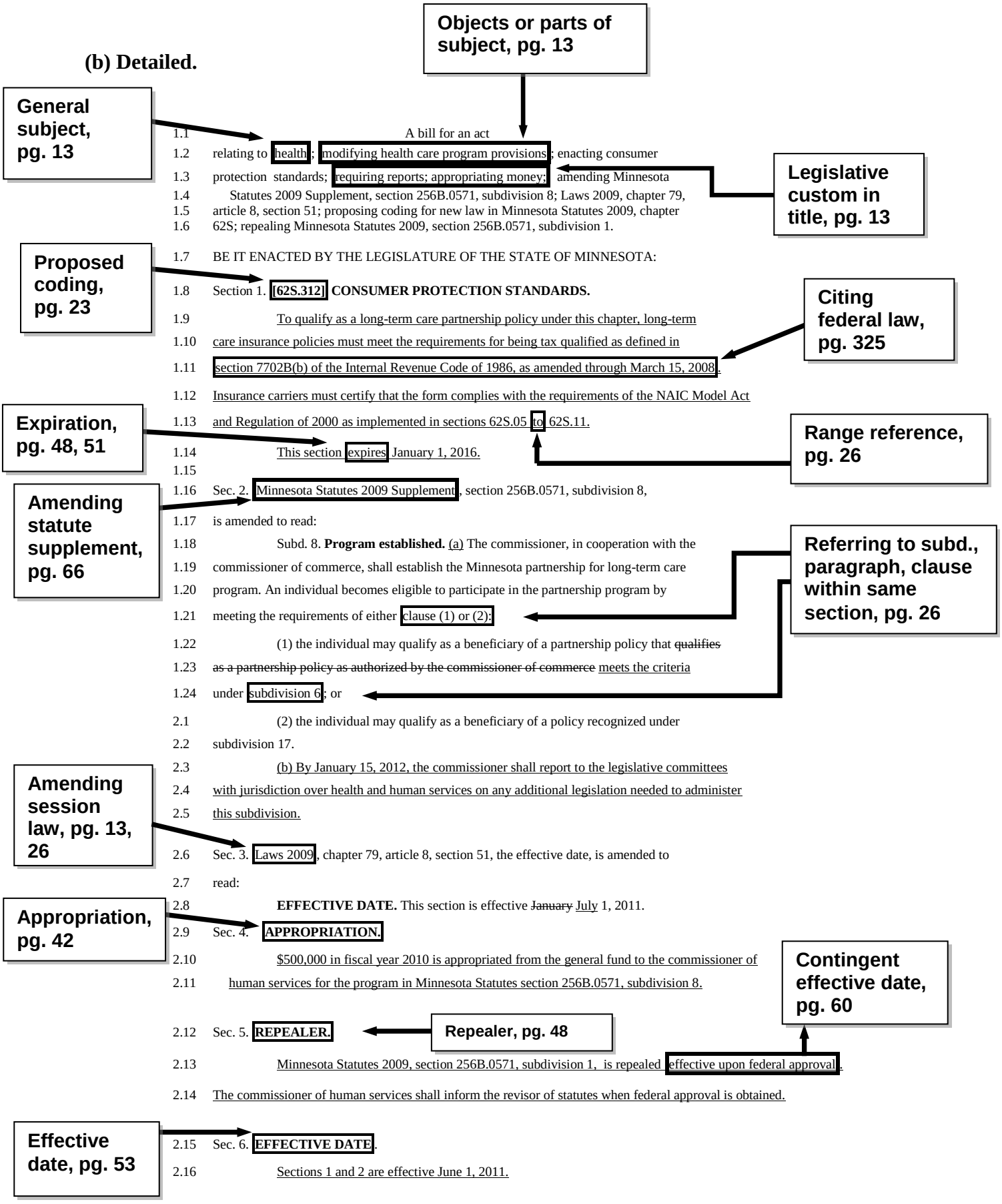
If the drafter decides that it is appropriate to amend the bill to add these style and form changes, it is strongly recommended that the title of the bill also be amended with language indicating that no substantive change to the law is intended. A phrase such as "making various nonsubstantive style and form changes" or "making certain conforming technical changes" could be used to express this intent. The second title phrase is especially appropriate when new law is being added and similar nonsubstantive changes are being proposed to existing law.

2.3 BILL FORM EXAMPLES

(a) Simple.



(b) Detailed.


Objects or parts of subject, pg. 13
General subject, pg. 13
A bill for an act
relating to health; modifying health care program provisions; enacting consumer protection standards; requiring reports; appropriating money; amending Minnesota Statutes 2009 Supplement, section 256B.0571, subdivision 8; Laws 2009, chapter 79, article 8, section 51; proposing coding for new law in Minnesota Statutes 2009, chapter 62S; repealing Minnesota Statutes 2009, section 256B.0571, subdivision 1.
Legislative custom in title, pg. 13
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
Proposed coding, pg. 23
Section 1. [62S.312] CONSUMER PROTECTION STANDARDS.
To qualify as a long-term care partnership policy under this chapter, long-term care insurance policies must meet the requirements for being tax qualified as defined in section 7702B(b) of the Internal Revenue Code of 1986, as amended through March 15, 2008.
Citing federal law, pg. 325
Insurance carriers must certify that the form complies with the requirements of the NAIC Model Act and Regulation of 2000 as implemented in sections 62S.05 to 62S.11.
Expiration, pg. 48, 51
This section expires January 1, 2016.
Range reference, pg. 26
Sec. 2. Minnesota Statutes 2009 Supplement, section 256B.0571, subdivision 8, is amended to read:
Amending statute supplement, pg. 66
Subd. 8. Program established. (a) The commissioner, in cooperation with the commissioner of commerce, shall establish the Minnesota partnership for long-term care program. An individual becomes eligible to participate in the partnership program by meeting the requirements of either clause (1) or (2):
Referring to subd., paragraph, clause within same section, pg. 26
(1) the individual may qualify as a beneficiary of a partnership policy that ~~qualifies as a partnership policy as authorized by the commissioner of commerce~~ meets the criteria under subdivision 6; or
(2) the individual may qualify as a beneficiary of a policy recognized under subdivision 17.
(b) By January 15, 2012, the commissioner shall report to the legislative committees with jurisdiction over health and human services on any additional legislation needed to administer this subdivision.
Amending session law, pg. 13, 26
Sec. 3. Laws 2009, chapter 79, article 8, section 51, the effective date, is amended to read:
EFFECTIVE DATE. This section is effective ~~January~~ July 1, 2011.
Appropriation, pg. 42
Sec. 4. APPROPRIATION.
$500,000 in fiscal year 2010 is appropriated from the general fund to the commissioner of human services for the program in Minnesota Statutes section 256B.0571, subdivision 8.
Contingent effective date, pg. 60
Sec. 5. REPEALER.
Repealer, pg. 48
Minnesota Statutes 2009, section 256B.0571, subdivision 1, is repealed effective upon federal approval.
The commissioner of human services shall inform the revisor of statutes when federal approval is obtained.
Effective date, pg. 53
Sec. 6. EFFECTIVE DATE.
Sections 1 and 2 are effective June 1, 2011.

2.4 BILL BASICS

(a) Bill purpose.

A bill is the most common legislative vehicle. It is the only form that carries the words "an act" in its title and uses the enacting clause 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:

- to create new law;
- to amend existing law;
- to repeal existing law; or
- to propose an amendment to the Minnesota Constitution.

(b) Standard bill composition.

(1) Bill order.

The standard order for a bill is described below. Except for the title and enacting clause, which are mandatory state constitutional requirements, a bill does not need to contain all of these elements. Each bill is a custom document, and the drafter may modify the framework if necessary to draft an effective bill.

- title (see 2.5 for discussion);
- enacting clause (see 2.6 for discussion);
- appropriation description and summary by fund (in omnibus appropriation bills) (see 3.1 for discussion);
- appropriation riders (in omnibus appropriation bills) (see 3.1 for discussion);
- coded sections (amended and proposed) in statutory order (see 2.8 and 2.10 for discussion);
- amendments to session law sections in order of year, chapter, article, section, and subdivision (see 2.8 and 2.9);
- uncoded sections (see 2.8 for discussion);
- uncoded appropriation sections (in bills other than omnibus appropriation bills) (see 2.19 for discussion);
- revisor's instructions (see 3.13 for discussion);
- repealers (see 2.20 for discussion); and
- general effective dates not appended to specific bill sections (see 2.21 for discussion).

(2) Appendix.

A bill that is divided into multiple articles includes as an appendix a table of contents that lists the page and line number of the beginning of each article in the bill. See Joint Rule 2.01.

(3) Optional repealer language.

A bill that repeals a statute or administrative rule may include an appendix, called the "Repealer Language" or "RLANG", which contains the full text of the statutory section or subdivision repealed or the administrative rule part or subpart repealed. See Joint Rule 2.01. The RLANG is attached by the revisor to the end of the bill.

(4) Revisor number.

The revisor number of a bill consists of a two-digit number and a four-digit number separated by a hyphen (xx-xxxx). It appears at the top of each page of an introduced bill in the upper right-hand corner. It is assigned by the revisor as part of the process of approving the form of a bill and jacketing it for introduction in the house of representatives and senate. The two digits to the left of the hyphen indicate the calendar year of the legislative session in which the bill is being introduced, and the four-digit number is a number assigned sequentially by the revisor to each bill. This sequential numbering scheme is continued between the first and second years of a biennial legislative term. Companion bills prepared for introduction in the house of representatives and senate, with rare exception, have the same revisor number. Through the Bill Search and Status systems of the house of representatives and senate, one can search for information on an introduced bill by its revisor number, as well as its house and senate file number.

(5) Footers.

Footers are navigation tools the revisor adds at the bottom of each page of every introduced bill and every engrossment of the bill prepared for the house of representatives and the senate. They show the reader the bill article, if any, and bill section number of the material being displayed on that page.

(6) Page and line numbers.

Page and line numbers are part of all legislative documents. They are useful for directing readers to a precise location within a document, and they serve as important reference points for drafters and others. See section 4.3 for a discussion of their importance in page and line amendments. The numbers run down the left hand margin of each page for each line of text on the page (1.1, 1.2, 1.3, etc.)

(7) The unique case of uniform laws.

Uniform laws are sets of laws proposed by the Uniform Law Commission. Because they are intended to be adopted by many states, they have their own style and form and may not follow the conventions described in this chapter.

Minnesota Statutes, section 645.22, provides that "(l)aws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." Because a uniform law is intended to be interpreted and construed in a consistent manner among the states enacting it, it is useful

to have some numbering scheme or other matching system to coordinate provisions of the state act with their counterparts in the uniform act on which they are based. One aid to consider is to align the coding of the two laws. Uniform laws of the Uniform Law Commission follow the convention of using a three digit section number (section 101, section 102, etc.) When coding the state law, the drafter could add those numbers in the proposed coding to the right of the decimal point. See Minnesota Statutes, chapter 336, the Uniform Commercial Code. If that is not possible, the drafter might consider adding the uniform laws section reference as part of the section headnote in the state law. See Minnesota Statutes, chapter 80A, the Minnesota Securities Act.

2.5 TITLE

(a) Generally.

A title is required by the Minnesota Constitution and the joint legislative rules. In view of these provisions, the title of a bill:

- must express the one subject of the bill;
- must express, in general terms, the purpose of the bill;
- should include certain phrases required by legislative custom;
- must list the provisions of coded and uncoded law that are being added, amended, or repealed in the bill; and
- should be clear and brief.

(b) Legal considerations.

(1) Constitution.

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." It is often referred to as the "single subject" or "one subject" rule. It has two elements: a germaneness element (no law shall embrace more than one subject), and a notice element (which shall be expressed in its title).

The one subject rule is intended to prevent logrolling. Despite the seeming simplicity of this rule, compliance is sometimes difficult. One reason for this 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 related to each other by a common thread, even if the thread is a mere filament. *Blanch v. Suburban Hennepin Regional Park District*, 449 N.W.2d 150, 154-55 (Minn. 1989). If there is any doubt about the relation of several subjects in a bill, the drafter should suggest to the requester that the bill be redrafted into two or more bills. Revising the subject chosen for the title of the bill is not sufficient because the constitutional defect is that the bill itself contains more than one subject, not that the general subject chosen for the title is too narrow to

encompass these disparate subjects. *See Unity Church of St. Paul v. State of Minnesota*, 694 N.W.2d 585 (Minn. Ct. App. 2005).

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

(2) Joint Rule 2.01.

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

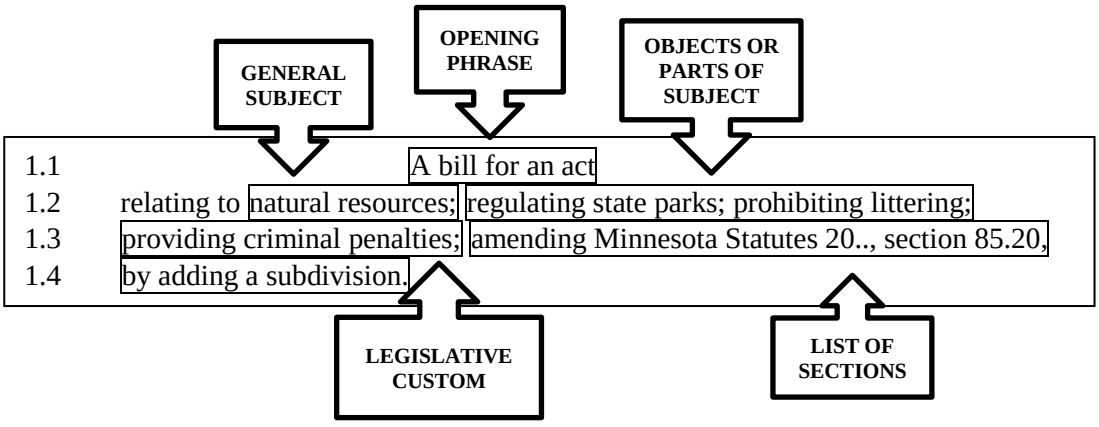
The joint rule provides direction to drafters on how the single subject rule is to be implemented. The one subject of the bill must be clearly stated in the title. Drafters attempt to satisfy this requirement by using a general subject or topic descriptor. The joint rule also adds the additional requirement that the title to the bill briefly state its purpose. See the discussion in paragraph (d).

Joint Rule 2.01 also states: "When a bill amends or repeals an existing act, the title shall refer to the chapter, section or subdivision." See the discussion in paragraph (c), clause (5), for the form of these references.

(c) Form.

The format of a bill's title has several parts divided by layout or punctuation.

Fig. 1



(1) Opening phrase.

The opening five words are always "A bill for an act." This can be seen on line 1.1 of Figure 1. If the bill is passed, the phrase is changed in the enrolling process to the words "AN ACT."

(2) The general subject.

The general subject required by Joint Rule 2.01 almost always begins "relating to . . . ." The general subject is usually broad. Examples are education, taxation, transportation, state government, energy, or crimes. In the example in Figure 1, the general subject is "natural resources."

(3) The objects or parts of the subject.

The parts of the subject follow the statement of the general subject of the bill and begin with a participle other than "relating to." The primary purpose of these phrases is to satisfy the requirements of Joint Rule 2.01 that the title of a bill "briefly state its purpose." The following words are examples of some of the more common words that begin these phrases:

"changing"	"adding"
"modifying"	"authorizing"
"regulating"	"abolishing"
"providing"	"limiting"
"creating"	"restricting"
"recodifying"	"prohibiting"
"clarifying"	

The remainder of the phrase should give the general focus of one or more provisions in the bill.

(4) Specific language required by legislative custom.

In some instances, legislative custom requires that additional specific purpose language be added to the bill title. When a criminal penalty other than a petty misdemeanor is imposed, the phrase "providing criminal penalties" should be inserted, as it is in Figure 1. 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" should be inserted in the title as another purpose of the bill.

(5) The list of sections amended, added, and repealed.

The list of sections being amended or 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. In Figure 1, the citation is "amending Minnesota Statutes 20.., section 85.20, by adding a subdivision."

(i) Sections amended.

When a section of Minnesota Statutes or Laws is amended, that section must be recited in the title. The format for amending law compiled in Minnesota Statutes

is "amending Minnesota Statutes 20.., section …." The format for uncoded temporary or local law is "amending Laws ..., chapter …, article …, section …"

If only a subdivision is amended, the section and subdivision are designated. An example is: "amending Minnesota Statutes 20.., section …, subdivision …," or "amending Laws …, chapter …, article …, section …, subdivision …"

Other variations are set out in the forms at the conclusion of this chapter and in section 2.11, including sections amended since the last publication of statutes and sections in pending legislation.

(ii) Sections added.

If a new statutory section is included in the bill, the chapter of Minnesota Statutes in which the section is proposed to be coded is recited in the title. The format is "proposing coding for new law in Minnesota Statutes, chapter …." 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 …."

(iii) Existing sections of statute, law, or rule provisions repealed.

Statute and Laws sections or subdivisions repealed are listed like the amended sections with the word "repealing" in place of "amending." Rule parts and subparts may also be repealed in bills, with the citation: "repealing Minnesota Rules, part xxxx.xxxx, subpart x."

(6) Order of affected laws:

The law being affected is listed in the title as follows:

- amended sections or subdivisions from Minnesota Statutes, in statutory order;
- amended sections or subdivisions from the supplement to Minnesota Statutes, in statutory order;
- amended original session law section ("as amended" is added if the cited original law has been subsequently amended);
- if there is more than one amended session law, amended session law section or subdivision from earliest to latest year;
- amended house or senate file section, if enacted;

- proposed new section of statutory law, in statutory order;
- proposed chapter of statutory law, in statutory order;
- repealed statute section or subdivision beginning with the most recent edition of statutes, in statutory order;
- repealed statute section or subdivision from the most recent supplement, in statutory order;
- repealed session law section or subdivision, from the earliest to latest year;
- repealed house or senate file section or subdivision, if enacted; and
- repealed rule parts or subparts.

(d) Drafting advice.

(1) Generally.

To avoid difficulties, the drafter should make sure that the title fairly indicates the subject and contents of the bill. In order to accomplish this objective, it is usually better to draft the title after drafting the bill.

The drafter should follow the custom and practice of the legislature and choose a general subject of the bill that facilitates its referral to the appropriate standing committee with jurisdiction over the subject of the bill. If it is possible to select from among several possible general subjects, the drafter should use the general subject keyed to the committee to which the bill's sponsor would prefer to have the bill initially referred. In Figure 1, in paragraph (c), the bill could be referred to the committee with jurisdiction over the environment and natural resources or the committee with jurisdiction over public safety. By choosing the general subject as "natural resources" in the referred to example, the bill would likely be referred to the committee with jurisdiction over the environment and natural resources first.

The drafter should avoid using a compound noun as the general subject. For example, do not use "relating to X and Y." Instead, choose a single broad term as the general subject.

If the title language refers to a broad topic and purpose, several parts of that topic may legitimately be treated in the bill. The parts treated may also be mentioned in the title, both for the convenience of the reader and to make sure that the subject matter is adequately covered.

(2) Clarity and brevity.

In an attempt to comply with the notice component of the single subject rule, Joint Rule 2.01, and perceived legislative custom and practice, a drafter may believe that the best course of action in writing a bill title is to describe the purpose of each section of the bill in the title, so that the bill title becomes a complete index to the bill. This is perhaps the most common error legislative drafters make in drafting bill titles. It should be avoided for the following two reasons:

- The single subject rule does not require this level of specificity in bill titles. This rule does not require the title of a bill to be a complete index to the bill. *Lifteau v. Metropolitan Sports Facilities Commission,* 270 N.W.2d 749 (Minn. 1978). The explicit language of Joint Rule 2.01 only requires that the title of the bill "clearly state its title and briefly state its purpose." Such a complete index goes well beyond the requirements of the state constitution and the joint rule.

- There is a strong practical reason not to describe every section. If the title of the bill as introduced is a complete index of its provisions, each time the bill is amended in either body of the legislature by including or removing material from the bill, the title must be corrected to reflect this action. Failure to do so may result in a title that is defective because it is overly restrictive or misleading.

Instead, a drafter should write a bill title that is clear and brief and, most importantly, accurate. The goal is to find a middle ground between a single laconic generality and a recapitulation of the whole bill. Absent more specific instructions from the requester on whose behalf the bill is being drafted, the goal is to draft a title whose purpose or purposes would not need to be revised because of any germane amendment added to the bill. For example, a bill changing shareholder rights, annual meeting requirements, and the liability of directors of business corporations, might be styled as a bill for an act "relating to business organizations; modifying certain organizational and operational requirements." This title would allow the inclusion of new organizational or operational requirements and the revision of any existing organizational and operational requirement applicable not only to business corporations, but to any other business organization the legislature chooses to regulate in this bill.

If the requester does not want the bill to become a vehicle for amendments relating to business organizations other than business corporations, then a more restrictive title is warranted. However, the decision to draft a restrictive title should be based on the specific direction of the requester, and not on the mistaken belief that the state constitution and legislative rule and custom require it.

For additional examples relating to titles, see section 2.22, paragraph (a).

2.6 ENACTING CLAUSE

(a) Generally.

The enacting clause is the phrase in the bill that expresses the legislative authority by which the bill is being enacted.

(b) Legal considerations.

Article IV, section 22, of the Minnesota Constitution states:

"The style of all laws of this state shall be: 'BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:'" The enacting clause is required in every law and failure to include one voids the law. *Sjoberg v. Security Savings & Loan Ass'n*, 75 N.W. 1116 (Minn. 1898). As a practical matter, an enacting clause is included in a bill as introduced and is retained in each iteration of the bill up to and including its final passage, enrollment, and publication in the *Laws of Minnesota*.

(c) Form.

The enacting clause begins on a new line immediately after the title and before the sections of the bill and does not deviate from the constitutionally required language.

Fig. 2

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

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

2.7 BILL ORGANIZATION

(a) Generally.

(1) Articles.

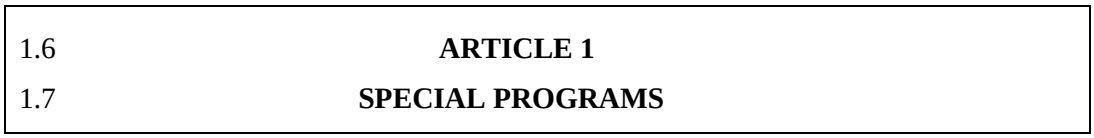
In a long or complex bill, or a bill with discrete subtopics, the organization of sections may be divided into articles. When using articles to divide a bill, the section numbering starts over with section 1 for the first section after each article division. The last sections in each article are the special or uncoded provisions such as the repealer and effective date provisions.

Each article is preceded by a centered "ARTICLE" followed by the number and, on the next line, a descriptive heading of the article, if it has one. If there is an article 1, there must also be an article 2. The article number and heading are displayed in bold text.

The drafter should divide a bill using articles and headings to facilitate understanding when necessary. For example, in a bill containing both substantive changes and technical or conforming changes, the technical material might warrant its own article.

A bill that is divided into articles is accompanied by a table of contents or bill index shown at the end of the bill. This table lists the articles and corresponding page numbers.

Fig. 3



(2) Centered headings.

A second method of dividing a bill is the use of centered headings for groups of sections. The use of these 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 on a separate line before the first section in the group.

When a centered 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 centered heading does not affect the bill format in any other way. Figure 4 is an example of what such a heading looks like:

Fig. 4

(b) Sections within a bill.

(1) Bill section numbering.

The first section of a bill is designated as "Section 1." Each successive section is abbreviated as "Sec. 2.," "Sec. 3.," etc. If there is only one section in a bill, the section is still designated as "Section 1."

Sections with statutory coding are listed first in a bill in statutory order, followed by amendments to sections of session laws, then by new uncoded law. For the discussion on proposed coding, see section 2.8.

Many bill drafts consist both of amendments to existing sections of Minnesota Statutes or the Supplement and new sections with proposed coding. When this occurs, the sections of new law with their proposed coding are inserted into the draft in statutory order with the amended sections. The result is that a new section may be followed by an amended section that is followed by another new section. Drafting this way allows all changes in the statutes to be shown in the order in which they will be published in Minnesota Statutes.

(2) Introductory phrase.

The introductory phrase is the phrase that tells the reader what law is being amended or repealed, or where the law is to be coded. An introductory phrase appears on lines 11.1, 11.5, and 11.9 of Figure 5.

Fig. 5

11.1 Section 1. Minnesota Statutes 20.., section 15A.082, is amended to read:
11.2 **15A.082 COMPENSATION COUNCIL.**
11.3 Subdivision 1. **Creation.** A compensation council is created to assist the
11.4 legislature in each even-numbered year. . . .
11.5 Sec. 2. **[293.21] REFUND OF TAX ERRONEOUSLY COLLECTED.**
11.6 The commissioner of revenue shall refund any tax erroneously paid or
11.7 collected and shall reimburse the general fund for the expenses of implementing
11.8 this chapter.
11.9 Sec. 3. **REPEALER.**
11.10 Minnesota Statutes 20.., section xxx.xx, is repealed.

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

(3) Subdivisions.

Section text may be divided into subdivisions. If the text is divided this way, the first subdivision of a section is spelled out as "Subdivision 1.", as shown in Figure 6. Each successive subdivision is abbreviated as "Subd. 2.", "Subd. 3.", etc. If there is a subdivision 1, there must be a subdivision 2.

Fig. 6

98.24 Sec. 2. **[116W.26] DEFINITIONS.**
98.25 Subdivision 1. **Applicability.** For the purposes of sections 116W.26 to 116W.34,
98.26 the terms in this section have the meanings given them.
98.27 Subd. 2. **Authority.** "Authority" means the Minnesota Science and Technology
98.28 Authority established under this chapter.

New subdivisions inserted between existing subdivisions are given lettered extensions, such as "Subd. 1a." or Subd. 3e.," to avoid changing the existing subdivision numbers

and any cross-references to these subdivision numbers elsewhere in Minnesota Statutes. To avoid problems with cross-references when subdivisions must be renumbered, there should be a revisor's instruction to renumber subdivisions rather than the use of striking and underscoring in an amendatory section showing a change in subdivision renumbering. The revisor's instruction should direct the revisor to correct statutory cross-references in Minnesota Statutes consistent with this renumbering. See section 3.13.

When specific subdivisions of a statutory section are being amended in a bill, each subdivision is amended in a separate section of the bill. If the entire section is being amended, it is not necessary to show each subdivision in a separate section.

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 these 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 the new language underlined.

(4) 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 do not need to be marked, but if they are, they 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).

Fig. 7

Section 1. Minnesota Statutes 20.., section 60A.123, subdivision 5, is amended to read:

Subd. 5. **Restructured mortgage loan.** (a) The insurer shall make an evaluation of the appropriate fair value of each restructured mortgage loan. The fair value must be based upon one or more of the following procedures:

(1) an internal appraisal;

(2) an appraisal by an independent appraiser;

(3) the value of guarantees or other credit enhancements related to the loan.

(b) The insurer shall measure impairment based on the fair value of the collateral less estimated costs to obtain and sell. The difference between the adjusted fair value of the collateral and other assets received and the amortized acquisition cost of its restructured mortgage loans must be recorded by the insurer as a direct write-down and a new cost basis established.

(5) Clauses.

Divisions below the subdivision level that are marked with Arabic numbers are called clauses. In new drafting, the preferred form is to use numbered clauses for lists, so that the numbered elements follow a lead-in clause. Lists of clauses can appear within a section, within a subdivision, or within a paragraph.

In most cases in new drafting, the lead-in clause and the numbered clauses together form a complete sentence. Numbered clauses that are not complete sentences should begin with lowercase letters, end with semicolons, and include a conjunction—*and* or *or*—at the end of the next-to-last clause.

Fig. 8

The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment; and

(3) the need for continued institutionalization.

When a clause is not a complete sentence, the drafter should avoid amending it by adding full sentences within it. One way to add explanatory material to a list item that is not a full sentence is to add it after the list, linking the list item and the new material with references.

Fig. 9

(a) The following factors must be considered in determining whether a transfer is appropriate:

(1) the person's clinical progress and present treatment needs;

(2) the need for security to accomplish continuing treatment; and

(3) the need for continued institutionalization.

(b) In evaluating the need for security under paragraph (a), clause (2), the evaluation team must consult with staff of the Minnesota Security Hospital.

Lists of clauses can also be drafted so that each clause is a complete sentence. When drafting a group of full-sentence clauses, take care that the lead-in clause is also a complete sentence. A full-sentence lead-in clause still ends in a colon. Also ensure that the lead-in clause contains language that stands in for the conjunction, which will be

omitted from a list of complete sentences. A phrase like “all of the following” or “one of the following” should be included.

Fig. 10

In determining whether a transfer is appropriate, the treatment team must consider all of the following questions:

(1) Has the person made the expected degree of clinical progress?

(2) Will security be needed to accomplish the person’s continuing treatment?

(3) Does the person need continued institutionalization?

Definitions that apply to one section only and that appear in one of its subdivisions are appropriate places to use full-sentence clauses.

Fig. 11

For purposes of this section, the following terms have the meanings given them:

(1) "New special plate" means a special plate that is not authorized under this chapter and for which legislature authorizing the plate is introduced or presented to the legislature.

(2) "Proximate special plate" means a special plate authorized under section 168.12.

The advantage of drafting clauses as full sentences is that they can be amended by adding full sentences right after the clauses they relate to, a placement that makes them easier to read and understand. The example in Figure 12 shows full-sentence clauses with a full-sentence amendment.

Fig. 12

In determining whether a transfer is appropriate, the treatment team must consider all of the following questions:

(1) Has the person made the expected degree of clinical progress?

(2) Will security be needed to accomplish the person’s continuing treatment? In answering this question, the evaluation team must consult with staff of the Minnesota Security Hospital.

(3) Does the person need continued institutionalization?

(6) Items.

Items are numbered (i), (ii), (iii), etc. They are divisions under clauses and follow the rules for clauses; however, it is recommended that, for readability, they be avoided. See Minnesota Statutes, section 115C.11, subdivision 1, paragraph (i), clause (5), for an example of the use of items within a numbered clause.

(7) Subitems.

Subitems are lettered (A), (B), (C), etc. They are divisions under 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.

(c) Drafting advice.

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

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

- If either subdivisions or paragraphs could be used, the drafter should use subdivisions if the text is complex, lengthy, or contains logically distinct parts.

- If a section or subdivision contains lettered paragraphs, numbered 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.

- Try to limit the use of items and subitems as necessary to cure an ambiguity. See chapter 8.

2.8 PROPOSED SECTION CODING

(a) Generally.

Laws of a general and permanent nature are published in Minnesota Statutes. In addition, Minnesota Statutes, section 3C.08 requires the statutes to be organized by a decimal numbering system. Therefore, if a proposed law is of a general and permanent nature, the drafter should propose a suggested section number or numbers for the law. The assignment of section numbers and the numbers themselves are commonly referred to as "coding," and sections that will be published in the statutes are called coded sections. Biennial appropriations and their riders are examples of law that is temporary in nature, and they are not coded for compilation in Minnesota Statutes.

Minnesota Statutes, section 3C.10, authorizes the revisor's office to recode sections or renumber subdivisions and parts of sections or subdivisions.

(b) Form.

Coding appears in bold before the section headnote. For existing sections, the coding appears on a new line under the citation and is indented. Proposed coding appears on the same line as the bill section number in brackets without a period and is underscored.

Minnesota uses section numbers that are true decimals, so that 123.125 appears after 123.12 and before 123.13.

(c) Drafting advice.

The proposed coding chosen by a drafter can have important implications beyond those involving the proper placement of the material in the compiled statutes. The decision to code a new provision of law or recode existing law in a particular chapter may involve the application of new definitions, civil and criminal penalty provisions, and other administrative or regulatory provisions that apply to the chapter in general and which most likely will apply to the new material being placed in that chapter, either by the assignment of new coding or the recoding of existing law. See *Vee v. Ibrahim*, 769 N.W.2d 770 (Minn. Ct. App. 2009) for a discussion of the implications of recoding a section of law in a different chapter.

For examples of bills that propose new law, see section 2.22, paragraph (a), clause (9).

For an example of uncoded law, see section 2.22, paragraph (b), clause (9).

2.9 HEADNOTES

(a) Headnotes generally.

A headnote is a brief description of a statute or part of a statute. Minnesota Statutes, section 645.49, states: "The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to indicate the contents of the section or subdivision and are not part of the statute." Headnotes are used to label sections and subdivisions.

(b) Section headnotes.

Headnotes should be included for each section, and written in bold text in full capitals ending with a period. Entirely new headnotes appear on the same line as the bill section number and any proposed coding and are underscored. If changes are being made to existing headnotes, striking and underscoring are used to show these changes.

(c) Subdivision headnotes.

Subdivision headnotes are written in bold text in mixed case. New subdivision numbers and headnotes are underscored and changes to existing headnotes use striking and underscoring to show the changes.

If a bill section is creating or amending either an entire statute section that has subdivisions or an individual subdivision, the bill section will contain the subdivision number and headnote. These are displayed on a new line below the section coding and headnote for a full section, or below the citation in the case of an individual subdivision being amended.

Fig. 13

Section 1. **[119B.055] EARLY EDUCATION SCHOLARSHIP PROGRAM.**

Subdivision 1. **Policy and purpose.** The legislature finds that the current state of school readiness and education outcomes . . .

Subd. 2. **Establishment.** The early education scholarship program is established to make child care and early education services . . .

(d) Legal considerations.

Although headnotes do not become law if the bill is passed, they can provide information for the construction of the provisions. *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228 (Minn. 2010); *Minnesota Express, Inc. v. Travelers Insurance Co.*, 1983, 333 N.W.2d 871 (Minn. 1983); *Matter of Contest of General Election on Nov. 8, 1977,* 264 N.W.2d 401 (Minn. 1978); *c.f. Associated Builders and Contractors v. Ventura*, 610 N.W. 2d 293 (Minn. 2000) (Revisor's headnotes are not part of the statute and thus do not determine its scope or meaning.) 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. For this reason, paragraph headnotes are discouraged.

(e) Drafting advice.

(1) Purpose.

Headnotes are finding aids. They should be kept short and accurate.

(2) Semicolons.

Semicolons in headnotes should be used sparingly to separate distinct subjects, as in "Suspending Licenses; Hearing; Relicensing." Do not use semicolons to replace prepositions. Instead of writing "Officers, Teachers; Neglect of Duty; Penalty." write "Penalty for Officers' or Teachers' Neglect of Duty."

(3) Headnotes beyond subdivisions.

Providing headnotes to material beyond the subdivision level is seldom necessary. If a subdivision is too long, 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.

(4) Changes to headnotes.

If necessary, changes are made in the existing headnotes of a section or subdivision to reflect amendments to the text. A section headnote is not shown or changed if it will not otherwise be part of the draft, such as when not all subdivisions of a section are changed.

If a section or subdivision headnote that is not part of the bill needs to be changed, the drafter should notify the revisor. Revisor's instructions in bills to change headnotes are unnecessary. The revisor will consider the suggested change when the next edition of Minnesota Statutes is compiled.

2.10 DISPLAYING NEW AND AMENDED LAW

(a) Range references.

Section 645.48 defines "to" when referring to a range of statute 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."

(b) Referring to other subdivisions or sections.

(1) Subdivisions, paragraphs, and clauses.

Chapter 645 creates defaults for internal references to subdivisions and paragraphs: "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." Minnesota Statutes, section 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." Minnesota Statutes, section 645.47. It is the custom of the legislature to treat clauses and items in the same manner.

(2) Sections, statutes, or laws.

When drafting bills refer to Minnesota Statutes as: "Minnesota Statutes . . . , section . . .," and refer to session laws as: "Laws . . . , chapter . . . , section . . ." See Joint Rule 2.01. When drafting within a section it is proper to refer to another section of Minnesota Statutes as merely "section 256B.059." When drafting in Laws, the reference to a statutory section is preceded by a reference to the complete law as in "Minnesota Statutes, section 256B.059." If section 256B.059 is being amended, refer to it as "this section."

Joint Rule 2.01 additionally states that "Reference shall be made to Minnesota Statutes for the provisions appearing therein unless reference to previous session laws is required for some special reason." This rule also explains why, when amending a section, it is proper to amend statutes and not session laws without a special reason.

(c) Displaying changes.

Joint Rule 2.01 states: "The words and characters constituting the amending matter shall be inserted in the proper place in the text and underscored. The words and characters to be eliminated by the amendment shall be stricken by drawing a line through them. 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. 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." However, the practice of the legislature is to underscore this material in omnibus appropriation bills.

(d) Displaying text.

Joint Rule 2.01 states: "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, in which event it shall contain the full text as amended." Because of this rule, the subdivision is the smallest unit of a statute that may be amended. 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 a single section of the bill.

On the format of sections, Joint Rule 2.01 states: "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."

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

2.11 AMENDING LAW ENACTED, OR PROPOSED TO BE ENACTED, WITHIN THE SAME SESSION

(a) Multiple amendments to the same provision of law.

If the legislature amends the same provision of law more than once in the same legislative session, the question arises as to how these actions are reconciled if they are enacted into law. Minnesota Statutes, section 645.33, provides some guidance. It states that:

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

(b) Existence of other amendments.

A drafter should always check to see if other amendments to the same provisions of law have been made in the current session.

If the amendments are being made to general and permanent law to be compiled in Minnesota Statutes, one way for the drafter to check to see if there have been other amendments to the same provisions is to use the Search by Statute Citation field of the house of representatives and senate bill information systems. If the drafter is a legislative drafter with access to the drafting programs used by the legislature, the drafter may use a tool that checks Table 2 of session laws and will be given a prompt if a provision of law being retrieved has also been amended in the same session.

If the amendments are being made to local or temporary law that is not compiled in Minnesota Statutes, the drafter may use the Search by Keyword field of the house of representatives and senate bill information systems.

(c) Reconciliation of other amendments.

If other amendments to the same provisions of law are found, the drafter may recommend one of three courses of action the legislature may take in response.

(1) Resolve the conflicts immediately.

This course of action is preferred. The drafter amends the provisions of law as amended by the other amendments by merging those provisions. Any grammatical or substantive inconsistencies created by the other amendments can be resolved by the drafter at this time, and no subsequent interpretation of the effects of the various amendments is necessary.

(2) Assume the merger of the amendments.

The drafter could amend the provisions of law without regard to the other amendments made to the same sections based on the drafter's opinion that all the amendments may be read together and effect given to each. In other words, this course of action is taken when the drafter has concluded that the amendments are not in conflict and can be reconciled or merged. However, this is not possible if the words of all of the amendments cannot be fit together in a coherent manner. This is sometimes referred to as grammatical irreconcilability. This is also not possible if the amendments substantively conflict so that it is not possible to give effect to each amendment. Even if the drafter concludes that the amendments are not irreconcilable, that conclusion may not prevail in any subsequent litigation on this issue.

(3) Recommend the specific order of enactment of amendments.

The drafter could also amend the provisions of law without regard to the other amendments and recommend to the requester that the later amendments be enacted into law after the other amendments to the same provisions of law have been enacted so that, consistent with Minnesota Statutes, section 645.33, the later-enacted amendments prevail. The consequences of choosing this course of action are misunderstood. An assumption that later-enacted amendments prevail in their entirety over the earlier-enacted amendments is incorrect. The amendments are read together and effect given to each except for the specific language that cannot be reconciled. An unrelated change made in an earlier amendment is not undone by the later-enacted one simply because it is not also reflected in that later amendment. Those two actions of the legislature may be reconcilable. Also, this course of action is problematic because the timing of it is complicated and hard to control.

(d) Examples.

Here are the most commonly used forms for amending provisions of law as amended by other amendments to those provisions. Note that the text of the law being amended is "cleaned" when displayed in the new amending document. This means that the underscoring from the prior amendment is removed from the new text and any prior stricken words are removed from the text.

Amendment to previously amended uncoded law

Fig. 14

Sec. ... Laws …., chapter .., article .., section .., subdivision .., as amended by Laws …., chapter .., section .., is amended to read:

Amendment to uncoded law amended by bill not yet enacted into law

Fig. 15

Sec. ... Laws …., chapter .., article .., section .., subdivision .., as amended by 20.. ..F. No. …., section .., if enacted, is amended to read:

Amendment to new coded law

Fig. 16

Sec. ... Minnesota Statutes 20.., section .., as added by Laws …., chapter .., section .., is amended to read:

Fig. 17

Sec. ... Minnesota Statutes 20.., section .., as added by Laws .., chapter .., section .., is amended by adding a subdivision to read:

Amendment to new coded law to be added by bill not yet enacted into law

Fig. 18

Sec. ... Minnesota Statutes 20.., section .., subdivision .., as added by 20.. ..F. No. …., article .., section .., if enacted, is amended to read:

Amendment to coded law amended earlier in same legislative session

Fig. 19

10.19 Sec. ... Minnesota Statutes 20.., section .., as amended by Laws …., chapter .., section
10.20 .., is amended to read:

Amendment to coded law amended by bill not yet enacted into law

Fig. 20

11.5 Sec. ... Minnesota Statutes 20.., section .., subdivision .., as amended by 20.. ..F. No.
11.6 …., article .., section .., if enacted, is amended to read:

Amendment to new uncoded law

Fig. 21

11.23 Sec. ... Laws …., chapter .., article .., section .., subdivision .., is amended to read:

2.12 REMOVING PREVIOUSLY ENACTED AMENDMENTS

If a drafter intends to remove or repeal amendments made to a provision of law in order to "restore" or "reinstate" a prior version of the law, it is not appropriate to merely repeal the act containing the amendments. In fact, it may be argued that in doing so the original law and all subsequent amendments to it are repealed. See Minnesota Statutes, sections 645.29; 645.31, subdivision 1; and 645.34.

The preferred approach is to amend the law containing the amendments by removing the language of the amendments by striking and underscoring to return the text of the law to what it was prior to the previous amendments. If the law is also amended by other law, the drafter can reconcile all these actions in the amendment.

If the unwanted amendments are published in Minnesota Statutes, the drafter should amend the latest published version of the law, as amended, and if the amendments are contained in an uncodified law, the drafter should amend the original law as amended. See the examples in section 2.11 for the correct forms of reference.

If practical considerations make it difficult to use the preferred approach, the drafter might consider the following forms to accomplish the same result. However, when considering this approach, the drafter should understand that it may be difficult or impossible to reconcile the action taken in the amendment, to repeal the amendments made by a certain session law, with

contemporaneous or later amendments made to the same provision of law. For a repealer with an effective date in the future, see the discussion of prospective or delayed repealers in section 2.21, paragraph (d), clause (4).

Amendments made to codified law

Fig. 22

> Sec. ... **REPEAL OF CERTAIN AMENDMENTS.**
>
> The amendments made to Minnesota Statutes, section …, by Laws 20.., chapter …, section …, are repealed.

Amendments made to uncodified law

Fig. 23

> Sec. ... **REPEAL OF CERTAIN AMENDMENTS.**
>
> The amendments made to Laws …, chapter …, section …(add "as amended" if the original law has been further amended) by Laws 20.., chapter …, section …, are repealed.

2.13 CITATION OR SHORT TITLE

(a) Generally.

A citation or short title may be added to a bill for convenience or public information or when required by the requester. A citation or short title is not required, and should not be included as a way for users to find the law.

(b) Form.

When used in a bill with more than one section, the citation or short title 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.

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

A short title or citation should be put in quotation marks when it is first assigned to a section or group of sections. Do not use quotation marks in later references to the short title or citation.

Fig. 24

1.7 Section 1. **CITATION.**

1.8 Minnesota Statutes, sections 199.10 to 199.31, may be cited as the "Minnesota

1.9 Property Tax Refund Act."

Fig. 25

3.18 Subd. 7. **Short title.** This section is the "Uniform Simultaneous Death Act."

(c) Drafting advice.

As an alternative to adding this material to the bill, if the requester suggests a popular or common name, a drafter may notify the revisor of this name so that it can be added to the "Popular Names of Acts" in the index to Minnesota Statutes if the bill is enacted into law.

If the requester requires a citation or short title section in the bill, the drafter may also consider not coding the section so that it appears in the session laws in the year the bill was enacted, but will not appear in the permanent compilation of law in Minnesota Statutes. The citation or short title will still be added by the revisor to the "Popular Names of Acts" in the index to Minnesota Statutes.

2.14 STATEMENT OF PURPOSE OR POLICY

(a) Generally.

A statement of purpose or policy, sometimes termed "legislative intent" expresses "the design or plan that the legislature had at the time of enacting a statute." Black's Law Dictionary 983 (9th ed. 2009).

(b) Form.

When used in a bill with more than one section, the statement of purpose or policy 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.

When written as part of a single section, the statement of purpose or policy should be the first or last subdivision.

(c) Examples.

(1) Legislative findings and purpose.

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.

(2) Anticipating litigation.

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. *AFSCME Councils*, 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." *AFSCME Councils*, 338 N.W.2d at 571 n 14.

(d) Drafting advice.

A statement of purpose or policy should be used only when essential. If the bill is otherwise clear, as should be the case, a recitation of what the legislature intended serves no purpose. Also, the danger exists that the text of the law may conflict with some or all of this statement. However, courts sometimes use policy statements to interpret law, and a statement may be appropriate if litigation about intent is expected.

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 is hard to find and edit for publication.

2.15 INTERPRETATION CLAUSE

(a) Generally.

An interpretation clause is a legislative provision that explains how one or more provisions of law are to be construed.

(b) Form.

When used in a bill with more than one section, the interpretation clause 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.

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

Fig. 26

10.1 Subd. 3. **Construction.** This chapter shall be liberally construed to effect the 10.2 purposes stated in subdivision 2.

(c) Drafting advice.

Minnesota Statutes, section 645.16, sets forth the principle that all statutes are construed to accomplish the intention of the legislature and secure their most beneficial operation. 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. However, a drafter is sometimes directed to include or not remove such a provision so the form consideration in paragraph (b) should be followed.

2.16 DEFINITIONS

(a) Generally.

A definition section is used to:

- define unfamiliar words or phrases;
- 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;
- reduce the length of a bill by eliminating repetition of a long title of, for example, a board, commission, or agency; or
- eliminate the need to provide a definition in every provision in which the term appears, which reduces the length of the bill and ensures consistency in how the term is applied and understood throughout the bill.

(b) Form.

(1) Break definition sections into subdivisions.

If more than one term is defined, the definition section should be broken into subdivisions with each term set out in its own subdivision.

Subdivision 1 should define the scope of the definitions in the section with language similar to "The definitions in this section apply to sections. . . . . to . . . . . ." An appropriate headnote for this subdivision is "Application", "Scope" or a similar word.

Each additional subdivision begins with the subdivision number followed by the term being defined as a headnote. The defining sentence begins with the term being defined, in quotation marks. The next word will usually be *means*, *includes*, or *refers to*, depending on

what follows. These words are singular, even when defining a plural term. They are only plural when defining two words at once.

(2) Alphabetize definitions.

Within the section, definitions should usually appear in alphabetical order when drafting new language. Occasionally, for the sake of comprehension, it may be appropriate to arrange definitions in a different order. It is better not to use abbreviations or initialisms. However, if initialisms are necessary, the drafter should make their meanings easy to find by alphabetizing under the abbreviated form, not the expanded form. The spelled out words being defined and the abbreviations being defined will sort together, as in this example: EEOC, efficiency, EIS, EPA, experimental control.

In Figure 27, 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.

Fig. 27

Section 1. **[123.45] DEFINITIONS.**

Subdivision 1. **Application.** The definitions in this section apply to sections ……. to ……..

Subd. 2. **Board.** "Board" means the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design.

Subd. 3. **Engineering.** "Engineering" means ……..

Subd. 4. **Practice of engineering.** "Practice of engineering" excludes ……..

(c) Drafting advice.

(1) What to define.

Definitions should be written after the body of the bill is written. As the draft is reviewed to see which terms need defining, the drafter should make sure to avoid varied terms or needless jargon. A clearly written draft needs very few definitions.

Words used in their ordinary senses do not need definitions. “Temporary sign,” for example, does not need the explanation that it is a sign intended to be displayed for a short time.

Drafters sometimes need to ask whether a word is really being used in its ordinary sense, or whether all parties agree on a word’s meaning.

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.

Many statutes contain special definitions or use terms that are not defined in Minnesota Statutes, chapter 645. 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. If a definition is incorporated by reference and that definition is modified in the future, the modified definition will most likely apply to the law that incorporated the definition by reference. See Minnesota Statutes, section 645.31. Consequently, if the special definition is connected in some way to the law being amended or proposed, incorporating the definition would seem to be appropriate. Conversely, if the special definition is not connected to the law, it is preferable to repeat the entire definition so that future amendments to the special definition are not applied to the term in law being proposed or amended unless they are specifically amended into the term by law.

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.

(2) Writing clear definitions.

(i) Use ordinary meaning.

Do not do violence to the ordinary meaning of words. Do not 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.

(ii) Use same part of speech.

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."

(iii) Using "refers to" instead of "means."

When it is not 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 . . . ."

(iv) Avoid using "means and includes."

Do not use "means and includes" together when defining a term. Choose one or the other depending on intent. Bear in mind that "includes" is potentially ambiguous.

(v) Watch the category.

In addition to part of speech, watch the category. For example, do not 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."

(vi) Defining words in terms of others.

Try not to define words in terms of other words also being defined. This rule is sometimes difficult to keep, as it may call for too much repetition.

(vii) Avoid substantive requirements.

Do not write substantive requirements into 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.

(3) Reorganizing Definitions.

(i) Avoid renumbering subdivisions.

When 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. In Figure 28, subdivision 2a has been inserted between subdivisions 2 and 3.

Fig. 28

Section 1. Minnesota Statutes 20.., section 123.45, is amended to read:

123.45 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 123.45 to 123.99, the definitions have the meanings given.

Subd. 2. **Board.** "Board" means ……..

Subd. 2a. **Crime.** "Crime" means . . . .

Subd. 3. **Director.** "Director" means ……..

Subd. 4. **Practice of engineering.** "Practice of engineering" excludes ……..

A drafter may change an existing subdivision number only when it is unavoidable. In Figure 29, if the drafter 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."

Fig. 29

Section 1. Minnesota Statutes 20.., section 123.45, is amended to read:

123.45 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 123.45 to 123.99, the definitions have the meanings given.

Subd. 2. **Board.** "Board" means ……..

Subd. 2a. **Caller.** "Caller" means . . . .

Subd. 2b. **Crime.** "Crime" means . . . .

Subd. 3. **Director.** "Director" means ……..

Subd. 4. **Practice of engineering.** "Practice of engineering" excludes ……..

(ii) Check cross-references.

If the method in Figure 29 is used, the drafter must search Minnesota Statutes and change any cross-references to the renumbered subdivision that might be referenced elsewhere in the statutes. An alternative approach shown in Figure 30 is to add "caller" as subdivision 2a and draft a revisor instruction to renumber the existing subdivision 2a, "crime," as 2b. This method ensures that any cross-references will be changed editorially by the revisor.

Fig. 30

Section 1. Minnesota Statutes 20.., section 123.45, is amended by adding a subdivision to read:

Subd. 2a. **Caller.** "Caller" means . . . .

Sec. 2. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall renumber Minnesota Statutes, section 123.45, subdivision 2a, as subdivision 2b and correct all cross-references.

When a subdivision is being added to a definition section where none of the existing definition sections are alphabetized, and the drafter wants to alphabetize them, instead of accomplishing this in the bill by striking and underscoring, the drafter should 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. An example of this revisor's instruction appears in Figure 30.

2.17 SEVERABILITY OR NONSEVERABILITY CLAUSE

(a) Generally.

A severability clause is a provision that keeps the remaining provisions of a statute in force if any portion of that statute is declared void or unconstitutional by a court.

(b) Legal considerations.

Minnesota Statutes, section 645.20, establishes a statutory presumption that all laws are severable. A court may sever an unconstitutional void provision from a law and leave the remaining valid provisions, unless the law includes an explicit nonseverability clause. In addition, the court could either find that the legislature would not have enacted the valid provisions without the void one, or that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with legislative intent.

(c) Form.

When used in a bill with more than one section, the severability or nonseverability clause 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.

When written as part of a single section, the severability or nonseverability clause should be the first or last subdivision.

(d) Examples.

Examples of a severability provision and a nonseverability provision follow in Figures 31 and 32:

Fig. 31

11.13 Sec. ... **SEVERABILITY.**

11.14 If any provision of this act is found to be unconstitutional and void, the remaining

11.15 provisions of this act are valid.

Fig. 32

11.13 Sec. ... **NONSEVERABILITY.**

11.14 If any provision of this act is found to be unconstitutional and void, the remaining

11.15 provisions of this act are void.

(e) Drafting advice.

If it is intended that the provisions of a bill not be severable, the drafter should specify that they are not.

On the issue of whether or not the legislature would have enacted the valid provisions without the void ones, the drafter can clarify the issue for the court by including an explicit severability or nonseverability provision that clearly expresses the legislature's intent. However, an explicit severability clause may not prevent a court from finding that the remaining provisions are incomplete and incapable of being executed in accordance with legislative intent.

2.18 SAVING OR NONSAVING CLAUSE

(a) Generally.

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

(b) Legal considerations.

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.

(c) Form.

When used in a bill with more than one section, the saving or nonsaving clause should be in a separate section near the end of the bill immediately preceding the repealer section and effective date section, if any.

When written as part of a single section, the saving or nonsaving clause should be the first or last subdivision.

Fig. 33

5.18 Sec. ... **EXISTING CONTRACTS.**

5.19 This act shall not be construed to invalidate any contracts or commitments made before

5.20 January 20...

(d) Drafting advice.

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.

2.19 APPROPRIATIONS

(a) Generally.

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 kindergarten through grade 12 education. Omnibus appropriations bills are discussed in section 3.1.

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 example, a new program or agency. It is placed near the end of the bill and followed only by any revisor's instructions, repealers, or effective date provisions.

There are also some instances in which appropriations may be made in statute. Statutory appropriations, also called "standing" or "open" appropriations, create an ongoing appropriation not bound by the two-year appropriation cycle generally used by the legislature. Because it operates against the typical budget process, this style of appropriation is reserved for specific instances. While legislative policy disfavors both dedicated receipts and statutory 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. See paragraph (e) for guidance about when to use statutory appropriations.

(b) Legal considerations.

(1) Constitutional requirements.

Article XI, section 1, of the Minnesota Constitution states: "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Therefore, the word "appropriated" must be used to make an appropriation. Any other language invites dispute about what is meant.

(2) Statutory requirements.

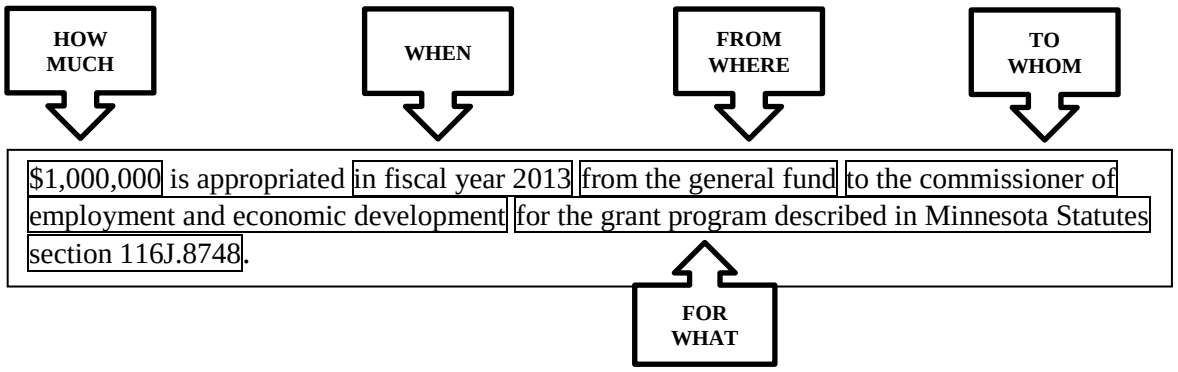
Minnesota Statutes, section 16A.28, sets default rules for the treatment of funds appropriated but not spent. These default rules can be overcome by adding corrective language to the appropriation. Paragraph (c), clause (2), and some of the examples in paragraph (c) contain such language.

Minnesota Statutes, section 645.02, sets the default effective date of a bill with an appropriation: "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."

(c) Form.

To construct an appropriation provision, the drafter must answer the questions: How Much? When? From Where? To Whom? and For What?

Fig. 34



(1) How much.

The dollar amount is rounded off to the nearest thousand dollars, except in special circumstances. For example, the legislature has traditionally passed an annual bill settling certain claims against the state which specifies appropriations to the cent. See Laws 2012, chapter 232.

(2) When.

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. If a provision is intended to affect a current year appropriation, it should be made effective "the day following final enactment."

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

When the allocation by fiscal year is shown, but the requestor 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 requestor 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 such as "This appropriation is available until expended" or "This appropriation is available until June 30, 20.." is added.

Appropriations for permanent improvements, including the acquisition of real property, are available until the project is completed or abandoned, subject to Minnesota Statutes, section 16A.642, which will cause most appropriations to cancel four years after the appropriation is made. See the discussion in section 3.2 on bonding.

(3) From where.

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.

(4) To whom.

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.

(5) For what.

Describe the purpose of the appropriation in a short phrase. If the purpose is more fully described elsewhere in the bill, and the appropriation language needs to refer to it, 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.

An agency may transfer appropriations between programs within an agency if the agency first notifies the commissioner of management and budget 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 Figure 36.

(d) Examples.

Typical direct appropriation sections are as shown in Figures 35 to 37.

Fig. 35

Sec. ... **APPROPRIATION.**

$100,000 in fiscal year 20.. and $100,000 in fiscal year 20.. are appropriated from the general fund to the commissioner of administration to administer sections 1 to 9.

or

Fig. 36

Sec. ... **APPROPRIATION.**

$100,000 is appropriated in fiscal year 20.. and $100,000 is appropriated in fiscal year 20.. from the general fund to the commissioner of administration to administer sections 1 to 9.

Notwithstanding Minnesota Statutes, section 16A.285, the agency must not transfer this appropriation.

Fig. 37

Sec. ... **APPROPRIATION.**

$100,000 is appropriated from the general fund to the commissioner of administration to administer sections 1 to 9, $20,000 to be available for the fiscal year ending June 30, 20.., and $80,000 to be available for the fiscal year ending June 30, 20…

(e) Drafting advice.

(1) Language used.

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

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.

(2) Dedicated receipts.

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

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

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

As with all appropriations, an appropriation from a dedicated receipt account must answer all five questions discussed in paragraph (c).

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. However, most appropriations of dedicated receipts are by statutory appropriations.

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. Figure 38 shows an example of such an appropriation:

Fig. 38

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

All fees and penalties collected by the board under sections 1 to 15 must be deposited in the state treasury and credited to a special account. Money in the account is annually appropriated to the board to administer sections 1 to 15.

When drafting statutory language specifying an account in a fund it may be helpful to consult with fiscal staff as to an appropriate account.

The example in Figure 38 does not name the fund to which the account is associated. Although under Minnesota Statutes, section 16A.53, the commissioner of management and budget has the authority to decide in which fund the account belongs, it is a better practice for a drafter to consult with legislative fiscal staff to identify and name in the appropriation the appropriate fund.

(3) Statutory appropriations.

As mentioned earlier, statutory appropriations refer to grants of authority that are codified in Minnesota Statutes, rather than made in a session law. This means the expenditure authority is ongoing and is not dependent upon the passage of an omnibus appropriations bill. Statutory appropriations may be "open" or "standing."

An open appropriation does not specify a dollar amount. Instead, an open appropriation states that "the amount necessary for this purpose is annually appropriated from the general fund," and is used almost exclusively for appropriations to pay tax refunds, aids and credits to individuals and local governments, or for income and property tax relief. The appropriation for each aid or credit is usually codified in Minnesota Statutes and the amount is typically subject to various conditions. Conversely, a standing appropriation specifies a dollar amount such as "$100,000 is annually appropriated." See Minnesota Statutes, section 16A.011, subd. 14a, for definition of statutory appropriations.

Generally speaking, legislative policy has discouraged the use of statutory appropriations and the drafter should avoid them unless a standing appropriation that would be repeated each year is consciously intended. Figure 39 shows an example of such an appropriation. Figure 40 shows an example of an open appropriation without a stated amount.

Fig. 39

Sec. 6. **[xxx.xx] APPROPRIATION.**

$20,000 is appropriated annually from the general fund to the commissioner of agriculture for the costs of inspecting wheat.

Fig. 40

Sec. 7. **APPROPRIATION.**

The amount in this account is annually appropriated to commissioner of public safety for the costs of regulation and enforcement.

2.20 REPEALERS

(a) Generally.

When drafting a bill, a drafter often finds it necessary to remove sections or subdivisions of statute, previous session laws, or parts or subparts of an administrative rule. 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.

(b) Legal considerations.

The drafter should consider the effect of Minnesota Statutes, sections 645.34, 645.35, and 645.36, upon the use of repealers. The effect of these sections is that:

- the repeal of an amendatory law does not revive the provisions it amended;
- the repeal of an original law also repeals all subsequent amendments;
- the repeal of any provision does not affect any right accrued under the former law; and
- the repeal of a repealer does not revive the law originally repealed, unless it is repealed before it becomes effective.

If an explicit expiration provision is used instead of a repealer, keep in mind that for purposes of revival there is no meaningful difference between a law that has been repealed and one that has expired. *Granville v. Minneapolis Public Schools*, 732 N.W.2d 201, 205 (Minn. 2007). *But see, In Re Dept. of Commerce Action Against AT&T,* 759 N.W.2d 242 (Minn. Ct. App. 2009) for treatment of an expiration for purposes of the general savings statute, Minnesota Statutes, section 645.35.

All of these effects can be overcome, but the drafter must specifically include words to do so. If the drafter's intent is to overcome the effect of one of the standard provisions, the language should be inserted in the repealer section of the bill.

(c) Form.

(1) Location.

Generally, a repealer is contained in a separate section of the bill near the end of the article or bill consistent with the order laid out in section 2.4, paragraph (b), clause (1). However, prospective repealers may be handled differently. See paragraph (d), clause (4).

(2) Reference.

A bill drafter should repeal sections only by reference to Minnesota Statutes for sections appearing in the compiled law, session laws for all other sections, or Minnesota Rules for parts and subparts appearing in the compiled administrative rules. If a series of sections is being repealed, each must be listed rather than using a reference like "sections 51.02 to 51.06."

Fig. 41

7.19 Sec. 6. **REPEALER.**

7.20 Minnesota Statutes 20.., sections 51.02; 51.04, subdivisions 1, 3, and 5; and 51.06, are

7.21 repealed.

(3) Divisions.

A repealer section may be divided into subdivisions or paragraphs. This method can be used to group similar repeals. Common examples of groupings include groups of repeals with the same effective date, groups of repeals from the same source, such as Minnesota Statutes or Minnesota Rules, or groups of repeals that serve the same function, such as grouping the repeals of a specific program. If the repealer section is divided into subdivisions, the subdivision headnote can be used to help the reader identify the material being repealed.

For additional examples relating to repealers, see section 2.22, paragraph (c).

(d) Drafting advice.

(1) Check cross-references.

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

by amending those sections and striking references to a repealed cite. The cross-references can be found in Table III of Minnesota Statutes or by performing a computer search of the statutes.

(2) Avoid general repealers.

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 approach to the problem. Sometimes it may be difficult to find the uncodified special laws that are affected by a repealer. Table I of Minnesota Statutes and Table 1 of Laws can assist; all affected laws should be found and repealed and a general repealer avoided.

(3) Repeal versus amendment.

Removing an entire subdivision may be done in two ways. A drafter may simply repeal the subdivision in a repealer section, or amend the statutory section by striking the entire subdivision.

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

Repealing a subdivision or section with a repealer section is preferred. For editing purposes, it generates a listing for Table 2 in Laws, 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 drafter chooses to amend the section by striking the entire subdivision, the specific, stricken subdivision is neither cited as repealed in Table 2 in Laws nor is it shown in the title or repealer section of the bill as repealed. If the subdivision is part of a statutory section being extensively amended, this method may be employed to promote the draft's economy and readability.

(4) Prospective or delayed repealers.

All repealers are prospective unless a contrary intention is explicitly expressed, usually in the effective date language of the repealer. When this manual discusses prospective repealers, it means a special class of repealers that are effective on a date beyond the next one or more legislative sessions after the session in which the repealer was enacted. "Delayed repealers" is the common conversational term for these late-acting repealers.

These repealers can be problematic if the provision of law being repealed is amended during these intervening legislative sessions. It is sometimes difficult to ascertain whether or not the legislature intended the intervening amendments to also be repealed on the

effective date of the repealer. A drafter must be aware of the prospective repeal at the time any intervening amendments are proposed, so that unintended consequences may be avoided.

If the prospective repealer involved codified law, the only reliable notice to the drafter of the effective date of the repealer will be the editorial note published by the revisor in the paper and electronic versions of *Minnesota Statutes*. A drafter should always check one of these versions for such important editorial notes when drafting amendments to current law. If the prospective repealer involves local law, the drafter must review amendments to the local law to see if any prospective repealers exist. The Cumulative Table 1 on the Minnesota Session Laws page on the revisor's Web site will provide this history of amendments for the drafter. Figure 42 is an example of a typical prospective repealer.

Fig. 42

Sec 10. Minnesota Statutes 20.., section 340A.404, subdivision 4a, is amended to read:

Subd. 4a. ~~**Publicly owned recreation; entertainment facilities**~~ **Sale of intoxicating liquor at TCF Bank Stadium.** No alcoholic beverage may be sold or served at TCF Bank Stadium unless the Board of Regents holds an on-sale intoxicating liquor license for the stadium as provided in paragraph (a), clause (3), that provides for the sale of intoxicating liquor at a location in the stadium that is convenient to the general public attending an intercollegiate football game at the stadium. On-sale liquor sales to the general public must be available at that location through half-time of an intercollegiate football game at TCF Bank Stadium, and sales at the stadium must comply with section 340A.909.

Sec. 11. **REPEALER.**

The amendments in section 10 to Minnesota Statutes, section 340A.404, subdivision 4a, are repealed on July 1, 2020.

As an alternative to an uncoded repealer section, a drafter should consider including language in the text of the law being repealed, when possible. The advantage of this alternative is that the prospective repeal language is contained in the substantive provision to which it relates. No research beyond a reading of the text of the law is necessary to be made aware of its existence. The drafter may use the term "expires" to describe the action.

The drafter should consider another alternative drafting convention when temporary amendments to current law are being contemplated. Instead of temporarily amending the

permanent law and introducing the issue of how intervening amendments are to be interpreted, a separate provision could be drafted that supersedes or suspends the current law for the period of time the amendments are to be effective and includes the relevant material from the suspended provision. A drafter of any intervening amendments could then clearly express the intended effect as to whether or not these intervening amendments are temporary or permanent by adding them to the current law or the superseding law, or both, as appropriate.

Fig. 43

Sec. 8. Minnesota Statutes 20.., section 340A.404, is amended by adding a subdivision to read:

Subd. 4b. **Sale of intoxicating liquor at TCF Bank Stadium.** (a) No alcoholic beverage may be sold or served at TCF Bank Stadium unless the Board of Regents holds an on-sale intoxicating liquor license for the stadium as provided in subdivision 4a that provides for the sale of intoxicating liquor at a location in the stadium that is convenient to the general public attending an intercollegiate football game at the stadium. On-sale liquor sales to the general public must be available at that location through half-time of an intercollegiate football game at TCF Bank Stadium, and sales at the stadium must comply with section 340A.909.

(b) This subdivision supersedes the provisions of subdivision 4a from its effective date until July 1, 2020.

By enacting the current text of subdivision 4a and the text of the temporary amendment as new, temporary, superseding text, the intent of the amendment may be easily indicated with regard to any intervening amendments by:

- amending the text of subdivision 4b if it is intended that the intervening amendment expire when the subdivision expires;

- amending the text of subdivision 4a if it intends the intervening amendment be made to the law after the superseding provision expires; or

- amending the text of both subdivisions 4a and 4b if it intends the intervening amendment to apply to the superseding provision and the law that remains after it expires.

(5) Headnotes in repealer sections.

In a repealer that treats several groups of statutory sections, subdivision headnotes help readers understand which programs are being repealed.

Fig. 44

Sec. ... **REPEALER.**

Subdivision 1. **Civil mediation.** Minnesota Statutes, sections 572.31; 572.33; 572.35; 572.36; 572.37; 572.39; and 572.40, are repealed.

Subd. 2. **Debtor and creditor mediation.** Minnesota Statutes, section 572.41, is repealed.

2.21 EFFECTIVE DATES

(a) Generally.

Effective date provisions allow for the orderly implementation and administration of the law being enacted. Specific effective dates are added to bills to clearly indicate the legislature's intent regarding the timing of the law being added, amended, or repealed, or to alter the default effective date rules set out in paragraph (b) that would otherwise apply. These provisions often are limited to establishing the specific date that a particular section or sections of the bill go into effect, but they also sometimes include application language in the form of savings provisions, or provisions that reinforce or alter the statutory presumption that all laws are prospective in application.

(b) Legal considerations.

(1) When the laws become effective.

Minnesota Statutes, section 645.02 provides guidance on different default rules regarding all effective dates.

- All parts of an act containing one or more appropriations are effective at 12:01 a.m. July 1 next following its final enactment, unless another effective date is specified in the act.
- All provisions of an act containing solely nonappropriation items are effective at 12:01 a.m August 1 next following final enactment, unless another effective date is specified in the act.

(2) Retroactive effective dates and application.

Minnesota Statutes, section 645.21, provides that: "no law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." This statute has been applied to the following two situations.

(i) Retroactive effective dates.

Courts are very reluctant to read a retroactive effective date into a section without clear language in the text of the section or effective date. In *Duluth Firemen's Relief Association v. Duluth*, 361 N.W.2d 381 (Minn. 1985), the Minnesota Supreme Court upon being asked to find that a law passed in 1982 forbade a city action taken in 1981, stated "[s]ection 645.21 requires that there be much clearer evidence of retroactive intent in the statute's language—such as mention of the word "retroactive"—before we determine that a statute was intended to be applied retroactively." *Duluth Firemen's Relief Ass'n*, 361 at 385. *See also Matter of Wage & Hour Violations of Holly Inn*, 386 N.W.2d 305 (Minn. Ct. App. 1986) (refusing to read as retroactive a newly created remedy).

In light of these holdings, the preferred method of indicating legislative intent to establish a retroactive effective date is a statement in the text of the section or in the effective date stating "this section is effective retroactively from [date]". See Figure 57 on page 61.

(ii) Retroactive application.

Sections that do not have a specific retroactive effective date may still retroactively change the legal status of a person, claim, or right. The Minnesota Supreme Court defined a retrospective law as:

> "[a law] which relates back to and gives to a previous transaction some different legal effect from that which it had under the law when it occurred… [or] one intended to affect transactions which occurred, or rights accrued, before it became operative, and which ascribes to them effects not inherent in their nature, in view of the law in force at the time of their occurrence." *Cooper v. Watson*, 290 Minn. 362, 369 (Minn. 1971).

Unlike cases involving explicitly retroactive effective dates, where the court requires "clear and manifest" intention of retroactivity, other cases involving the retroactive application of law require a "clear and manifest" showing of the application and not necessarily the retroactivity. In *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413 (Minn. 2002), the law changed the statute of limitations from two to four years. The effective date of the section stated that the section "is effective August 1, 1999, and applies to actions commenced on or after that date." Though there was no use of the word "retroactive," the Minnesota Supreme Court held "that the legislature by its use of plain and unambiguous language clearly and manifestly expressed its intent…" to apply to all actions commenced after August 1, 1999, even those that had been time-barred under the previous statutory section.

This attempted distinction between retroactive effective dates and retroactive application is further explored in *In re Individual 35W Bridge Litigation*, 806 N.W.2d 811 (Minn. 2011). The case involved a statutory section that was amended twice, both times with explicit retroactive effective dates, but with no application clause. While the Court found that the changes to the statute were effective from the stated retroactive date, the court found "the effective date language of the statute does not 'clearly and manifestly' demonstrate an intent to retroactively revive claims that were previously extinguished…" *In re Individual 35W Bridge Litigation*, 806 N.W.2d at 819.

These two cases can be reconciled by the presence or absence of an application clause. When drafting an effective date provision that is to have a retroactive application, the drafter should include an application clause stating the circumstances to which the effective date applies. An application clause ensures that the retroactive intent is clear, and it should be included even when an explicit retroactive effective date is provided. In these application clauses are legally clearer if they point to the time when the cause of action accrued instead of the time when the action was commenced. In the case of a section extending a two-year statute of limitation for certain torts to four years with an August 1, 2013, effective date, each of the application clauses in Figures 45 to 47 has the effect described in the text that follows it.

Fig. 45

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective August 1, 2013, and applies to causes of action accruing on or after that date.

The four-year statute of limitations would apply only to torts committed on or after August 1, 2013. Torts committed previous to that would have the two-year limitation.

Fig. 46

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective August 1, 2013, and applies to causes of action accruing on or after August 1, 2011.

The four-year statute of limitations would apply to new torts and past torts that would not be time-barred under the previous two-year statute of limitations when the statute takes effect, but time-barred actions would not be revived.

Fig. 47

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective August 1, 2013, and applies to causes of action accruing on or after August 1, 2009, including causes of action that would otherwise have been time-barred on August 1, 2011.

The four-year statute of limitations would apply to all torts up to the new statute of limitations regardless of whether or not they were previously time-barred.

(3) Constitutional considerations; retroactive application of law.

Once a court has determined that a clear and manifest intention to construe a law to be retroactive exists, it must consider whether any constitutional limits prevent the law from being applied retroactively. Retroactive application of laws touches three primary constitutional concerns: due process, the prohibition against ex post facto laws, and the restrictions on laws impairing the obligation of contract.

(i) Due process.

Applying the due process clauses in the 14th Amendment to the United States Constitution and article I, section 7 of the Minnesota Constitution to retroactive statutes requires a two-part analysis: "that the interest allegedly interfered with rises to the level of a constitutionally protected 'liberty' or 'property' interest, and that this interest has been interfered with to an extent that violates the Due Process Clause." *In re Individual 35W Bridge Litigation*, 806 N.W.2d 820, 829 (Minn. 2011). Historically, Minnesota courts have applied a "vested rights" analysis in these cases. This line of judicial precedents dates back to 1858, creating a large body of "vested rights" cases. The results of this analysis are similar to the rights analysis required by the first prong of the modern substantive due process analysis.

The following interests have been found by the courts to not be a "vested right":

- any particular legislative remedy as long as an adequate remedy remains, *Wichelman v. Messner*, 85 N.W.2d 800 (Minn. 1957);
- lowering a pension payment when no reliance was shown, *Duluth Firemen's Relief Ass'n v. City of Duluth*, 361 N.W.2d 381, 386 (Minn. 1985);
- land zoning, *Rose Cliff Landscape Nursery, Inc. v. City of Rosemount*, 467 N.W.2d 641 (Minn. Ct. App. 1991);
- statute of limitations defenses, *Donaldson v. Chase Secs. Corp.*, 13 N.W.2d 1 (Minn. 1943); and

- legislative changes to the timing or content of claims to the detriment of the claim holder "… unless the time allowed [to act] is manifestly so short as to amount to a practical denial of justice." *Hill v. Townley*, 47 N.W.2d 653-54 (Minn. 1891).

In contrast, the following have been found to be "vested rights":

- real property rights, *Young v. Mall Inv. Co*., 215 N.W. 840, 841 (Minn. 1927);

- certain statutory rights, *Yaeger v. Delano Granite Works*, 84 N.W.2d 363, 366 (Minn. 1957)(stating that a right exists in certain portions of the workers' compensation statutes);

- final judgments, *Holen v. Minneapolis-St. Paul Metro. Airports Comm'n*, 84 N.W.2d 282, 287 (Minn. 1957); and

- statute of repose defenses. *In re Individual 35W Bridge Litigation*, 806 N.W.2d at 830-32.

If a protected right is found by the court, due process analysis then proceeds to a rational basis test unless a fundamental right is involved. *In re Individual 35W Bridge Litigation*, 806 N.W.2d at 830. Under this test, the court determines whether the change in law is "rationally related to a legitimate governmental interest." *In re Individual 35W Bridge Litigation*, 806 N.W.2d. at 832.

(ii) Ex post facto laws.

For a discussion of ex post facto laws, see section 3.4, paragraph (c), clause (5).

(iii) Impairment of contract.

The prohibition against impairing the obligations of contracts can be found in article I, section 10, clause 1 of the United States Constitution and article I, section 11 of the Minnesota Constitution. In impairment of contract cases, "[i]t has long been recognized that the prohibition of laws impairing the obligation of contracts does not prevent states from acting pursuant to their inherent police power to promote the public welfare." *Minn. Ass'n of Health Care Facilities v. Minnesota Dep't of Public Health*, 742 F.2d 442, 449 (8th Cir. 1984). The Minnesota Supreme Court has adopted the United States Supreme Court test to determine the unconstitutionality of contractual impairment:

> "The initial question is whether the state law has, in fact, operated as a substantial impairment of a contractual obligation. The severity of the impairment increases the level of scrutiny to which the legislation is subjected. If there is a substantial impairment, the state, at the second step, must demonstrate a significant and legitimate public purpose behind the legislation. Third, the state's action is examined in the light of this

> public purpose to see whether the adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption." *Christensen v. Minneapolis Municipal Employee Retirement Board*, 331 N.W.2d 740, 750 (Minn. 1983) (internal citations and brackets omitted).

(c) Form.

There are two general forms of effective dates: one that is drafted as an uncoded section at the end of the bill or article, and one that is placed immediately after the section.

(1) Effective date at end of bill or article.

Fig. 48

2.2 Sec. ... **EFFECTIVE DATE.**

2.3 Sections 1 to 12 are effective January 1, 20… Sections 13 and 14 are effective the

2.4 day following final enactment.

or

Fig. 49

12.2 Sec. ... **EFFECTIVE DATE.**

12.3 This act (or article) is effective January 1, 20...

(2) Effective date immediately after a section.

The effective date may be placed immediately after the section as follows:

Fig. 50

5.18 Sec. ... Minnesota Statutes 20.. Supplement, section 289A.02, is amended by adding a

5.19 subdivision to read:

5.20 Subd. ... **Internal Revenue Code.** Unless specifically defined otherwise, "Internal

5.21 Revenue Code" means the Internal Revenue Code of 1986, as amended through March

5.22 15, 20...

5.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

If several sections have the same effective date, the effective date must be repeated in each section if the end-of-section method is used. 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. Instead, draft a general effective date section at the end of the bill for that group of sections.

(d) Unique effective dates.

(1) Effective dates of repealers.

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

Fig. 51

Section 1. **REPEALER.**

Minnesota Statutes 20, section 297A.68, subdivision 28, is repealed.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective for sales and purchases made after June 30, 20...

or

Fig. 52

Sec. ... **REPEALER.**

Minnesota Statutes 20, section 297A.68, subdivision 28, is repealed.

EFFECTIVE DATE. This section is effective for sales and purchases made after June 30, 20...

or

Fig. 53

Sec. ... **REPEALER.**

Minnesota Statutes 20, section 297A.68, subdivision 28, is repealed effective for sales and purchases made after June 30, 20....

(2) Delayed effective dates.

An effective date may be drafted for a date in the future.

Fig. 54

6.10	**EFFECTIVE DATE.** This act is effective July 1, 2019.

(3) Contingent effective dates.

An effective date may be drafted upon the occurrence or nonoccurrence of some future event. When drafting a contingent effective date, the drafter should be cognizant of the inability of the legislature to delegate its lawmaking authority. "Pure legislative power, which can never be delegated, is the authority to make a complete law – complete as to the time it shall take effect and as to whom it shall apply – and to determine the expediency of its enactment." *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949). Thus, a contingent effective date must be contingent on an event that can be clearly and objectively verified. An effective date that gives wide discretion to a person or agency to determine if the law is effective may be challenged as an unconstitutional delegation of legislative authority.

"If the law furnishes a reasonably clear policy or standard of action which controls and guides the administrative officers in ascertaining the operative facts to which the law applies, so that the law takes effect upon these facts by virtue of its own terms, and not according to the whim or caprice of the administrative officers, the discretionary power delegated to the board or commission is not legislative." *Coalition of Greater Minnesota Cities v. Minnesota Pollution Control Agency*, 765 N.W.2d 159, 165 (Minn. Ct. App. 2009), citing *Lee v. Delmont*, 36 N.W.2d at 538-39 (Minn. 1949).

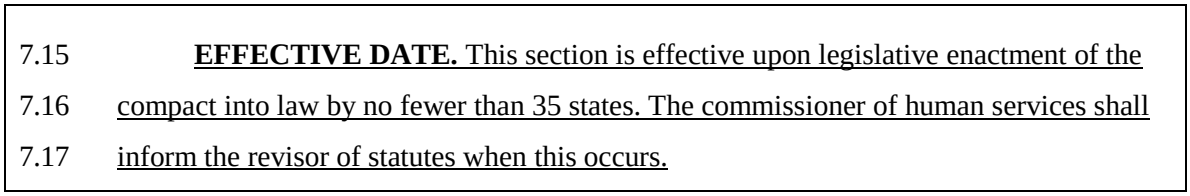
As a practical matter, the drafter must also include language requiring that notification must be given when the contingency is met.

Fig. 55

7.5	**EFFECTIVE DATE.** This section is effective upon federal approval. The
7.6	commissioner of human services shall notify the revisor of statutes when federal
7.7	approval is obtained.

or

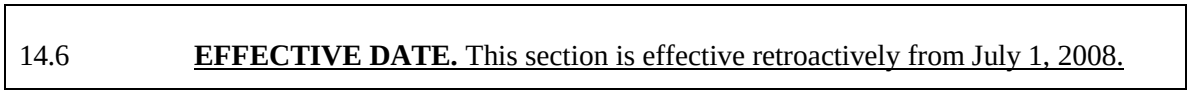
Fig. 56



(4) Retroactive effective dates.

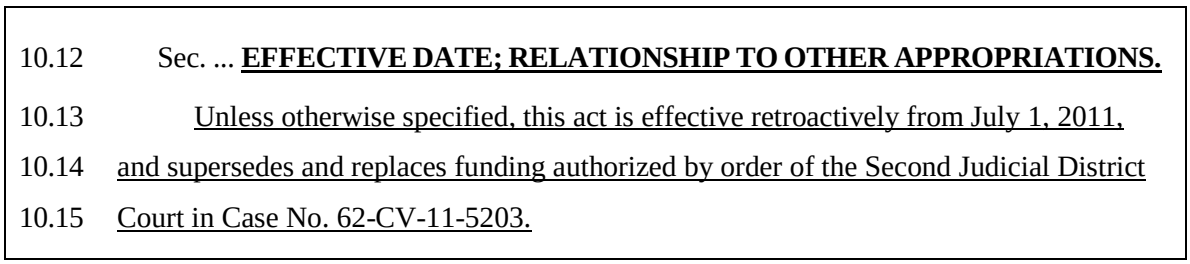
Retroactive effective dates have special legal considerations. Courts have ruled that the legislature must state a clear and manifest expression of intent for a law to be applied retroactively. Using some form of the word "retroactive" in the law's effective date is a sufficiently clear and manifest expression of legislative intent, as in Figure 57:

Fig. 57



Sometimes appropriations must be made retroactively. This effective date was used during the 2011 special session which took place after July 1, and needed a retroactive effective date.

Fig. 58



Language in the bill's effective date which makes the bill applicable to "causes of action arising before" or "proceedings commenced or pending on or after" a certain date has been found to be a clear indication that the legislature intends the new law to apply to legal claims arising before the effective date, as long as all avenues of appeal have not yet been exhausted.

(5) Multiple effective dates.

Different sections of a bill may contain different effective dates. Similarly, different amendments within a single section of a bill may have different effective dates. The drafter should be as descriptive as possible when drafting multiple effective dates to avoid confusion.

Fig. 59

Sec. ... Minnesota Statutes 20.., section 256B.0625, subdivision 8, is amended to read:

Subd. 8. **Physical therapy.** (a) Medical assistance covers physical therapy and related services~~, including specialized maintenance therapy~~. Specialized maintenance therapy is covered for recipients age 20 and under.

(b) Authorization by the commissioner is required to provide medically necessary services to a recipient ~~beyond any of the following onetime service thresholds, or a lower threshold where one has been established by the commissioner for a specified service: (1) 80 units of any approved CPT code other than modalities; (2) 20 modality sessions; and (3) three evaluations or reevaluations~~.

EFFECTIVE DATE. The amendment to paragraph (a) is effective January 1, 20... The amendment to paragraph (b) is effective March 1, 20...

or

Fig. 60

Sec. ... Minnesota Statutes 20.., section 119B.13, subdivision 1a, is amended to read:

Subd. 1a. **Legal nonlicensed family child care provider rates.** (a) Legal nonlicensed family child care providers receiving reimbursement under this chapter must be paid on an hourly basis for care provided to families receiving assistance.

(b) The maximum rate paid to legal nonlicensed family child care providers must be ~~80~~ 68 percent of the county maximum hourly rate for licensed family child care providers. In counties where the maximum hourly rate for licensed family child care providers is higher than the maximum weekly rate for those providers divided by 50, the maximum hourly rate that may be paid to legal nonlicensed family child care providers is the rate equal to the maximum weekly rate for licensed family child care providers divided by 50 and then multiplied by ~~0.80~~ 0.68. The maximum payment to a provider for one day of care must not exceed the maximum hourly rate times ten.

EFFECTIVE DATE. This section is effective April 16, 20.., except the amendment changing 80 to 68 and 0.80 to 0.68 is effective October 31, 20...

(e) Additional content.

An effective date may also operate as an application section. It might provide details regarding how the law should be implemented such as in Figure 61. However, drafters should be wary of inserting details in the effective date that are permanent in nature and should be coded.

Fig. 61

Sec. ... **EFFECTIVE DATE; IMPLEMENTATION SCHEDULE.**

(a) Subdivisions 1 to 6 are effective July 1, 20...

(b) The jurisdictions of the regional quality councils in subdivision 4 must be defined, with implementation dates, by July 1, 20... During the biennium beginning July 1, 20.., the Quality Assurance Commission shall continue to implement the alternative licensing system under this section.

(f) Amending an effective date.

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 shown in Figures 62 and 63.

Fig. 62

Sec. ... Laws 2001, First Special Session chapter 5, article 12, section 82, the effective date, is amended to read:

EFFECTIVE DATE. This section is effective January 1, ~~2003~~ 2004.

Fig. 63

Sec. 10. Laws 2006, chapter 259, article 3, section 2, the effective date, is amended to read:

EFFECTIVE DATE. This section is effective for sales made after December 31, 2004, and on or before December 31, ~~2005~~ 2007.

EFFECTIVE DATE. This section is effective retroactively from January 1, 2006.

The effective date change is being made in 2007 and is an example of an amendment to a section effective date that has its own special effective date.

(g) Additional considerations for special laws.

Drafters of special laws, laws of local rather than general application, should review the special default effective date rules in Minnesota Statutes, sections 645.02 to 645.024.

When a special law requires local approval, the law becomes effective when the local government satisfies the requirements of Minnesota Statutes, section 645.021, subdivision 3, providing for the filing of certificates of approval with the secretary of state. 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 3.5, paragraph (c).

Fig. 64

5.5 **EFFECTIVE DATE.** This section is effective the day after the governing body
5.6 of the city of St. Paul and its chief clerical officer comply with Minnesota Statutes,
5.7 section 645.021, subdivisions 2 and 3.

(h) Delayed effective dates.

When amending law, a drafter should always check to see if the provision being amended is effective, or if its effective date has been delayed. The revisor provides an editorial note in the electronic and paper versions of *Minnesota Statues* to alert readers that a provision of law has a delayed effective date, unless the delayed effective date is in the law. See Minnesota Statutes, section 256B.0657.

If the provision being amended has a delayed effective date, the drafter should provide an express effective date of the amendment. If that date is also the date the provision being amended is effective, the language in Figures 65 or 66 could be used.

Fig. 65

12.2 Sec. ... **EFFECTIVE DATE.**
12.3 Section … is effective January 15, 20…

or

Fig. 66

12.12 Sec. ... **EFFECTIVE DATE.**
12.13 Section … is effective on the date the (section or subdivision) being amended is
12.14 effective.

The language in Figure 66 can be used if the effective date of the law being amended is difficult to ascertain, for example, in the case of a contingent effective date.

If the desired effective date for the amendment is not the same as for the provision being amended, that different date should be expressed, even if it is the default effective date under

Minnesota Statutes, section 645.02. If the date is not expressed, a court might conclude that the legislature intended some other date to apply.
Sometimes, the delayed effective date note also contains the text of the law as it will read when the law becomes effective. In these cases, the drafter might be required to amend the text of the current law, the text of the delayed law in the note, or both, depending on the intent of the amendment.

(i) Drafting advice.

If it is 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. A bill should not be made effective the day following its final enactment unless there is an urgent need. This is especially true for a bill enacting new, or modifying existing, criminal laws. Exceptions to this rule are immediate effective dates for technical or housekeeping changes or to provide for authority to adopt administrative rules before implementing the program to which they relate.

Avoid the use of "effective upon passage"; a section effective the day following final enactment has been construed to be effective at 12:01 a.m. on the date immediately following the date the governor signs the bill.

When effective dates are grouped at the end of an article or bill, and different dates apply to different sections of the bill, subdivision headnotes help readers to understand which date applies to which subject matter.

Fig. 67

Sec. 31. **EFFECTIVE DATES.**

Subdivision 1. **Nursery stock certification.** Sections 1 to 15 are effective September 1, 20…

Subd. 2. **Seed potato certification.** Sections 16 to 30 are effective January 1, 20…

For other specific examples of effective date provisions, see section 2.22, paragraph (e).

2.22 EXAMPLES

(a) Titles

(1) Opening phrase	A bill for an act
(2) General subject	relating to education;
Objects or parts of the subject	authorizing school districts to provide houses for teachers;
(3) Penalties	providing penalties;
(4) Appropriations	appropriating money;
(5) Legislative appointments	providing appointments;

(6) Amendments to sections or subdivisions of most recent statutes in statutory order

Type of amendment	**Citation beginning with "amending"**
Amending a section or subdivision	Minnesota Statutes 20.., section..., subdivision ..;
Adding a subdivision	Minnesota Statutes 20.., section..., by adding a subdivision;
Added since last cited publication	Minnesota Statutes 20.., section..., subdivision.., as added;
Section amended since last cited publication	Minnesota Statutes 20.., section..., subdivision.., as amended;
Section added by H.F., S.F., or Laws	Minnesota Statutes 20.., section..., subdivision.., as added, if enacted;
Section amended by H.F., S.F., or Laws	Minnesota Statutes 20.., section..., subdivision.., as amended, if enacted;

(7) Amendments to most recent supplement in statutory order

Type of amendment	**Citation beginning with "amending"**
Amending a section or subdivision	Minnesota Statutes 20.. Supplement, section..., subdivision ..;
Adding a subdivision	Minnesota Statutes 20.. Supplement, section..., by adding a subdivision;
Added since last cited publication	Minnesota Statutes 20.. Supplement, section..., subdivision.., as added;
Section amended since last cited publication	Minnesota Statutes 20.. Supplement, section..., subdivision.., as amended;
Section added by H.F., S.F., or Laws	Minnesota Statutes 20.. Supplement, section..., subdivision.., as added, if enacted;
Section amended by H.F., S.F., or Laws	Minnesota Statutes 20.. Supplement, section..., subdivision.., as amended, if enacted;

(8) Amendments to uncoded law and house or senate files

Type of amendment	Citation beginning with "amending"
Session law section (least recent to most recent)	Laws 2010, chapter 56, section 7, subdivision 3;
House or Senate file	20.. ..F. No. .., section .., if enacted;

(9) Adding new law in statutory order

Type of addition	Citation
Adding a chapter	proposing coding for new law as Minnesota Statutes, chapter 429;
Adding a section	proposing coding for new law in Minnesota Statutes, chapter 429;
New uncoded law	(nothing after objects or parts of the subject)

(10) Repealers

Type of repeal	Citation beginning with "repealing"
Statute section or subdivision in statutory order	Minnesota Statutes 20.., section 425.6, subdivision 3;
Statute section or subdivision from supplement in statutory order	Minnesota Statutes 20.. Supplement, section 634.57, subdivision 3;
Session law section (least recent to most recent)	Laws 2010, chapter 88, section 3, subdivision 3;
House or Senate file	20.. ..F. No. .., section .., if enacted;
Rules	Minnesota Rules, part(s).., subpart(s)..

(11) Combined title

relating to health care; establishing mental health urgent care and consultation services; creating a new general assistance medical care program; appropriating money; amending Minnesota Statutes 20.., sections 256.969, subdivision 27; 256B.0625, subdivision 13f, by adding a subdivision; 256B.0644; 256B.69, subdivision 20; 256L.05, subdivisions 1b, 3, 3a, 3c; 517.08, subdivision 1c; Minnesota Statutes 20.. Supplement, sections 256.969, subdivision 3a; 256B.0947, subdivision 1; 256B.196, subdivision 2; 256D.03, subdivision 3; amending Laws 20.., chapter 122, section 12; proposing coding for new law in Minnesota Statutes, chapters 245; 256B; 256D; proposing coding for new law as Minnesota Statutes, chapter 429; repealing Minnesota Statutes 20.., sections 256.742; 256.979, subdivision 8; 256B.195, subdivisions 4, 5; 256D.03, subdivision 9; 256L.07, subdivision 6; 256L.15, subdivision 4; 256L.17, subdivision 7; Minnesota Statutes 20.. Supplement, sections 256B.195, subdivisions 1, 2, 3; 256D.03, subdivision 4.

(b) Sections

(1) Introductory phrase citation forms

Statute section from most recent statutes	Minnesota Statutes 20.., section 307.08, is amended to read:
Statute section from most recent supplement	Minnesota Statutes 20.. Supplement, section 389.08, is amended to read:
Subdivision from most recent statutes	Minnesota Statutes 20.., section 292.22, subdivision 3, is amended to read:
Adding a subdivision	Minnesota Statutes 20 .., section 85.20, is amended by adding a subdivision to read:
Session law section	Laws 2010, chapter 212, article 1, section 3, subdivision 2, is amended to read:
Session law section as amended (earliest to most recent)	Laws 1973, chapter 175, section 1, as amended by Laws 1975, chapter 117, section 1, subdivision 2, is amended to read:
House or Senate file, if enacted	20.. ..F. No. 1555, section 2, if enacted, is amended to read

(2) Amending a subdivision

Section 1. Minnesota Statutes 20.., section 297.22, subdivision 3, is amended to read:

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

(3) Amending a section in the supplement to Minnesota Statutes

Section 1. Minnesota Statutes 20.. Supplement, section 389.08, is amended to read:

389.08 COUNTY SURVEYORS; FILING OF SURVEYS IN CERTAIN COUNTIES.

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

(4) Amending a section by adding a subdivision

Section 1. Minnesota Statutes 20.., section 85.20, is amended by adding a subdivision to read:

Subd. 6. **State parks; littering; penalty.** A person shall not drain, throw, or deposit upon the lands and waters within a state park any substance that can mar the park's appearance, destroy its cleanliness or safety, or create a stench . . . .

(5) Amending a section by creating subdivisions

Section 1. Minnesota Statutes 20.., section 307.08, is amended to read:

307.08 DAMAGES TO CEMETERY OR BURIAL GROUND; DISCHARGE OF FIREARMS; PENALTY.

Subdivision 1. **Penalty.** Every person who shall willfully destroy, mutilate, injure, or remove any tombstone, monument, or structure placed in any public or private cemetery or authenticated and identified Indian burial ground, or any fence, railing, or other work erected for protection or . . . . . .

Subd. 2. **Posting required.** An authenticated and identified Indian burial ground shall be posted every 75 feet around its . . . . . .

(6) Amending uncodified session law

Section 1. Laws 2005, chapter 158, section 4, is amended to read:

Sec. 4. **EFFECTIVE DATE; TERMINATION.**

This act is effective the day following final enactment. The amendments made by section 1, and sections 2 and 3 expire May 31, ~~2007~~ 2008.

(7) Proposing new law as a statutory section without subdivisions

Section 1. **[629.78] TRANSPORTATION AFTER TRIAL.**

A county or municipality that causes a warrant to be issued for arrest of a person under section 628.05 or 629.41 shall furnish return transportation at the person's request. The person must be transported to the municipality or town of residence in Minnesota after a trial or final hearing on the matter. This section does not apply:

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

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

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

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

(8) Proposing new law as a statutory sections with subdivisions

Section 1. **[256.977] SENIOR COMPANION PROGRAM.**

Subdivision 1. **Establishment.** The Minnesota Board on Aging shall establish a senior companion program to engage the services of low . . . .

Subd. 2. **Compensation.** A person serving as a senior companion shall be compensated for no more than 20 hours . . . .

Subd. 3. **Grants.** The Minnesota Board on Aging may make grants-in-aid for the purchase of senior companion . . . .

(9) Proposing new uncoded law without subdivisions

Section 1. **LAND SALE AUTHORIZED.**

Independent School District No. 466, Dassel-Cokato, may sell and execute a deed of conveyance for any unused school property notwithstanding its possible later use for school purposes.

(c) Repealers

(1) Repeal of a section

Section 1. **REPEALER.**

Minnesota Statutes 20.., section ..., is repealed.

(2) Repeal of a subdivision

> Section 1. **REPEALER.**
>
> Minnesota Statutes 20.., section ..., subdivision .., is repealed.

(3) Repeal of session law

> Section 1. **REPEALER.**
>
> Laws 20.., chapter ..., is repealed.

(4) Repeal of a rule part

> Section 1. **REPEALER.**
>
> Minnesota Rules, part ..., subpart ..., is repealed.

(5) Repeal divided in subdivisions

> Section 1. **REPEALERS; OBSOLETE PROVISIONS.**
>
> Subdivision 1. **Disposal of diseased animals.** Minnesota Statutes 20.., sections 35.701; and 35.96, subdivision 5, are repealed.
>
> Subd. 2. **Consumer Advisory Board.** Minnesota Statutes 20.., section 62Q.64, is repealed.
>
> Subd. 3. **Housing authority exemption; energy planning.** Minnesota Statutes 20.., section 216C.30, subdivision 4, is repealed.
>
> Subd. 4. **Advisory council definition.** Minnesota Statutes 20.., section 256E.21, subdivision 3, is repealed.

(6) Repeal divided into paragraphs

> Section 1. **REPEALER.**
>
> (a) Minnesota Statutes 20.., section ..., is repealed.
>
> (b) Minnesota Statutes 20.. Supplement, section ..., is repealed.
>
> (c) Minnesota Rules, part ..., is repealed.

(7) Revival and reenactment

Sec. 88. Laws 2008, chapter 344, section 56, is amended to read:

Sec. 56. **REPEALER.**

(a) Minnesota Statutes 2006, sections 62A.149, subdivision 2; and 65B.29, are repealed.

(b) Laws 2006, chapter 255, section ~~26~~ 56, is repealed.

EFFECTIVE DATE; REVIVAL AND REENACTMENT. This section is effective retroactively from August 1, 2008, and Laws 2006, chapter 255, section 26, codified as Minnesota Statutes, section 62J.83, is revived and reenacted as of that date.

(d) Appropriation

(1) Regular biennial (odd-numbered year session)

Sec. 10. **APPROPRIATION.**

$50,000 is appropriated from the general fund to the commissioner of administration to administer sections 1 to 9. The appropriation is available for the biennium ending June 30, 20...

(2) Permanent improvement

Section 1. **APPROPRIATION.**

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

(3) Annual statutory appropriation

Sec. 6. **[XXX.XX] APPROPRIATION.**

$20,000 is appropriated annually from the general fund to the commissioner of agriculture for the costs of inspecting wheat.

If coding was not assigned when the provision was drafted, the revisor would assign coding during the editing process after its enactment.

(4) Statutory appropriation of dedicated receipts

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

(5) Antilapse provision

> This appropriation is available until expended.

(e) Effective dates

(1) General

> Sec. 10. **EFFECTIVE DATE.**
>
> Sections 1 to 9 are effective the day following final enactment.

> Sec. 10. **EFFECTIVE DATE.**
>
> Sections 1 to 9 are effective September 1, 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) Application

> Sec. 3. **EFFECTIVE DATE.**
>
> Sections 1 and 2 are effective August 1, 2013, and apply to students entering grade 9 in the 2013-2014 school year and later.

(3) Multiple effective dates

> Sec. 10. **EFFECTIVE DATES.**
>
> Sections 1, 3, 4, 5, and 9 are effective the day following final enactment. Section 2 is effective January 1, 20...

In this example, sections 6, 7, and 8 would be effective August 1, since no effective date is stated for those sections. If there were an item of appropriation in the bill, then those sections would be effective July 1.

(4) Repeal with specific effective date

> Sec. ... **REPEALER.**
>
> Section ... is repealed effective July 1, 20...

(5) Retroactive effective date

> Sec. 10. **EFFECTIVE DATE.**
>
> Sections 1 to 8 are effective retroactively from July 1, 20...

(6) Conditional effective date

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

(7) Section effective date

> Sec. ... Minnesota Statutes 20.., section 122A.162, is amended to read:
>
> 122A.162 **LICENSURE RULES.**
>
> The commissioner may make rules relating to licensure of school personnel not licensed by the Board of Teaching or Board of School Administrators.
>
> **EFFECTIVE DATE.** This section is effective September 1, 20...

As an alternative to having an effective date at the end of an article or bill, an effective date may be added directly after a section. See discussion and forms in section 2.21.

Chapter 3
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3.1 OMNIBUS BILLS

(a) Generally.

This section covers the omnibus bills that establish the state budget. The state budget is a function of the money the legislature decides to spend and collect by law. The amount that is available to be spent is dependent on how much revenue is raised by the various taxes and fees that are imposed and their rates and methods of collection. This is because the Minnesota Constitution requires a balanced budget. It does not permit the use of public debt to finance the operations of state government. See article XI, sections 4 and 5.

Some of the money that the state collects is dedicated, by law or by the state constitution, to certain funds and accounts in the state treasury, to be spent for specific purposes. Money that is not deposited in the state treasury for a special or dedicated purpose is allocated to the general

fund and may be spent "for the usual, ordinary, running, and incidental expenses of the state government." Minnesota Statutes, section 16A.54.

The legislature spends money through appropriations. 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. Each omnibus bill has many appropriation items, often to several agencies, for many purposes.

Omnibus bills have the essential elements of other bills: each has a title and an enacting clause and is divided into sections and subdivisions. However, omnibus bills contain additional unique elements. Also, the format of the appropriating language of the omnibus bills- is different from other bills. For appropriations in other bills see section 2.20.

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 and are usually divided into a number of different articles.

Each appropriation item within an omnibus bill may have one or more conditions attached to the appropriation, called riders. Several types of common riders as well as legal consideration and drafting advice about riders are discussed in paragraph (i).

(b) Bill process.

Omnibus bills are put together by house of representatives and senate committees. They 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 bills are subject to much change as the bills are being put together. Omnibus bills can be assembled in two ways: amended on to an existing bill or introduced as a committee bill.

If amended, they follow the same guidelines as amendments to other bills. See chapter 4, Amendments. If introduced as a committee bill, after the content of the bill is finalized by the full committee, a new bill is prepared and introduced by the chair on behalf of the committee and given priority for floor consideration or referral to another standing committee. Companion bills of these committee bills are not prepared for introduction and consideration in the other body, although that body may deem a bill to be a companion of the committee bill for purposes of conference committee. Because of their complexity and length, omnibus bills are almost always referred to conference committees.

(c) Legal considerations.

(1) Constitution.

The act of appropriating is important because the Minnesota Constitution 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.

(2) House of representatives and senate rules.

The house of representatives and senate establish omnibus bills by rule, organized by principal subject area. See House Rule 4.03 for a list of finance and revenue bills and Senate Rule 7.3 for a list of tax and appropriation bills.

Since each house develops its own omnibus bills, ordinarily no companions are introduced in the other body. Each finance or budget committee or division of the house of representatives or senate usually develops a bill for the agencies or programs under the jurisdiction of the committee or division.

A review of the Session Laws will show that the number and organization of omnibus bills passed by the legislature has varied over the years.

(3) Minnesota Statutes.

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

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

(4) Minnesota cases on appropriations issues.

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

- A state obligation to a political subdivision is of no force without an appropriation. *State ex rel. Chase v. Preus*, 179 N.W. 725, 726 (Minn. 1920), *County of Beltrami v. Marshall,* 135 N.W.2d 749 (Minn. 1965).

- 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,* 152 N.W.2d 484 (Minn. 1967); *United States Fire Insurance Co. v. Minnesota State Zoological Board,* 307 N.W.2d 490 (Minn. 1981).

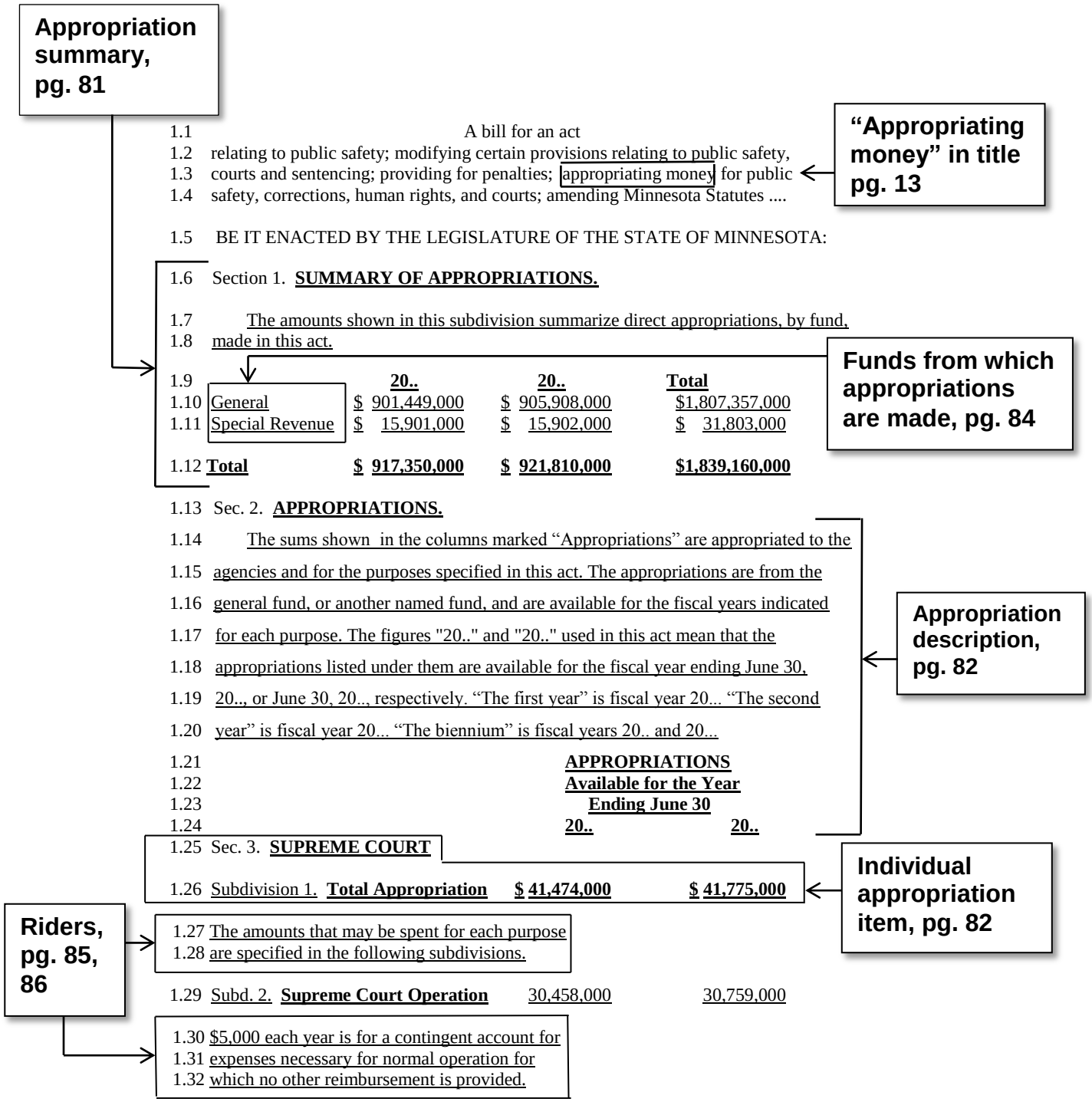
- A provision of an omnibus appropriation bill even though uncoded can be as permanent as coded statutes, and in the circumstances of the case can repeal a coded statute by implication. *State v. City of Duluth*, 56 N.W.2d 416 (Minn. 1952).

  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."

- 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 (8th Cir. 1977).

- 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*, 222 N.W.2d 87 (Minn. 1974).

(d) Omnibus bill example.



(e) Bill composition.

(1) Bill order.

The best way to learn the drafting style and form of omnibus bills is to review recent omnibus bills. Each substantive area has its own nuances.

The standard order for an omnibus appropriations bill (except for kindergarten through grade 12 education) is described below. As with non-omnibus bills, the title and enacting clause are mandatory state constitutional requirements, other elements are optional.

- title (see 2.5 and this section, paragraph (b) for discussion);
- enacting clause (see 2.6 for discussion);
- appropriation summaries and description and (see paragraphs (f) and (g) for discussion);
- individual appropriations and associated riders (see paragraphs (h) and (i) for discussion);
- coded sections, amended and proposed, in statutory order (see 2.8 and 2.10 for discussion);
- amendments to session law sections in order of year, chapter, article, section, and subdivision (see 2.8 and 2.9);
- uncoded sections (see 2.8 for discussion);
- revisor's instructions (see 3.13 for discussion);
- repealers (see 2.20 for discussion); and
- general effective dates not appended to specific bill sections (see 2.21 for discussion).

(2) Title.

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.

Fig. 1

A bill for an act
relating to state government; appropriating money for the general administrative and judicial expenses of state government with certain conditions and changes in related programs, practices, and rules; providing for the transfer of certain money in the state treasury; fixing and limiting fees; making technical and clarifying changes; amending Minnesota Statutes ....

The common thread that runs through the various sections of a law need only be a "mere filament" to withstand the single subject restriction. *Blanch v. Suburban Hennepin Regional Park Dist.*, 449 N.W.2d 150, 154-55 (Minn. 1989).

Similarly, a title that contains words that "alert readers" and are "reasonably related" to the changes in the act has been held constitutionally sufficient. *Masters v. Commissioner of Dep't of Natural Resources*, 604 N.W.2d 134, 137-38 (Minn. Ct. App. 2000). The Supreme Court has indicated, 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).

(f) Appropriation summaries.

(1) Generally.

Some omnibus bills begin with summaries of the appropriations made within the bill. The most common of these summaries is the Summary by Fund which totals the appropriation from each fund for each fiscal year and the biennium as a whole. Another common summary is the Summary by Agency which totals the appropriation that each agency receiving money in the bill will receive.

(2) Form.

Fig. 2

Section 1. **SUMMARY OF APPROPRIATIONS.**

Subdivision 1. **Summary By Fund.** The amounts shown in this subdivision summarize direct appropriations, by fund, made in this act.

SUMMARY BY FUND

	20..	**20..**	**Total**
General	$ 1,281,533,000	$ 1,281,282,000	$ 2,562,815,000
Health Care Access	2,157,000	2,157,000	4,314,000
Total	**$ 1,283,690,000**	**$ 1,283,439,000**	**$ 2,567,129,000**

Subd. 2. **Summary By Agency - All Funds.** The amounts shown in this subdivision summarize direct appropriations, by agency, made in this act.

SUMMARY BY AGENCY – ALL FUNDS

	20..	**20..**	**Total**
Minnesota Office of Higher Education	$ 190,823,000	$ 190,573,000	$ 381,396,000
Board of Trustees of the Minnesota State Colleges and Universities	545,366,000	545,365,000	1,090,731,000
Board of Regents of the University of Minnesota	547,501,000	547,501,000	1,095,002,000
Total	**$ 1,283,690,000**	**$ 1,283,439,000**	**$ 2,567,129,000**

(g) Appropriation description.

(1) Generally.

To reduce duplication of text throughout the bill, an appropriation description is included in omnibus bills. This boilerplate language appears once in the bill, creates the appropriation authority, sets the fiscal years, and defines common terms, such as "the first year" and "the biennium."

(2) Form.

Fig. 3

Section 1. **STATE DEPARTMENTS; APPROPRIATIONS.**

The sums shown in the columns marked "Appropriations" are appropriated to the agencies and for the purposes specified in this act. The appropriations are from the general fund, or another named fund, and are available for the fiscal years indicated for each purpose. The figures "20.." and "20.." used in this act mean that the appropriations listed under them are available for the fiscal year ending June 30, 20.., or June 30, 20.., respectively. "The first year" is fiscal year 20.. "The second year" is fiscal year 20.. "The biennium" is fiscal years 20.. and 20..

(h) Individual appropriation items.

(1) Generally.

An "item of appropriation" is a separate and identifiable sum of money dedicated for a specific purpose. *Inter Faculty Organization v. Carlson*, 478 N.W.2d 192, 195 (Minn. 1991).

(2) 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. The Minnesota Supreme Court has held that an item need not be a specific dollar amount stated in the law. Some appropriations appropriate "a sum sufficient" or "the amount necessary," which can be determined by identifying the amount required by a formula, for example, or the revenue generated by collecting certain fees or taxes. In *Johnson v. Carlson*, the court upheld the governor's item veto of an appropriation to a state agency attributable to a tax rate increase, saying the dollar amount need not be stated in law, so long as the dollar amount was "readily identifiable." *Johnson v. Carlson*, 507 N.W.2d 232, 234 (Minn. 1993).

(3) Form.

The appropriating language in an omnibus bill has the same six elements as any appropriation: amount, fiscal year of appropriation, words of appropriation, source, recipient, and purpose.

Fig. 4

				APPROPRIATIONS	
				Available for the Year	
				Ending June 30	
				20..	**20..**
Sec. 2.	**NATURAL RESOURCES**				
Subdivision 1.	**Total Appropriation**		**$ 207,502,000**	**$ 202,510,000**	
	Appropriation by Fund				
General		120,616,000	115,091,000		
Natural Resources		26,373,000	25,798,000		
Game and Fish		60,413,000	61,521,000		
Solid Waste		100,000	100,000		
The amounts that may be spent for each purpose are specified in the following subdivisions.					
Subd. 2.	**Mineral Resources Management**		51,194,000	51,174,000	
$378,200 the first year and $33,741,000 the second year are for mineral diversification.					

(i) Amount.

The amount should be stated in figures, usually rounded to the nearest thousand dollars. Sections within an appropriation bill are often divided into subdivisions that make allocation of the overall appropriation.

(ii) Fiscal year of appropriation.

Fiscal years begin July 1 of the previous numerical year. Thus, fiscal year 2013 begins on July 1, 2012. The fiscal year should be stated in figures, not written in words.

Appropriations in sessions in odd-numbered years may be made for the current fiscal year and for either or both fiscal years of the next biennium, but not beyond. Appropriations in even-numbered year sessions may be made for either or both

fiscal years of the current biennium, but not beyond. See Minnesota Constitution, article XI, section 6.

Because state accounts are kept by fiscal year, 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.

Fig. 5

1.11	Sec. 2. **SUPREME COURT**		
1.12	Subd. 3. **Civil Legal Services**	10,000,000	10,000,000
1.13	If the appropriation in either year is		
1.14	insufficient, the appropriation for the		
1.15	other year is available for it.		

Similarly, balances may be carried over from the first year of a biennium to the second as seen in Figure 6.

Fig. 6

1.11	Sec. 2. **SUPREME COURT**		
1.12	Subd. 3. **Civil Legal Services**	10,000,000	10,000,000
1.13	Any unencumbered balance remaining in the		
1.14	first year does not cancel and is available in		
1.15	the second year.		

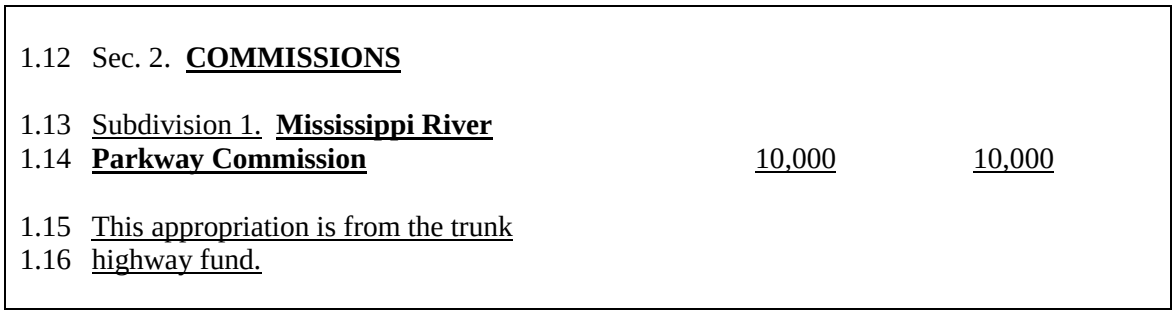
(iii) Words of appropriation.

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. In an omnibus bill, this element is usually fulfilled in the appropriation description section of the bill and is not found in the individual appropriation items.

(iv) 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. In the absence of an expressly stated source, Minnesota Statutes, section 16A.575, provides that the appropriation is from the general fund. See Figure 7 for an appropriation not from the general fund.

Fig. 7



1.12 Sec. 2. **COMMISSIONS**

1.13 Subdivision 1. **Mississippi River**
1.14 **Parkway Commission** 10,000 10,000

1.15 This appropriation is from the trunk
1.16 highway fund.

(v) 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.

(vi) Purpose.

A purpose for the appropriation should be clearly and precisely stated. The general purpose of an appropriation can usually be ascertained by the title of the subdivision; however, more specific purposes can be given through rider language like that seen in Figure 4, subd. 2 regarding mineral diversification.

(i) Riders.

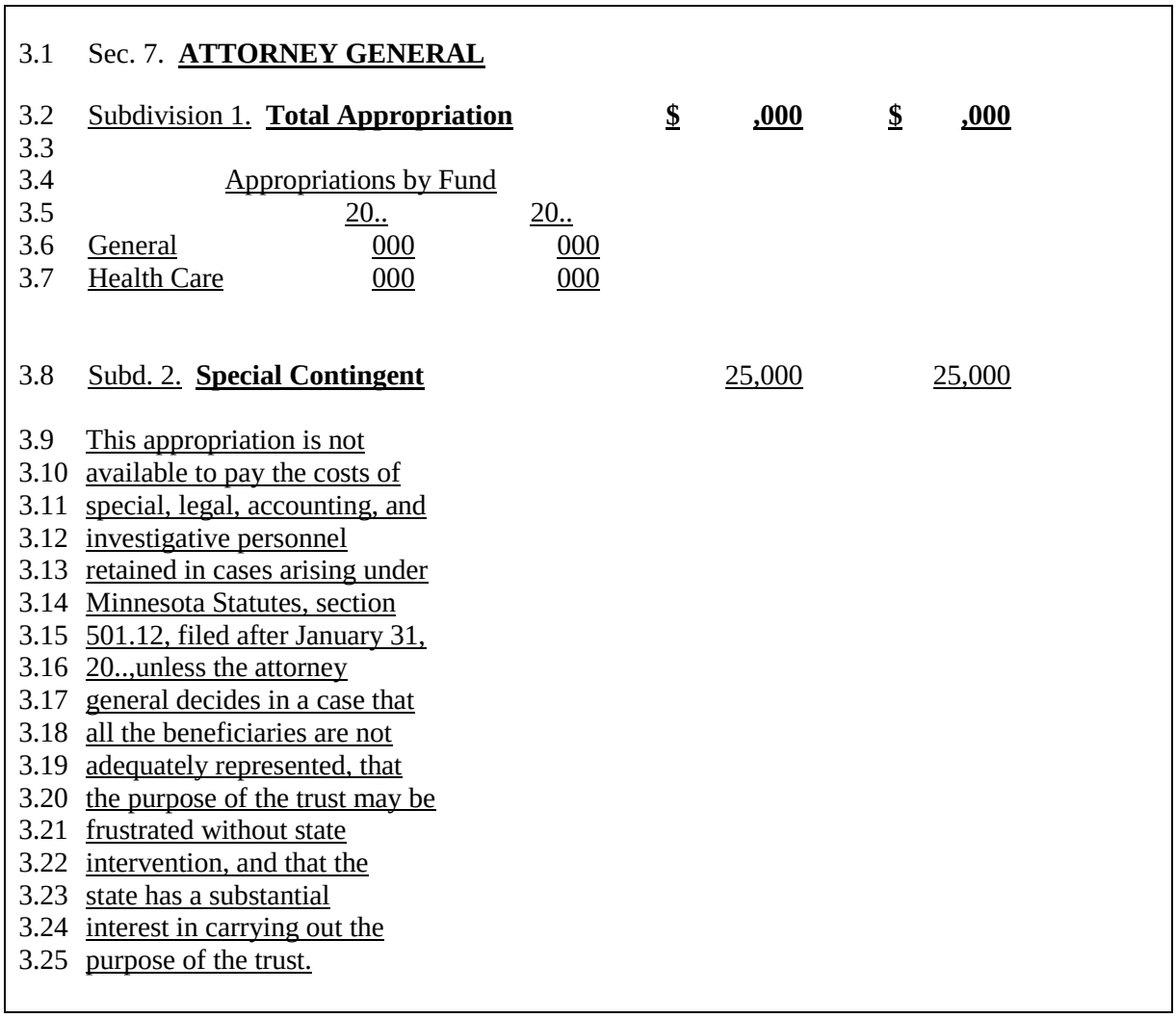
(1) Generally.

Rider is a generic term for language accompanying an appropriation that conditions the appropriation in some way. Examples of the types of conditions include: allocating large appropriations between programs; designating whether the appropriation should be added to the department's base budget or is a one-time appropriation; restricting or allowing transfers or use in the other fiscal year of the biennium; including an anti-lapse or expiration provision; and requiring matching grants. These types of riders limit or expand the procedure of the appropriation itself and are therefore sometimes known as procedural riders. Because appropriations are temporary law and expire at the end of a biennium, the riders attached to them should not contain permanent substantive law. See the discussion on drafting advice in clause (4) for more about how to avoid substantive riders.

(2) Form.

Riders appear in a column below the subdivision title. If there are multiple riders attached to the same item of appropriation, they can be lettered like paragraphs.

Fig. 8



Sec. 7. **ATTORNEY GENERAL**

Subdivision 1. **Total Appropriation**			**$,000**	**$,000**
	Appropriations by Fund			
	20..	20..		
General	000	000		
Health Care	000	000		
Subd. 2. **Special Contingent**			25,000	25,000

This appropriation is not available to pay the costs of special, legal, accounting, and investigative personnel retained in cases arising under Minnesota Statutes, section 501.12, filed after January 31, 20..,unless the attorney general decides in a case that all the beneficiaries are not adequately represented, that the purpose of the trust may be frustrated without state intervention, and that the state has a substantial interest in carrying out the purpose of the trust.

(3) Common riders.

(i) Introductory riders.

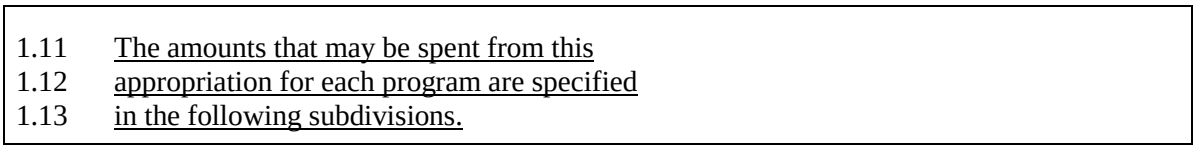
A type of introductory rider that commonly follows a summary by fund in appropriations bills may be worded as follows:

Fig. 9

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

or

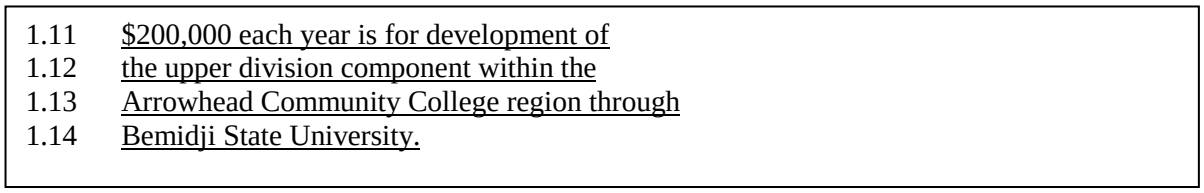
Fig. 10



(ii) Onetime vs. budget base appropriations.

Although the general rule is that funding for fiscal years 2014 and 2015 is assumed to continue at the fiscal year 2013 appropriated level unless some other level is specified, it may be helpful to clarify the intent of an appropriation. The following is a typical example of rider language contained in an omnibus appropriations bill that may cause confusion:

Fig. 11



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.

Examples of rider language that adds the funds to the base include:

Fig. 12

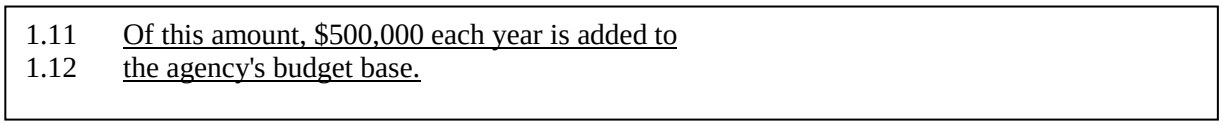
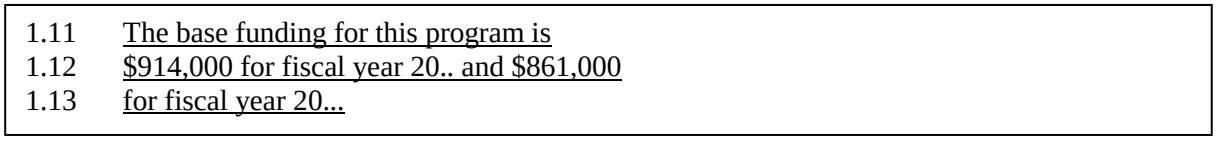


Fig. 13



Examples of rider language that designates the appropriation as a onetime appropriation include:

Fig. 14

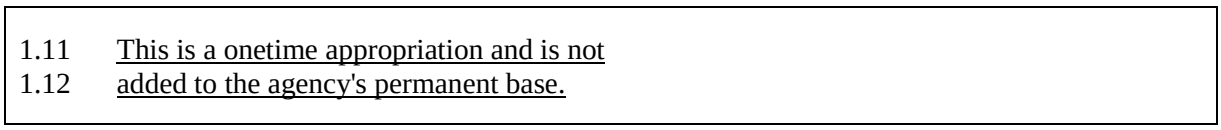


Fig. 15

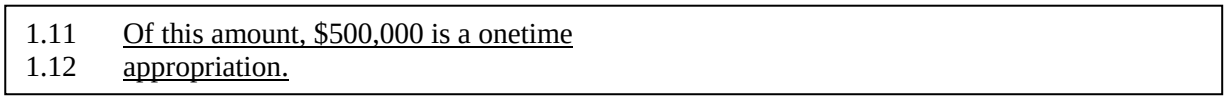
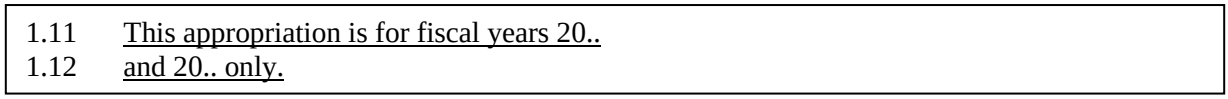


Fig. 16



(iii) Matching grant provisions.

Occasionally, the drafter may intend an appropriation 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, for example, dollar-for-dollar, of the matching funds to be committed. It is also a good idea to name the commissioner of management and budget as the agency responsible for determining if the matching funds have been committed.

Fig. 17

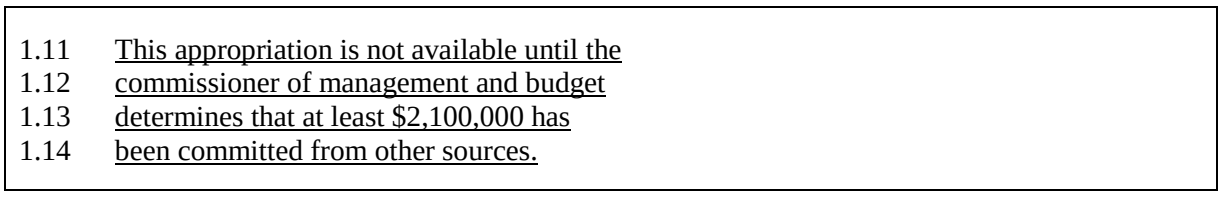
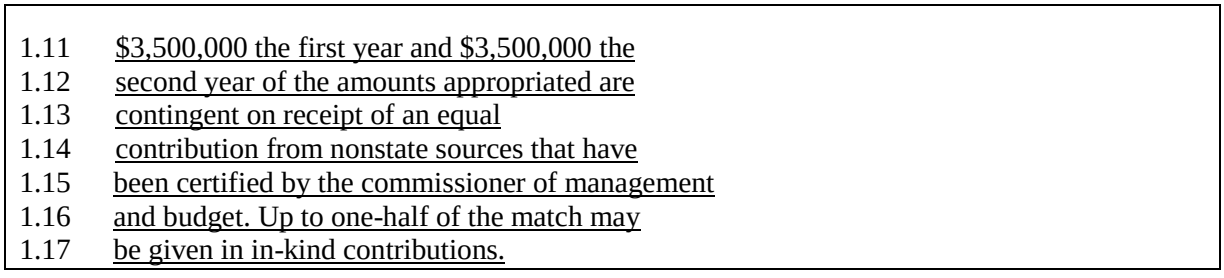


Fig. 18



(iv) Other common riders.

Although Minnesota Statutes, section 16A.28, provides that a state agency may carry forward operating funds appropriated to the state agency in the first year 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." Minnesota Statutes, section 16A.28, does not allow appropriations to the agency for programs it operates or funds that are not part of the operation of the agency to be carried forward.

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:

Fig. 19

1.11 During the 20..-20.. fiscal biennium, grant
1.12 money must not be transferred to operations
1.13 within the Department of Health without the
1.14 approval of the legislature.

Fig. 20

1.11 The commissioner may transfer up to
1.12 $15,000,000 each year to the transportation
1.13 revolving loan fund.

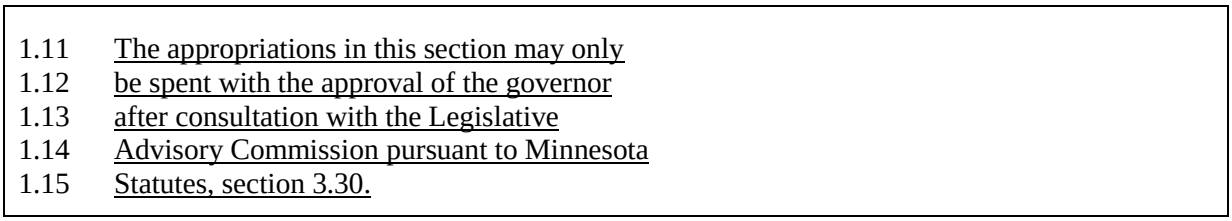
To prevent an appropriation for a project from lapsing or reverting back to the fund from which it was originally appropriated, the legislature may extend the life of the appropriation by express language.

Fig. 21

1.11 This appropriation is from the county
1.12 state-aid highway fund and is available
1.13 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:

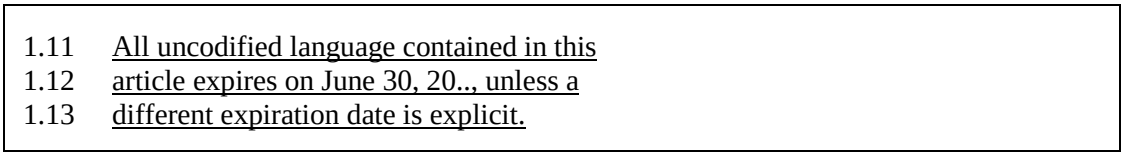
Fig. 22



(v) 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. See Laws 2011, First Special Session chapter 9, article 10, section 16.

Fig. 23



(4) Drafting advice.

A drafter should be careful to avoid placing substantive law in a rider. Figure 24 contains substantive law. 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 14, before *The*, there should be added "For the fiscal biennium ending June 30, 20..,"

Fig. 24

Sec. 3. **BOARD ON JUDICIAL STANDARDS** **$ 105,000** **$ 104,000**

Approved Complement.

The Board on Judicial Standards shall annually review the compliance of each district, county, municipal, or probate judge with Minnesota Statutes, section 546.27. The board shall notify the commissioner of finance of each judge not in compliance. If the board finds that a judge has compelling reasons for noncompliance, it may decide not to issue the notice. When the commissioner is notified that a judge is not in compliance, the commissioner shall not pay the judge's salary.

The board may cancel a notice of noncompliance if it finds that a judge has since complied, but a judge shall not be paid a salary for the period in which the notification of noncompliance is in effect.

(j) Nonappropriation sections.

Omnibus bills usually contain non-appropriation sections. Depending on the effect of the section, and the nuances and traditions of substantive area, these sections may be grouped together with or segregated from the appropriations sections. With the exception of these placement issues, these sections are drafted like those drafted in any other bill.

Programs created in omnibus bills that are general and permanent in nature should be codified. See section 2.8 for guidance on coding sections.

(k) 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.

Deficiencies and reductions have slightly different appropriation descriptions than that of initial appropriations described in paragraph (g).

Figure 25 shows an example of this language and refers to the earlier law. If the dollar amount is to be added to the prior appropriation, the description language should clarify that the new appropriation is added to it. If the dollar amount is to be subtracted from the prior appropriation, it should appear in parentheses and the description language should include this convention.

Fig. 25

Section 1. **SUPREME COURT; APPROPRIATIONS.**

The dollar amounts shown are added to or, if shown in parentheses, are subtracted from the appropriations in Laws 20.., chapter .., article .., from the general fund, or another named fund, to the Supreme Court for the purposes specified in this article, to be available for the fiscal years indicated for each purpose. The figures "20xx" and "20yy" used in this article mean that the appropriations listed under them are available for the fiscal year ending June 30, 20xx or June 30, 20yy respectively.

	APPROPRIATIONS	
	20xx	**20yy**
Sec. 2. **BOARD OF PUBLIC DEFENSE**	**$ -0-**	**$ (1,153,000)**
Sec. 3. **COURT OF APPEALS**	**$ -0-**	**$ 200,000**

In Figure 25, "xx" stands for the first year of a biennium, "yy" stands for the second.

3.2 BONDING

(a) Introduction.

Both the state and its political subdivisions have the authority to sell and issue bonds in order to borrow money for a variety of purposes, as provided in the Minnesota Constitution and by law. The proceeds raised from the sale of these bonds are used to pay the costs of projects that are approved by the legislature.

(b) Constitutional considerations.

The Minnesota Constitution is quite clear that *any* expenditure of public money must be for a "public purpose." "Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes." Minnesota Constitution, article X, section 1. "The legislature shall pass no local or special law…authorizing taxation for a private purpose." Minnesota Constitution, article XII, section 1. *See also e.g., Castner v. City of Minneapolis*, 99 N.W. 361 (Minn. 1904).

Article XI of the Minnesota Constitution regulates state finances and is largely concerned with public debt. "Public debt" is a legal obligation of the state, payable in whole or in part from a tax of statewide application such as property, sales, or income taxes. Bonds sold and issued for which "the full faith, credit, and taxing powers" of the state are pledged are known as general obligation bonds. "Public debt" does not include an obligation of the state payable from a source of revenue other than taxes. Minnesota Constitution, article XI, section 4. *See also Schowalter v. State*, 822 N.W.2d 292 (Minn. 2012).

The Constitution also contains a general prohibition against the state's involvement with internal improvements. "The state shall not be a party to carrying on works of internal improvements except as provided by this Constitution." Article XI, section 3. Public debt may be contracted for internal improvements, in a manner authorized by law, but only for the purposes and subject to the conditions stated in the Constitution.

For example, public debt for state highways is authorized in article XIV of the Constitution, which establishes the trunk highway system.

Public debt is also authorized in article XI, section 5 of the Constitution, which permits the issuance of general obligation bonds to develop forestation, to construct and improve airports, and to improve railroad rights-of-way and other rail facilities. The state may also contract public debt to purchase, construct, and improve public buildings and land. This grant of authority, which is found in section 5, clause (a), was adopted by voters as a constitutional amendment in 1962. It permits bonding "for the acquisition and betterment of public lands and buildings and other public improvements of a capital nature."

Most bonding authorized by the legislature involves the purposes described in section 5, clause (a). According to the terms of the Constitution, these projects must be: (1) adopted by a three-fifths vote of the legislature; (2) publicly owned; and (3) capital in nature.

Neither the Constitution nor state law offers a precise definition of the term "capital nature." However, guidance provided by state bond counsel has suggested the following. First, the expenditure must be for the acquisition or improvement of a "fixed asset," such as land, buildings, or improvements to land. Second, the fixed asset must have a useful life of at least ten years. Third, an expenditure on a fixed asset already owned must be a substantial improvement that extends the useful life or substantially increases the value of the fixed asset.

Finally, the purpose for which any general obligation bonds are issued must be clearly set forth in law. Minnesota Constitution, article XI, section 7.

(c) Case law.

The constitutional requirement that public money be spent for a public purpose and the restrictions on internal improvements and contracting public debt have been the focus of a long line of court cases dating back to the state's early years. These cases have involved challenges to enactments of the legislature that approved debt financing for a variety of purposes and typically raise the same central issue: whether such debt financing is related to an activity appropriate for government involvement.

In a series of early decisions, 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,* 89 N.W.2d 635 (Minn. 1958); water pollution control facilities, *Minnesota Pollution Control Agency v. Hatfield,* 200 N.W.2d 572 (Minn. 1972); low and moderate-income housing, *Minnesota Housing Finance Agency v. Hatfield,* 210 N.W.2d 298 (Minn. 1973); and a multipurpose sports facility, *Lifteau v. Metropolitan Sports Facilities Comm'n.,* 270 N.W.2d 749 (Minn. 1978).

The *Visina* decision provided what is probably the most authoritative guidance as to when public debt may be contracted for works of internal improvement. First, the state or its political subdivisions may only expend public money on a public purpose. A "public purpose" is an activity that will benefit the community as a whole and is directly related to the functions of government. A legislative declaration of "public purpose" is not controlling; the final determination rests with the court. Finally, the mere fact a private interest may derive an incidental benefit from the activity does not deprive the activity of its "public purpose." However, if the primary object of the activity is to promote a private interest, the activity is unconstitutional; even if there is some incidental public benefit. *Visina,* 89 N.W.2d at 643.

Over the years, the court has recognized the changing nature of what constitutes a "public purpose." *See Minnesota Housing Finance Agency,* 310 N.W.2d at 306, holding that the notion of what is public use changes from time to time. "The term 'public use' is flexible and cannot be limited to the public use known at the time of the forming of the Constitution," *citing Stewart v. Great Northern Ry. Co.,* 68 N.W. 208 (Minn. 1896). *See also Lifteau,* 270 N.W.2d at 754, discussing the evolution of the public purpose doctrine in Minnesota.

(d) Legislative findings or policy statements.

If a new program requires public debt and the drafter anticipates that it will be challenged in court, a policy statement or legislative findings or both may be useful in defense. Minnesota Statutes, section 462A.02, the Housing Finance Agency Law of 1971, was cited extensively by the *Lifteau* court. It sets forth exhaustive legislative findings and policy statements for the housing law, including the following:

> 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.

Statements of policies or legislative findings are not necessary for bills in which the propriety of governmental involvement has already been established.

If statements of policies or findings are used, they should be specific. They should not resort 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 give specific reasons for state involvement.

(e) State bonding.

There are three main types of bonds that are issued by the state. The first, as mentioned earlier, are general obligation bonds, backed by the full faith, credit, and taxing powers of the state. The sale and issuance of most general obligation bonds are authorized pursuant to article XI, sections 4 to 7 of the Minnesota Constitution.

Trunk highway bonds are a distinct form of general obligation bond of the state, whose proceeds are dedicated solely to projects on the trunk highway system and whose debt service is paid with trunk highway fund revenue. Minnesota Constitution, article XIV.

The second type of bonds are revenue bonds. Revenue bonds are not subject to the same constitutional requirements as general obligation bonds because revenue bonds are not an "obligation" of the state, meaning, they are not secured by a statewide tax. Rather, revenue bonds are secured only by a source of revenue generated by fees, charges, or other income derived from the publicly financed and operated project, such as rents from public housing, which is then pledged for the repayment of the bonds.

Numerous state agencies have the authority to issue revenue bonds for a variety of purposes, so the laws relating to these authorizations are found throughout Minnesota Statutes. For example, pursuant to Minnesota Statutes, section 136A.32, the Higher Education Facilities Authority may issue revenue bonds to construct or improve facilities for student housing, parking, academic or administrative purposes, and other buildings or equipment used by public colleges and universities in the state. As mentioned earlier, such bonds are not an obligation of the state but are payable only from loan repayments, revenue generated from fees, and other security pledged by the borrower; in this case, the college or university benefiting from the particular bond issue.

The third type of bonds are commonly known as "appropriation bonds." They are so-named because such bonds are dependent solely upon appropriations of the legislature to make the annual debt service payments on the bonds. As a result, appropriation bonds also do not constitute a long-term legal obligation of the state and are not considered "public debt" within the meaning of the constitution. While the state may identify a revenue stream to repay the bonds, such revenue is not pledged as security for their repayment; an important distinction from revenue bonds. See Minnesota Statutes, section 16A.99, Tobacco Appropriation Bonds, and section 16A.965, Stadium Appropriation Bonds, for examples. The legislature has also

committed to appropriate money for bonds issued by another public entity. See Minnesota Statutes, section 137.54, relating to the University of Minnesota football stadium.

State bonding is authorized by the legislature in an omnibus capital investment bill that has been traditionally considered and passed in the second year of the biennium. This helps even out the legislative workload; by considering and passing the operating budget in odd-numbered years and a capital budget in even-numbered years. A review of the last decade or so of session laws, however, will reveal that bonding legislation is not always limited to the second year.

For examples of the various types of state bonding bills, see paragraph (j), clauses (2) and (3).

(f) Local bonding.

Local governments have been granted authority to issue general obligation and revenue bonds, for the purposes and subject to the conditions imposed by the legislature. The issuance of these bonds is governed generally by Minnesota Statutes, chapter 475, but also by a variety of other statutes and special local laws, depending on the particular unit of government and authority that has been granted.

For example, port authorities may issue general obligation bonds for purposes prescribed by law in an amount authorized by its city's council, pursuant to Minnesota Statutes, section 469.060. The city of Bloomington was authorized to issue revenue bonds for parking facilities and related improvements at the Mall of America. This grant of authority is found in Laws 2008, chapter 366, article 5, section 29.

Legislation involving local bond issues is typically included and passed in the omnibus capital investment bill or in a "public finance" omnibus bill or article of an omnibus bill.

For examples of local bonding bills, see paragraph (j), clause (1).

(g) Basic considerations.

A basic consideration in all bond law drafting is whether the bonds will be marketable, that 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.

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:

Fig. 26

Sec. 2. **BOND SALE.**

To provide the money appropriated by this act from the bond proceeds fund, the commissioner of management and budget shall sell and issue bonds of the state in an amount up to $14,615,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI, sections 4 to 7.

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

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

Fourth, the security for repayment or the method by which the bonds will be paid must be clear. The governmental unit issuing the bonds is borrowing money to pay for the project and must eventually repay its lenders. These lenders want security that they will be repaid.

In the case of general obligation bonds, 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 (taxing authority) to raise additional revenue to do so. Because these conditions are absent in the case of revenue bonds, a chief concern to investors is whether there is sufficient revenue to repay the bonds. For this reason, revenue bonds pay the highest rate of interest. General obligation bonds typically sell at the best interest rate because there is taxing authority to back them. While appropriation bonds are not regarded as highly by investors as general obligation bonds, they are still considered a more reliable investment than revenue bonds. As a result, they offer substantially lower financing costs to the borrower than revenue bonds.

(h) Other conditions.

When drafting a bonding bill, it is also important to be aware of whether the particular appropriation would be subject to other conditions imposed by law.

For example, many state capital grant programs require local governments to provide matching funds or other nonstate contributions as a condition of receiving the grant. See Minnesota Statutes, section 103F.161, Flood Hazard Mitigation Grants, which specifies that "a grant may not exceed one-half the total cost" of the proposed project.

Minnesota Statutes, section 16A.695, specifies a number of requirements that apply when property is purchased or bettered with state bond proceeds. When state bonds are issued to

finance property that is to be leased, managed, or used by a private entity for example, this statute governs the lease or management contract which must be entered into and complied with to ensure the legality of the bonds.

Finally, all appropriations for capital improvements, including appropriations from the general fund, are available until the project is completed or abandoned, subject to Minnesota Statutes, section 16A.642. This statute requires the commissioner of management and budget to report to the legislature by January 1 of each odd numbered year on the cancellation of general fund and bond financed capital improvement projects authorized more than four years before January 1. It directs the unencumbered or unspent project balances included in the report to be cancelled effective July 1, unless the project is specifically reauthorized by an act of the legislature.

The drafter needs to be aware of such conditions, especially if the author of the bill intends to make the appropriation exempt from certain requirements.

(i) Specific problem areas.

Bonding bills consistently present unique or specific problems to drafters and it would be impossible to cover every potential issue that may arise in this summary. Suffice it to say, the drafter should be aware that bonding will involve the state Constitution, statutes, session laws, and even state guidelines.

For example, in order to maintain the state's good credit rating, the Department of Management and Budget establishes guidelines limiting the amount of debt the state may incur. From time to time the legislature has enacted provisions to address these guidelines in the omnibus capital investment bill. See Laws 2008, chapter 179, section 75, directing the commissioner of finance to make certain assumptions in calculating debt service limits.

New political subdivisions, like economic development authorities, are sometimes created to accomplish a limited purpose and are given bonding authority to accomplish that purpose. New political subdivisions are also sometimes created to avoid bonding limitations on existing units of government. When creating a new political subdivision with bonding authority, the drafter should try to follow the model of a successful existing subdivision.

Local governments are regular issuers of bonds and often desire to vary procedures or restrictions that are provided by general law, such as waivers of debt limits or popular vote requirements. A volume of session laws may have several laws changing the conditions for particular bonds of particular local government bodies.

Bonding is also affected by federal tax law. The state sells taxable and tax-exempt general obligation bonds. The tax exempt status of bonds is of crucial importance to investors as the interest earned on the bonds is free from federal income tax. The tax exempt status remains throughout the life of the bonds, provided applicable tax law requirements are met. If an action is taken which results in the bonds not being allocated to the qualified purpose for which they were issued, such as an improper use of the bond-financed property, the bonds will lose their tax exempt status.

These examples represent just a few of the potential issues that arise in drafting bonding legislation. Mastery of this specialized area of law may require more time than most drafters can give it. Consultation with available sources of information or experts like bond counsel, can make it manageable.

(j) Examples.

(1) Local government bonding.

Fig. 27

A bill for an act

relating to bonds; authorizing the city of Winsted to issue bonds under Minnesota Statutes, chapter 475, to finance the acquisition and betterment of a facility consisting of a city hall, community center, and police station.

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

Section 1. **CITY OF WINSTED; BONDING AUTHORITY.**

(a) The city of Winsted may issue general obligation bonds under Minnesota Statutes, chapter 475, to finance the acquisition and betterment of a facility consisting of a city hall, community center, and police station; park improvements, including trails and an amphitheater; related public improvements; and substantial landscaping for the improvements.

(b) The bonds may be issued as general obligations of the city without an election to approve the bonds under Minnesota Statutes, section 475.58.

(c) The bonds are not included in computing any debt limitation applicable to the city, including, but not limited to, the net debt limits under Minnesota Statutes, section 475.53, and the levy of taxes under Minnesota Statutes, section 475.61, to pay principal of and interest on the bonds that is not subject to any levy limitation.

(d) The aggregate principal amount of bonds used to pay costs of the acquisition and betterment of the facility consisting of a city hall, community center, and police station; park improvements, including trails and an amphitheater; related public improvements; and substantial landscaping for the improvements may not exceed $4,900,000, plus an amount equal to the costs related to issuance of the bonds and capitalized interest.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective upon compliance by the governing body of the city of Winsted with Minnesota Statutes, section 645.021, subdivision 3.

This is a good example of a local government bonding bill. Paragraph (b) provides a waiver to the election requirement. Paragraph (c) exempts these bonds from inclusion in computing certain net debt limits. Paragraph (d) provides the "cap" on the amount of bonds that may be issued under this specific grant of authority.

This legislation was included in the public finance article of the 2008 Omnibus Tax Bill, Laws 2008, chapter 154, article 10, section 29.

(2) State bonding.

Fig. 28

A bill for an act

relating to capital improvements; appropriating money to renovate the governor's residence; authorizing the sale and issuance of state bonds.

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

Section 1. **GOVERNOR'S RESIDENCE RENOVATION.**

Subdivision 1. **Appropriation.** $4,000,000 is appropriated from the bond proceeds fund to the commissioner of administration to renovate the governor's residence.

Subd. 2. **Bond sale.** To provide the money appropriated in this act from the bond proceeds fund, the commissioner of management and budget shall sell and issue bonds of the state in an amount up to $4,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI, sections 4 to 7.

EFFECTIVE DATE. This section is effective the day following final enactment.

This is a state bonding project involving the issuance of general obligation bonds to raise the necessary money. The appropriation is made from the "bond proceeds fund;" the fund which proceeds from the sale of state bonds issued under the Minnesota Constitution, article XI, section 5, clause (a), are credited.

This appropriation is being made to the commissioner of administration. A variety of state agencies, however, are involved in administering their own capital improvement programs. When drafting a bonding bill, it is important to know which state agency has the proper jurisdiction, such as natural resources, transportation, and corrections, and should receive the appropriation.

Although separate bills of this kind are routinely introduced during the session, the projects are adopted as part of an omnibus capital investment bill that includes a whole range of projects.

(3) State bonding; grant to local government.

Fig. 29

A bill for an act

relating to capital improvements; authorizing the sale and issuance of state bonds; appropriating money for the Duluth Entertainment Convention Center arena.

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

Section 1. **DULUTH ENTERTAINMENT AND CONVENTION CENTER.**

Subdivision 1. **Appropriation.** $40,283,154 is appropriated from the bond proceeds fund to the commissioner of employment and economic development for a grant to the Duluth Entertainment and Convention Center Authority to design, construct, furnish, and equip renovations to the Duluth Entertainment Convention Center. The renovations must include an approximately 217,446 square foot arena with an ice sheet of at least 200 feet by 85 feet; trade show and concert space; seating capacity of at least 6,630 with suites, club seats, and concessions; state-of-the-art locker and training facilities; and accessible and expanded media space.

Subd. 2. **Bond sale.** To provide the money appropriated in this act from the bond proceeds fund, the commissioner of management and budget shall sell and issue bonds of the state in an amount up to $40,283,154 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 16A.631 to 16A.675, and by the Minnesota Constitution, article XI, sections 4 to 7.

Subd. 3. **Activities; contracts.** The legislature recognizes that the authority has all powers necessary or convenient to design, construct, furnish, equip, and improve the Duluth Entertainment Convention Center, including a new arena, and may enter into contracts that are, in its judgment, in the best interests of the public for those purposes. Notwithstanding any law to the contrary, the authority may adopt a fair and competitive design and construction procurement process as determined by the authority to be in the public interest in connection with the Duluth Entertainment Convention Center improvements and which contract may provide for a construction manager at risk.

EFFECTIVE DATE. This section is effective the day following final enactment.

Frequently, a state bonding bill will appropriate money for a grant to a local unit of government. These projects may be subject to additional requirements that are included in the legislation authorizing the grant. Steps must be followed before funds are made available, including entering into a grant agreement, and use agreement, if the local capital project will be used or

operated by a nonprofit organization. This project was enacted in Laws 2008, chapter 179, section 21, subdivision 7.

(4) Trunk highway bonding; generally.

Fig. 30

A bill for an act

relating to transportation; appropriating money for trunk highway interchanges; authorizing the sale and issuance of state bonds.

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

Section 1. **TRUNK HIGHWAY BONDS; APPROPRIATION AND BOND SALE AUTHORIZATION.**

Subdivision 1. **Appropriation.** $ 35,000,000 is appropriated from the bond proceeds account in the trunk highway fund to the commissioner of transportation for construction of interchanges involving a trunk highway, where the interchange will promote economic development, increase employment, and promote traffic safety. This amount must be allocated solely outside of the department's metropolitan district.

Subd. 2. **Bond sale.** To provide the money appropriated in subdivision 1 from the bond proceeds account in the trunk highway fund, the commissioner of management and budget shall sell and issue bonds of the state in an amount up to $35,000,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 167.50 to 167.52, and by the Minnesota Constitution, article XIV, section 11, at the times and in the amounts requested by the commissioner of transportation. The proceeds of the bonds, except accrued interest and any premium received from the sale of the bonds, must be deposited in the bond proceeds account in the trunk highway fund

EFFECTIVE DATE. This section is effective the day following final enactment.

This example provides the general format for a trunk highway bill. While the appropriation provision in subdivision 1 follows the same general principles as other state or local bonding bills, subdivision 2, the bond sale, is different, and reflects the unique constitutional requirements for trunk highway bonds.

(5) Trunk highway bonding; grant to local government.

Fig. 31

A bill for an act

relating to highways; authorizing issuance of trunk highway bonds; appropriating money for marked Trunk Highway 75 in Luverne.

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

Section 1. **HIGHWAY APPROPRIATION AND BOND SALE.**

Subdivision 1. **Appropriation.** $1,688,000 is appropriated from the bond proceeds account in the trunk highway fund to the commissioner of transportation for a grant to the city of Luverne for surfacing improvements on marked Trunk Highway 75 in the city of Luverne.

Subd. 2. **Bond sale.** To provide the money appropriated in subdivision 1 from the bond proceeds account in the trunk highway fund, the commissioner of management and budget shall sell and issue bonds of the state in an amount up to $1,688,000 in the manner, upon the terms, and with the effect prescribed by Minnesota Statutes, sections 167.50 to 167.52, and by the Minnesota Constitution, article XIV, section 11, at the times and in the amounts requested by the commissioner of transportation. The proceeds of the bonds, except accrued interest and any premium received from the sale of the bonds, must be deposited in the bond proceeds account in the trunk highway fund.

EFFECTIVE DATE. This section is effective the day following final enactment.

While most trunk highway bond appropriations are directed to the commissioner of transportation, sometimes a drafter will be asked to direct the appropriation to a local unit of government. In order to accomplish this, a simple approach is to instruct the commissioner of transportation to make a grant to the specified entity, the city of Luverne in Figure 31. Note that the bond sale language remains the same for all trunk highway bonds regardless of the appropriation recipient.

3.3 AMENDMENTS TO THE MINNESOTA CONSTITUTION

(a) Constitutional considerations.

The Minnesota Constitution, article IX, section 1 authorizes the legislature to propose amendments to the state constitution, which become part of the constitution if ratified by the people at a general election. If two or more amendments are submitted to voters at the same time, this section requires voters to vote on each amendment separately. In all other respects, the form and manner of submitting the question of the amendment to the people is left to the judgment and discretion of the legislature. *See State ex rel. Marr v. Stearns,* 75 N.W. 210 (Minn. 1898) rev'd on other grounds.

(b) Form of amendment.

(1) Displaying text.

Minnesota Statutes, section 3.20 requires an act for the submission of an amendment to the constitution to "… set forth the section as it will read if the amendment is adopted, with only the other matter necessary to show in what section or article the alteration is proposed." The current practice follows the bill drafting conventions of underscoring additions and striking deletions. Examples of how this is done can be found in paragraph (e), clause (1).

(2) Bill form.

The long-standing custom and practice of the Minnesota legislature has been to use a bill as the vehicle to propose the adoption of state constitutional amendments to the people. Examples of the form of these bills can be found in paragraph (e). These bills are subject to all the legislative process requirements applicable to other bills. In addition, there are special legislative rules that apply to state constitutional amendments. Accordingly, an amendment to add a constitutional amendment to a bill that does not already include one is not germane under Senate Rule 35.3; a bill that proposes a constitutional amendment must be referred or re-referred before second reading to the house Committee on Rules and Legislative Administration under House Rule 4.15; and a bill containing a constitutional amendment may only contain the statutory language and changes necessary to conduct the constitutional election and implement the constitutional amendment should it pass according to Joint Rule 2.01.

Legislative practice has been to present bills containing constitutional amendments to the governor even though constitutional amendments are not subject to the governor's veto power. *Op. Atty. Gen 213-c, March 9, 1994,* and *Op. Atty. Gen. 86a, November 12, 1946.* As a courtesy, the governor is given the opportunity to indicate support for the amendment by signing the bill before it is deposited with the secretary of state.

(3) Joint resolution form.

Joint Rule 2.07 authorizes the use of joint resolutions to propose constitutional amendments to the people. This joint rule does not allow for the presentment of joint resolutions to the governor. Examples of the form of a joint resolution to propose a state constitutional amendment to the people can be found in chapter 6.

Drafters sometimes include with constitutional amendments related amendments or additions to Minnesota Statutes that become effective upon the adoption of the amendment by the people. In these cases, the joint resolution should not be used because the governor arguably still has veto power over these statutory amendments and additions.

(4) Ballot questions.

Constitutional amendments not only show the textual changes that will be made to the state constitution should the people adopt the amendment, they also pose the ballot questions on

which the people will be asked to vote. In drafting ballot questions, the legislature has a good deal of latitude, subject only to the following limitations: (1) the ballot questions must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the proposal to a popular vote. *See State ex rel. Marr v. Stearns,* 75 N.W. 210, 214 (Minn. 1898), rev'd on other grounds; accord *State v. Duluth & N.M. Ry. Co.*, 112 N.W. 897, 898 (Minn. 1907), accord *Breza v. Kiffmeyer*, 723 N.W.2d 633 (Minn. 2006); and (2) voters must be able to understand the essential purpose of the proposed constitutional amendment. *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636 (Minn. 2012).

(5) Effective date.

Constitutional amendments are effective upon the report of the canvassing board that it has been ratified by the people. *City of Duluth v. Duluth Street Railway Co.*, 62 N.W. 267 (Minn. 1895). If it is necessary to provide for a later effective date, it may not be sufficient to include a separate effective date for the amendment. Unless the delayed effective date is part of the ballot question, the constitutional amendment may become effective upon adoption by the people. *See State ex rel. Graves v. Brown*, 247 N.E.2d 463 (Ohio 1969). An example of a delayed effective date included in the ballot question can be found in Figure 33.

(c) Manner of submission.

The objectives of the constitutional requirement that multifarious amendments be submitted to the people separately are similar to the stated objectives of the single subject rule for bill titles: to prevent the people from being misled or deceived through concealment or confusion; and to prevent logrolling. *Fugina v. Donovan,* 104 N.W.2d 911, 912 (Minn. 1960). This requirement does not, however, prohibit the legislature from submitting two or more amendments to the state constitution as one proposal. Proposed amendments that might be submitted separately to the people may be submitted in a single proposal if they are rationally related to a single purpose, plan, or subject. *Opatz v. City of St. Cloud*, 196 N.W.2d 298 (Minn. 1972), *Fugina,* 104 N.W.2d at 912, *Winget v. Holm,* 244 N.W. 331 (Minn. 1932). However, these cases also underscore the importance of drafting a clear ballot question in these multipart amendment situations and that the significance of each part might require separate submissions though the parts are logically related. See *Fugina,* 104 N.W.2d at 915.

Minnesota Statutes, section 3.20 requires an amendment to the state constitution to be submitted to the people "…at the next general election as provided by the law relating to general elections." State election law regulates the form of the ballot question, section 204B.36, subdivision 3, the color of the ballot, section 204D.11, subdivision 2, and the form and distribution of sample ballots, section 204D.15.

Minnesota Statutes, section 3.21 requires the attorney general at least four months before the election at which the people will be asked to vote on a proposed constitutional amendment to give the secretary of state a statement of the purpose and effect of all amendments being proposed, showing clearly the form of the existing sections of the constitution and how they will read if

amended. This statement is important in determining what the people intended in adopting a state constitutional amendment. *Knapp v. O'Brien*, 179 N.W.2d 88 (Minn. 1970).

(d) Construction of amendment.

The rules of construction of constitutional provisions are substantially the same as the rules applicable to the construction of statutes. *State v. Twin City Telephone Co.*, 116 N.W. 835 (Minn. 1908). In *State ex rel. Mathews v. Houndersheldt*, 186 N.W. 234 (Minn. 1922), the Minnesota Supreme Court provided the following summary of these rules:

> Chief among them is the one which requires a construction which will give effect to the intent of the people as expressed in the language of the amendment they adopt. Davis v. Hugo, 81 Minn. 220, 83 N. W. 984. If the language is unambiguous, it must be taken as it reads--there is no room for construction. State v. Sutton, 63 Minn. 147, 65 N. W. 262, 30 L. R. A. 630, 56 Am. St. Rep. 459. The constitution must be read as a whole so as to harmonize its various parts. State v. Stearns, 72 Minn. 200, 75 N. W. 210, and the maxim, noscitur a sociis, is applicable. Dike v. State, 38 Minn. 366, 38 N. W. 95. The evils the amendment was designed to remedy and its legislative history may be considered. State v. O'Connor, 81 Minn. 79, 83 N. W. 498; State v. Brown, 97 Minn. 402, 106 N. W. 477, 5 L. R. A. (N. S.) 327.

Chapter 7 provides a general overview of what drafters need to know about statutory construction.

(e) Examples.

(1) Proposing amendment to existing section.

Fig. 32

A bill for an act

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

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

Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, article XIII, section 3, will read:

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

Sec. 2. **SUBMISSION TO VOTERS.**

The proposed amendment must be submitted to the people at the 20.. general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to add two student members to the University of Minnesota Board of Regents?

Yes .....

No ....."

Note that the constitutional section does not contain the printed headnote shown in Minnesota Statutes. The omission emphasizes that those printed headnotes are not part of the constitution.

(2) Proposing amendment to multiple sections.

Fig. 33

A bill for an act

proposing an amendment to the Minnesota Constitution, article V, sections 1, 3, 4; article VIII, section 2; article XI, sections 7 8; abolishing the Office of the State Treasurer; repealing the powers, responsibilities, and duties of the state treasurer.

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

ARTICLE 1

CONSTITUTIONAL AMENDMENT;

STATE TREASURER'S OFFICE ABOLISHED

Section 1. **CONSTITUTIONAL AMENDMENTS PROPOSED.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, article V, section 1, will read:

Section 1. The executive department consists of a governor, lieutenant governor, secretary of state, auditor, ~~treasurer~~ and attorney general, who shall be chosen by the electors of the state. The governor and lieutenant governor shall be chosen jointly by a single vote applying to both offices in a manner prescribed by law.

article V, section 3, will read:

Sec. 3. The governor shall communicate by message to each session of the legislature information touching the state and country. He is commander-in-chief of the military and naval forces and may call them out to execute the laws, suppress insurrection and repel invasion. He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to his duties. With the advice and consent of the senate he may appoint notaries public and other officers provided by law. He may appoint commissioners to take the acknowledgment of deeds or other instruments in writing to be used in the state. He shall take care that the laws be faithfully executed. He shall fill any vacancy that may occur in the offices of secretary of state, ~~treasurer,~~ auditor, attorney general and the other state and district offices hereafter created by law until the end of the term for which the person who had vacated the office was elected or the first Monday in January following the next general election, whichever is sooner, and until a successor is chosen and qualified.

(Proposing amendment to multiple sections, cont.)

article V, section 4, will read:

Sec. 4. The term of office of the secretary of state, ~~treasurer,~~ attorney general and state auditor is four years and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.

article VIII, section 2, will read:

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

article XI, section 7, will read:

Sec. 7. 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 shall be maintained on ~~his~~ the 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.

article XI, section 8, will read:

(Proposing amendment to multiple sections, cont.)

Sec. 8. (a) The permanent school fund of the state consists of 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. Within limitations prescribed by law, the fund shall be invested to secure the maximum return consistent with the maintenance of the perpetuity of the fund. The principal of the permanent school fund shall be perpetual and inviolate forever. This does not prevent the sale of investments at less than the cost to the fund; however, all losses not offset by gains shall be repaid to the fund from the interest and dividends earned thereafter. The net interest and dividends arising from the fund shall be distributed to the different school districts of the state in a manner prescribed by law.

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

Sec. 2. **SUBMISSION TO VOTERS.**

The proposed amendment must be submitted to the people at the 20.. general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to abolish the Office of State Treasurer effective as of the first Monday in January 20..?

Yes …….....

No ....."

If related statutory text was being amended in the bill, the phrase "relating to state government;" would be appropriate at the beginning of the title at line 2. 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.

(3) Proposing new section.

Fig. 34

A bill for an act

proposing an amendment to the Minnesota Constitution by adding a section to article IV; requiring the legislature to provide by law for DNA evidence in civil and criminal trials and hearings.

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

Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a section shall be added to article IV, to read:

Sec. 27. The legislature shall provide by law for the admissibility as evidence in civil and criminal trials and hearings of the results of DNA, deoxyribonucleic acid, analysis.

Sec. 2. **SUBMISSION TO VOTERS.**

The proposed amendment must be submitted to the people at the 20.. general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to provide that the admissibility of DNA evidence in civil and criminal trials and hearings shall be governed by law enacted by the legislature?

Yes .....

No ....."

(4) Repeating a section.

Fig. 35

A bill for an act

relating to constitutional amendments; proposing to amend the Minnesota Constitution, article XI; repealing the increase in the sales and use tax rate dedicated for natural resources and cultural heritage purposes; repealing Minnesota Statutes 2008, sections 85.53; 97A.056, subdivisions 1, 2, 3, 4, 5, 6, 7; 114D.50; 129D.17.

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

Section 1. **CONSTITUTIONAL AMENDMENT PROPOSED.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, article XI, section 15, will be repealed.

Sec. 2. **SUBMISSION TO VOTERS.**

The proposed amendment must be submitted to the people at the 20.. general election. The question submitted must be:

"Shall the Minnesota Constitution be amended to remove the sales and use tax rate increase of three-eighths of one percent that began July 1, 20.., and is dedicated to protect our drinking water sources; to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve our arts and cultural heritage; to support our parks and trails; and to protect, enhance, and restore our lakes, rivers, streams, and groundwater until the year 20..?

Yes …....

No ....."

(5) Renumbering as part of a proposed amendment.

Fig. 36

A bill for an act

proposing an amendment to the Minnesota Constitution by adding a new article XV, and by renumbering certain sections; establishing the children's endowment fund.

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

Section 1. **CONSTITUTIONAL AMENDMENT.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a new article XV shall be added to read:

ARTICLE XV

EDUCATION

Section 1. **[Article XIII, section 1, renumbered]**

Sec. 2. **[Article XIII, section 2, renumbered]**

Sec. 3. **[Article XIII, section 3, renumbered]**

Sec. 4. The endowment fund for Minnesota's children is established in the state treasury. The principal of the children's endowment fund must be perpetual and inviolate forever. The net earnings from the fund must be appropriated by law for purposes that will enhance children's physical, emotional, and intellectual development through the age of six years.

Sec. 5. **[Article XI, section 8, renumbered]**

Sec. 6. **[Article XI, section 9, renumbered]**

Sec. 2. **SUBMISSION TO VOTERS.**

The proposed amendment must be submitted to the people at the 20.. general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to create a permanent endowment fund to enhance the development of young children through the age of six?

Yes .....

No ……....."

This constitutional amendment renumbers some existing sections of the constitution.

The article numbers and centered article headings that are printed with the constitution are part of the constitution and should be shown when an entire article is amended. Roman numerals, rather than Arabic numbers, are used to designate articles in the Minnesota Constitution.

(6) Title of ballot questions specified.

Fig. 37

A bill for an act

relating to constitutional amendments; proposing an amendment to the Minnesota Constitution, article XI; increasing the sales tax rate by three-eighths of one percent and dedicating the receipts for natural resource and cultural heritage purposes; creating an outdoor heritage fund; creating a parks and trails fund; creating a clean water fund; creating an arts and cultural heritage fund.

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

Section 1. **CONSTITUTIONAL AMENDMENT.**

An amendment to the Minnesota Constitution is proposed to the people. If the amendment is adopted, a section will be added to article XI, to read:

Sec. 15. Beginning July 1, 2009, until June 30, 2034, the sales and use tax rate shall be increased by three-eighths of one percent on sales and uses taxable under the general state sales and use tax law. Receipts from the increase, plus penalties and interest and reduced by any refunds, are dedicated, for the benefit of Minnesotans, to the following funds: 33 percent of the receipts shall be deposited in the outdoor heritage fund and may be spent only to restore, protect, and enhance wetlands, prairies, forests, and habitat for fish, game, and wildlife; 33 percent of the receipts shall be deposited in the clean water fund and may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, and at least five percent of the clean water fund must be spent only to protect drinking water sources; 14.25 percent of the receipts shall be deposited in the parks and trails fund and may be spent only to support parks and trails of regional or statewide significance; and 19.75 percent shall be deposited in the arts and cultural heritage fund and may be spent only for arts, arts education, and arts access and to preserve Minnesota's history and cultural heritage. An outdoor heritage fund; a parks and trails fund; a clean water fund and a sustainable drinking

water account; and an arts and cultural heritage fund are created in the state treasury. The money dedicated under this section shall be appropriated by law. The dedicated money under this section must supplement traditional sources of funding for these purposes and may not be used as a substitute. Land acquired by fee with money deposited in the outdoor heritage fund under this section must be open to the public taking of fish and game during the open season unless otherwise provided by law. If the base of the sales and use tax is changed, the sales and use tax rate in this section may be proportionally adjusted by law to within one-thousandth of one percent in order to provide as close to the same amount of revenue as practicable for each fund as existed before the change to the sales and use tax.

Sec. 2. **SUBMISSION TO VOTERS.**

(a) The proposed amendment shall be submitted to the people at the 2008 general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to dedicate funding to protect our drinking water sources; to protect, enhance, and restore our wetlands, prairies, forests, and fish, game, and wildlife habitat; to preserve our arts and cultural heritage; to support our parks and trails; and to protect, enhance, and restore our lakes, rivers, streams, and groundwater by increasing the sales and use tax rate beginning July 1, 2009, by three-eighths of one percent on taxable sales until the year 2034?

Yes .....

No ……....."

(b) The title required under Minnesota Statutes, section 204D.15, subdivision 1, for the question submitted to the people under paragraph (a) shall be "Clean Water, Wildlife, Cultural Heritage, and Natural Areas."

3.4 CRIMES AND PENALTIES

(a) Minnesota criminal code.

The main body of Minnesota criminal law is codified in Minnesota Statutes, chapter 609. However, crimes may be found in other chapters of statutory law. Minnesota Statutes, section 609.02, establishes the following four levels of crimes and penalties:

> Subd. 2. **Felony.** "Felony" means a crime for which a sentence of imprisonment for more than one year may be imposed.

> Subd. 3. **Misdemeanor.** "Misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than $1,000, or both, may be imposed.
>
> Subd. 4. **Gross misdemeanor.** "Gross misdemeanor" means any crime which is not a felony or misdemeanor. The maximum fine which may be imposed for a gross misdemeanor is $3,000.
>
> Subd. 4a. **Petty misdemeanor.** "Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than $300 may be imposed.

(b) Default penalty when none specified.

When a crime is established in statute, but no penalty is included in the statutory language, Minnesota Statutes, section 609.03, provides the following penalties:

> If a person is convicted of a crime for which no punishment is otherwise provided the person may be sentenced as follows:
>
> (1) If the crime is a felony, to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both; or
>
> (2) If the crime is a gross misdemeanor, to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both; or
>
> (3) If the crime is a misdemeanor, to imprisonment for not more than 90 days or to payment of a fine of not more than $1,000, or both; or
>
> (4) If the crime is other than a misdemeanor and a fine is imposed but the amount is not specified, to payment of a fine of not more than $1,000, or to imprisonment for a specified term of not more than six months if the fine is not paid.

(c) Drafting advice.

(1) Statutes and court rules.

A drafter should determine whether the author of a bill draft wants a law relating to criminal procedure or substantive matters of criminal law. The substantive matters in criminal law are determined by the legislature in statute. The procedural matters of criminal law, evidence, and juvenile court are determined by the judiciary in court rules. Minnesota Statutes, section 480.059, governs the Rules of Criminal Procedure, section 480.0591 governs the Rules of Evidence, and section 480.0595 governs juvenile court rules. Where there is a criminal matter that involves procedure rather than substance, Minnesota Statutes, section 480.059, subdivision 7, provides as follows:

> Present statutes relating to the pleadings, practice, procedure, and the forms thereof in criminal actions shall be effective until modified or superseded

> by court rule. If a rule is promulgated pursuant to this section which is in conflict with a statute, the statute shall thereafter be of no force and effect.

See State v. Johnson, 514 N.W.2d 551 (Minn. 1994) (discussing the conflict between a statute and a rule of criminal procedure).

The legislature declares what acts are criminal and provides the penalty for those acts as substantive law. The judiciary "regulates the method by which guilt or innocence of one who is accused of violating a criminal statute is determined." *State v. Lindsey*, 632 N.W.2d 652 (Minn. 2001) (citations omitted). A statute is procedural when it does not create a new cause of action or deprive a defendant of a defense on the merits. *Johnson,* 514 N.W.2d at 555 (citations omitted). The judiciary has the responsibility under the separation of powers doctrine to regulate matters of evidence and matters of trial and appellate procedure. *Lindsey,* 632 N.W.2d at 658 (citations omitted). However, if the legislature passes a statute regulating a matter of evidence or court procedure not already governed by a court rule, the court, as a matter of comity, may let the statute stand. *Johnson,* 514 N.W.2d at 554 n.5.

(2) Elements of a crime.

Before drafting a new crime, the drafter should first determine whether a new crime is actually needed. This should include a review of what crimes and penalties currently exist in statute. If the crime or penalty does not already exist for the conduct the author of the bill wishes to prohibit, the drafter should determine whether a new statutory section is needed or whether an existing section should be amended.

(i) Due process.

The elements of the crime and its penalty should be clearly stated in order to satisfy due process and give persons notice of what conduct is prohibited and provide equal protection.

The United States Constitution, amendments 5 and 14, section 1, and the Minnesota Constitution in article I, section 7, provide that "no person shall be deprived of life, liberty, or property, without due process of law." Constitutional due process requires that people be able to comprehend their rights and duties under the law.

A criminal law is particularly susceptible to successful challenge on grounds of being void for vagueness or on grounds of overbreadth. The due process clauses of the state and federal constitutions prohibit a statute from forbidding or requiring the performance of an act in terms that are so vague that persons of common understanding must guess at the meaning of the statute or differ as to its application. A statute is overbroad when its proscriptive language embraces not

only acts properly and legally punishable, but others that are constitutionally protected or outside the police power of the state to regulate.

The Minnesota Supreme Court in *State v. Robinson*, 539 N.W.2d 231 (Minn. 1995) stated:

> "It is a well-established principle that a penal statute must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). Therefore, a statute is void for vagueness if persons of common intelligence must necessarily guess at its meaning or differ as to its application. *State v. Newstrom*, 371 N.W.2d 525 (Minn. 1985).

(ii) Equal protection.

The equal protection clause prevents the state government from enacting criminal laws that arbitrarily discriminate. The United States Constitution, amendment 14, section 1, provides that a state may not deny a person "within its jurisdiction the equal protection of the laws." The due process clause of the United States Constitution, amendment 5, extends this prohibition to the federal government if the discrimination violates due process of law. *Detroit Bank v. United States*, 317 U.S. 329, 337 (1943). *See Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954) ("discrimination may be so unjustifiable as to be violative of due process"). Article I, section 2, of the Minnesota Constitution provides that "no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen."

The prohibition on governmental discrimination is not absolute; it depends on the class of persons targeted for special treatment. In general, court scrutiny is heightened according to a sliding scale when the subject of discrimination is an arbitrary classification such as race or national origin. The most arbitrary classifications demand strict scrutiny, so that the criminal statute must be supported by a compelling government interest. Statutes containing classifications that are not arbitrary must have a rational basis and be supported by a legitimate government interest.

Criminal statutes that have a rational basis for discrimination and are supported by a legitimate government interest *may* discriminate. Criminal statutes that punish felons more severely when they have a history of criminal behavior, for example, three-strikes statutes, are supported by the legitimate government interests of specific and general deterrence and incapacitation. A criminal defendant's status as a convicted felon is rational, not arbitrary like race. Thus, although these statutes discriminate, they are not unconstitutional under the equal protection clause. *See State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991) (used three-pronged test to hold that there is no rational basis under Minnesota Constitution to

justify significant disparity in punishment between users of crack cocaine and users of powder cocaine).

(iii) Mens rea or culpability.

The mens rea, culpability, or guilty state of mind required before a person can be convicted of a crime should be specified in the definition of every crime. The same offense, for example killing a person, can incur a wide range of punishment, depending entirely on what level of mens rea is found present in the person's mind at the time the offense was committed. The difference between criminal negligence and deliberate intention in this case could be the difference between a few years in prison and life in prison. There are four states of mind which constitute the necessary mens rea for a criminal offense. These are that a person acted intentionally or purposely, knowingly, recklessly, or negligently. Blacks Law Dictionary, 435, 1075 (9th ed. 2009) (definitions of culpability and mens rea). Sometimes the definition of a criminal offense will make it clear which of these four mental states is appropriate, but sometimes court decisions explain the requirements of the definition more precisely.

In *State v. Ndikum*, 815 N.W.2d 816, the Minnesota Supreme Court stated that in relying on the common law rule requiring a mens rea element in every crime, the United States Supreme Court has determined that statutory silence is typically insufficient to dispense with mens rea. When a criminal statute is silent as to a mens rea requirement, this silence "does not necessarily suggest that Congress intended to dispense with a conventional mens rea element." Instead, some positive indication of legislative intent is required to dispense with mens rea. *Ndikum*, 815 N.W.2d at 818, *citing* Staples, 511 U.S. 600, 114 S.Ct. 1793 (1994); see, *In re C.R.M.*, 611 N.W.2d 802, 805 (Minn. 2000) ("[L]egislative intent to impose strict criminal liability must be clear."). The court explained that "'we are guided by the public policy that if criminal liability, particularly gross misdemeanor or felony liability, is to be imposed for conduct unaccompanied by fault, the legislative intent to do so should be clear.'" *C.R.M.*, 611 N.W.2d. at 809 (quoting *State v. Neisen*, 415 N.W.2d 326, 329 (Minn. 1987)). The Minnesota Supreme Court has also considered the severity of the penalty for a crime to be an important factor in determining whether the legislature intended to dispense with mens rea as an element of that crime. *See C.R.M.*, 611 N.W.2d at 806–07.

(3) Penalty.

(i) Bills of attainder.

A bill of attainder is a special legislative enactment that declares a person or group of persons guilty of a crime and subject to punishment without a trial. The United States Constitution, article I, sections 9 and 10, prohibit Congress and the state legislatures from enacting bills of attainder. The Minnesota Constitution, article I, section 11, also prohibits bills of attainder. The constitutional prohibition on bills of attainder is to safeguard a person from arbitrary punishment.

(ii) Cruel or unusual punishment.

The United States Constitution, amendment 8, and the Minnesota Constitution, article I, section 5, prohibit cruel or unusual punishment. When drafting a criminal penalty, the drafter should make sure that the punishment fits the crime. A statute that imposes a more severe penalty for an act done "negligently" than for the same act done "intentionally" would likely be held unconstitutional. Statutes sometimes provide different penalties for the same conduct committed with different mental states, such as first, second, and third degree murder in Minnesota Statutes, sections 609.185, 609.19, and 609.195.

(iii) Penalty language.

If an author chooses to rely on Minnesota Statutes, section 609.03, and not include specific penalty language in legislation, then the drafter must specify the level of crime. Whether drafting a new section or amending an existing section, separate crimes and penalties should be set out in separate provisions.

In Figure 38, the crime is drafted with a penalty, but without the level of crime. In Figure 39, the level of crime is stated, without giving a penalty.

Fig. 38

609.222 ASSAULT IN THE SECOND DEGREE.

Subdivision 1. **Dangerous weapon.** Whoever assaults another with a dangerous weapon may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than $14,000, or both.

Subd. 2. **Dangerous weapon; substantial bodily harm.** Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20.000. or both.

Fig. 39

609.2246 TATTOOS; MINORS.

Subdivision 1. **Requirements.** No person under the age of 18 may receive a tattoo unless the person provides written parental consent to the tattoo. The consent must include both the custodial and noncustodial parents, where applicable.

Subd. 2. **Definition.** For the purposes of this section, "tattoo" means an indelible mark or figure fixed on the body by insertion of pigment under the skin or by production of scars.

Subd. 3. **Penalty.** A person who provides a tattoo to a minor in violation of this section is guilty of a misdemeanor.

(4) Parentheses.

Parentheses are generally discouraged in drafting. While it may appear that the use of parentheses, to describe or summarize a statutory section in a single cross-reference or a string of cross-references, clarifies the subject matter of the citation, it can also create unintended results and confusion in the implementation of the law. In the example in Figure 40, for the purposes of fingerprinting certain persons, a targeted misdemeanor includes Minnesota Statutes, section 518B.01, as explained in parentheses to mean an order for protection. However, section 518B.01 also addressed no contact orders. With the inclusion of this parenthetical language, does a targeted misdemeanor include only violations of orders for protection under section 518B.01, or also violations of no contact orders? It is unclear how this language would be interpreted.

Fig. 40

> For purposes of this section, a targeted misdemeanor is a misdemeanor violation of section 169A.20 (driving while impaired), 518B.01 (order for protection violation), 609.224 (fifth-degree assault), 609.2242 (domestic assault), 609.746 (interference with privacy), 609.748 (harassment or restraining order violation), or 617.23 (indecent exposure).

Alternatives to parentheses include commas and rephrasing. The use of commas and rephrasing require the drafter to thoughtfully look at the drafted language and determine whether all or part of a statutory section should be the cross-reference in another section. This results in clearly and simply stated crimes and penalties that avoid vagueness and ambiguity. Figure 41 shows the use of semicolons to divide the list, and Figure 42 shows the use of clauses to form a list of crimes.

Fig. 41

> The crimes for which mandatory minimum sentences shall be served as provided in this section are: criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); drive-by shooting under section 609.66, subdivision 1e; stalking under section 609.749, subdivision 3, clause (3); possession or other unlawful use of a firearm in violation of section 609.165, subdivision 1b, or any attempt to commit any of these offenses.

Fig. 42

> Subd. 2. **Life without release**. The court shall sentence a person to life imprisonment without possibility of release under the following circumstances:
>
> (1) the person is convicted of first-degree murder under section 609.185, paragraph (a), clause (1), (2), (4), or (7);
>
> (2) the person is convicted of committing first-degree murder in the course of a kidnapping under section 609.185, clause (3); or
>
> (3) the person is convicted of first-degree murder under section 609.185, clause (3), (5), or (6), and the court determines on the record at the time of sentencing that the person has one or more previous convictions for a heinous crime.

(5) Effective date.

A statutory section establishing a crime, penalty, or both must be specific as to the effective date. The Constitutional prohibition on ex post facto laws in the United States Constitution, Article I, sections 9 and 10, and the Minnesota Constitution, Article I, section 11, is to prevent legislative enactments that disadvantage a defendant. The U.S. Supreme Court in *Calder v. Bull*, 3 U.S. 386 (1798), listed four types of ex post facto laws:

- a law that makes an innocent action, done before the passage of the law, criminal and punishes the action;
- a law that aggravates a crime, or makes it greater than it was, when committed;
- a law that changes the punishment and inflicts a greater punishment than the law imposed when the crime was committed; and
- a law that alters the legal rules of evidence, allowing evidence of guilt that is lesser or different than the law required at the time of the commission of the offense, in order to convict the offender.

However, Congress or a state legislature may retroactively assist a defendant by legislatively reducing the punishment for a crime.

See Figures 43 and 44 for examples of language specifying when a new crime becomes effective.

Fig. 43

2.1 **EFFECTIVE DATE; APPLICATION.** This section is effective August 1, 20..,
2.2 and applies to crimes committed on or after that date.

Fig. 44

2.1 Sec. 4**. EFFECTIVE DATE; APPLICATION.**
2.2 Sections 1 to 3 are effective August 1, 20.., and apply to incidents involving
2.3 firearms occurring on or after that date.

(6) Title.

The title of the bill should include language such as "providing for criminal penalties" if the criminal penalty being imposed requires incarceration. This language is customary to give notice that the bill includes sanctions and to direct the bill to the correct legislative committees.

3.5 SPECIAL LAWS

(a) Defined.

The courts have defined a "special law" as follows:

> A "special law" is one which relates and applies to particular members of a class, either particularized by express terms of the act or separated by any method of selection from the whole class to which the law might, but for such limitation, be applicable. *Hamlin v. Ladd*, 14 N.W.2d 396 (Minn. 1944). *Visina v. Freeman*, 89 N.W.2d 635 (Minn. 1958).

(b) Prohibition; interpretation by courts.

(1) Constitutional provisions.

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."

(2) Judicial interpretation.

Almost all legislation sets up classes and affects people and other entities differently depending on their class, such as taxpayers with different incomes, disabled persons, cities of the third class, or 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 has no rational basis:

> 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,* 89 N.W.2d 635, 651 (Minn. 1958).
>
> Classification will not violate constitutional prohibition against special legislation if it meets a rational basis test. *Larson v. Sando*, 508 N.W.2d 782 (Minn. Ct. App. 1993), review denied.

A long line of cases, beginning with *Wichelman v. Messner*, 83 N.W.2d 800 (Minn. 1957) apply a three-part "rational basis test."

> In order to determine whether an appropriate classification has been made, thus avoiding violation of constitutional prohibition against special legislation,

> reviewing court applies three-part rational basis test: (1) the classification applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation; (2) the distinctions are not manifestly arbitrary or fanciful but are genuine and substantial so as to provide a natural and reasonable basis justifying the distinction; and (3) there is an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefor which the law purports to provide. *Council of Independent Tobacco Mfrs. of America v. State,* 685 N.W.2d 467 (Minn. Ct. App. 2004), review granted, affirmed, 713 N.W.2d 300 (Minn. 2006), rehearing denied, certiorari denied, 127 S.Ct. 666, 549, U.S. 1052, 166 L.Ed.2d 514 (2006) (citations omitted).

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 based on substantial distinctions and the law applies to every member of the class. Even one alone may constitute a class.

> The legislature may create, through law, a class having only one member without violating constitutional prohibition against special legislation. *Larson v. Sando,* 508 N.W.2d 782.

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,* 91 N.W.2d 642 (Minn. 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,* 61 N.W.2d 508 (Minn. 1953), appeal dismissed 347 U.S. 949 (1954).

(3) Examples of unconstitutional special laws.

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

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

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

- 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,* 130 N.W. 76 (Minn. 1911); and

- A statute granting a limitless bankruptcy exemption to debtors who purchase annuities from a fraternal benefit society. *In re Tveten,* 402 N.W.2d 551 (Minn. 1987). Here the creation of two classes based on whether the seller was a for-

profit insurance company or a fraternal benefit society did not pass the three part rational basis test.

(4) Examples of statutes challenged but upheld.

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

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

- Any two contiguous cities of the first class (authorizing creation of Metropolitan Airports Commission). *Monaghan v. Armatage*, 15 N.W.2d 241 (Minn. 1944), appeal dismissed 323 U.S. 681 (1945);

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

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

- Boroughs of not more than 10,000 population (liquor store regulation). *Arens v. Village of Rogers*, 61 N.W.2d 508 (Minn. 1953), appeal dismissed 347 U.S. 949 (1954);

- Statute exempting a local hospital from compliance with certificate of need requirements. *Rush City Hospital v. Sandstone Area Hospital*, 326 N.W.2d 638 (Minn. 1982); and

- Statute authorizing the private sale of a particular parcel of state land. *Larson v. Sando*, 508 N.W.2d 782 (Minn. Ct. App. 1993), review denied.

Although the problems most of the cases in clause (3) and this clause 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 examples in clause (3) and this clause that neither classes with population limits nor classes with limits based on two factors are automatically approved or disapproved. The classification scheme must be rationally 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, these appropriations are constitutional, including appropriations to pay the claims of named individuals. *Dennison v. State,* 11 N.W.2d 151 (Minn. 1943). Perhaps because the classification device is used successfully to make a law general and avoid the limitations of article XII, section 1, this other kind of exception has had less attention.

(c) Local laws.

(1) Exception for 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 Minnesota 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.

(2) Statutory provisions.

Minnesota Statutes, section 645.021, was enacted in 1959 and sections 645.023 and 645.024 were enacted in 1967 to implement the above constitutional provision. They read:

> **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.

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.

(3) Drafting considerations.

A local law requires local approval unless it meets one of the exceptions in Minnesota Statutes, section 645.023. 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 Minnesota Statutes, 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 drafter must consider that the addition of a local approval clause triggers the application of Minnesota Statutes, section 645.021, to that bill. After the bill is passed into law, the local unit of government must meet those requirements within the time limit of subdivision 3 if the act is to become effective. This requirement may be unexpected or unnoticed by the local unit of government. On the other hand, a local approval clause may reassure members of the legislature that the provision is discretionary and will not take effect without the political subdivision's specific approval. A local law requiring local approval will also appear in the records of the secretary of state and in Table 1 of the print version of Minnesota Statutes under the name of the governmental unit, making it easier to locate in the future. The decision to require, or not require, local approval in a bill is often discussed and determined in the committees of each body with jurisdiction over local government matters. A drafter may seek the counsel of house or senate committee staff to determine whether the committee generally has a preference. When local approval is not required, a drafter who adds a specific provision that local approval is not required may preempt questions. In addition the law will also be included in the records of the secretary of state and in Table 1 of the print version of Minnesota Statutes. In any event, a local approval requirement citing Minnesota Statutes, section 645.021, or a specific exemption from local approval citing the appropriate authority under Minnesota Statutes, section 645.023, removes any uncertainty. *See Blanch v. Suburban Hennepin Regional Park Dist.*, 449 N.W.2d 150 (Minn. 1989).

(4) Effective dates.

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 in paragraph (j).

(d) Specific problem areas.

(1) Counties.

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. See Minnesota Constitution, article XII, section 3.

(2) Laws enacted prior to adoption of article XII, section 2.

Special care should be taken in amending laws applicable to local government units that were enacted prior to the adoption in 1958 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. For 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." 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 example 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.

(3) Contiguous counties.

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 validity of the law could be challenged.

(e) 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.

(f) Finding a local law.

If the drafter is not sure when a local law was enacted but knows the local unit of government to which it applies, Table 1 in the print version of Minnesota Statutes may aid the drafter in finding the law. Table 1 contains local special laws from 1849 organized alphabetically under the name of the local unit of government. This table is compiled manually and may not contain every local law; see the explanation at the beginning of the table. At the time this manual went to press, Table 1 of Minnesota Statutes was not yet available online. If the drafter knows the year the law was enacted, the act can be found in the index to the session law for that year under the name of the local unit of government. See the Session Law Archives on the revisor's Web site. Once found, the drafter should locate all amendments made to the law and include them in the underlying language. See paragraph (h).

(g) Determining whether a local law is effective.

If a law requires local approval under section 645.021, or has a local approval provision, the drafter should be sure the law is in effect before amending it. A drafter can check with the secretary of state to determine whether the local unit of government filed the approval within the time limits required by section 645.021, subdivision 3. If the law has an explicit local approval requirement, Tables 4, 5, and 6 of the print version of Laws of Minnesota, beginning with the year the law is passed, also indicate the approval and filing dates under the name of the local unit of government. See the explanation at the beginning of each table. The session laws for prior years are on the revisor's Web site under Session Law Archives. However, at the time this manual went to press these tables were not yet available online.

(h) Amending a local law.

Because local laws are not codified, the drafter must be sure that the most recent version of the law is being amended. Failure to research prior amendments to the law may result in multiple amendments to the law which are difficult or impossible to read together or have substantive conflicts. The revisor's office annually publishes online and in print a cumulative table of amendments to, or repeals of, session laws that were enacted in or after 1945. This table should be consulted to ensure that all prior amendments to a local law are included in the underlying language before additional amendments are drafted.

(i) Coding.

Special laws, even though permanent, are, by definition, not general in application. They are not usually codified and proposed coding is not placed in a bill for a special law; however, local laws relating to certain counties are codified and should contain proposed coding. The counties are Ramsey, chapter 383A, Hennepin, chapter 383B, St. Louis, chapter 383C, Dakota, chapter 383D, and Anoka, chapter 383E. Occasionally, although not required, local laws that are expansions of or exceptions to a general law have been codified. For example, see the specific city port

authorities in sections 469.069 to 469.089. The decision to codify local law should be made sparingly.

(j) Examples.

(1) Bill applying to one unit of government.

Fig. 45

A bill for an act

relating to the city of Edina; establishing terms for certain municipal offices.

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

Section 1. **EDINA CITY COUNCIL.**

At the city elections in 20.. for the city of Edina, three council members shall be elected. The two candidates receiving the highest number of votes shall ....

Sec. 2. **EFFECTIVE DATE.**

This act takes effect the day after the governing body of the city of Edina and its chief clerical officer timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

In this example of a special law, the city is named and there is no proposed coding. Section 2 is the usual provision for local approval required under Minnesota Statutes, section 645.021.

(2) Bill applying to more than one unit of government.

Fig. 46

A bill for an act

relating to taxation; providing for the imposition of an occupation tax upon persons, partnerships, companies, corporations, and other associations engaged in the business of removing gravel from gravel pits in Kittson County and Marshall County; prescribing penalties.

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

Section 1. **KITTSON AND MARSHALL COUNTIES; GRAVEL PITS; OCCUPATION TAX.**

A person engaged in the business of removing gravel from gravel pits in either Kittson County or Marshall County and selling the gravel to other persons, shall pay to the county an occupation tax. The board of county commissioners may determine the amount of the tax necessary for the purposes in section 6, but the amount shall not exceed ten cents on each cubic yard of gravel removed from a gravel pit. The tax must be computed and be due and payable as provided in sections 1 to 7.

Sec. 2. **DEFINITIONS.**

Subdivision 1. **Operator.** For the purposes of sections 1 to 8, "an operator" or "the operator" means a person engaging in the business of removing gravel and selling it to others.

Subd. 2. **Person.** For the purposes of sections 1 to 8, "person" includes individuals, partnerships, companies, corporations, and other associations.

Sec. 3. **COLLECTION OF TAX.**

Subdivision 1. **Report.** Each quarter of each year an operator shall file with the county auditor, under oath, a report in the form and containing the information that the auditor may require. The first report shall be filed on July 1, 20.., covering the period between the effective date for the county of sections 1 to 8 and June 30, 20.., and thereafter on October 1, January 1, April 1, and July 1 of each year covering the preceding quarter. In each report the operator shall state the number of cubic yards of gravel removed during the quarter and compute the amount of the tax due.

Subd. 2. **Computation.** The tax computed in the report must be paid to the county treasurer on the first day of the quarter next following the quarter for which the report is filed.

Sec. 4. **FAILURE TO REPORT AND PAY TAX.**

If an operator fails to file the report required by section 3, subdivision 1, or files an erroneous report, the county auditor shall determine the amount of the tax due and notify the person by certified mail of the amount of the tax. The operator may, within 30 days from the date of mailing of the notice, file a written statement of the objections to the amount of the taxes due. The statement of objections is a petition under Minnesota Statutes, chapter 278, and Minnesota Statutes, sections 278.02 to 278.13, apply to it.

Sec. 5. **PROHIBITION.**

A person may not remove any gravel from any gravel pit unless taxes due under this act have been paid or objections have been filed as provided in section 4. A violation of this section is a misdemeanor.

Sec. 6. **USE OF REVENUE.**

Subdivision 1. **Deposit.** All occupation taxes collected under this act shall be deposited in the county treasury and credited as follows:

(1) 90 percent to the county road and bridge fund; and

(2) ten percent to a county reserve fund for the restoration of abandoned gravel pits.

Subd. 2. **Expenditure.** All occupation taxes deposited and credited to the county road and bridge fund or the reserve fund shall be spent by the county only to maintain, construct, or reconstruct roads traveled by trucks hauling gravel or to restore abandoned gravel pits. Occupation taxes shall only be spent to restore abandoned gravel pits upon lands to which the county holds title or upon lands forfeited to the state, as trustee for nonpayment of taxes.

Sec. 7. **APPLICABILITY TO STATE.**

No report need be filed by or occupation tax paid by the state or its contractors when the gravel removed is used to maintain, construct, or reconstruct trunk highways.

Sec. 8. **EFFECTIVE DATE.**

The provisions of sections 1 to 7 that relate to Kittson County are effective if approved by the members of the board of county commissioners of Kittson County the day after timely compliance by the board and the chief clerical officer of Kittson County with Minnesota Statutes, section 645.021, subdivisions 2 and 3. The provisions of sections 1 to 7 that relate to Marshall County are effective if approved by the members of the board of county commissioners of Marshall County the day after timely compliance by the board and the chief clerical officer of Marshall County with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

This bill specifically provides that the bill is effective for each county when the county approves and files it. Without this provision, under Minnesota Statutes, section 645.02, both counties must approve and file before the law takes effect.

(3) Bill that gives discretion to local unit of government.

Fig. 47

Sec. ... **CITY OF FERGUS FALLS; SALES AND USE TAX AUTHORIZED.**

Notwithstanding Minnesota Statutes, section 297A.99, subdivision 1, or 477A.016, or any other provision of law, ordinance, or city charter, as approved by the voters at the November 2, 2010 general election, the city of Fergus Falls may impose by ordinance a sales and use tax of up to one-half of one percent for the purposes specified in subdivision 2. Except as provided in this section, the provisions of Minnesota Statutes, section 297A.99, govern the imposition, administration, collection, and enforcement of the tax authorized under this subdivision.

EFFECTIVE DATE. This section is effective the day after the governing body of the city of Fergus Falls and its chief clerical officer timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

Even though the bill is discretionary, it specifically requires local approval. Otherwise no local approval would be required under Minnesota Statutes, section 645.023, subdivision 1, paragraph (a).

(4) Local law approval provisions; effective date.

If local law approval is required, use the following form. It is drafted to direct the governing body and its chief clerical officer to the specific statutory provisions they must follow:

Fig. 48

Sec. .. **EFFECTIVE DATE; LOCAL APPROVAL.**

Section … is effective the day after the governing body of ... and its chief clerical officer timely complete their compliance with Minnesota Statutes, section 645.021, subdivisions 2 and 3.

This drafting 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 helpful 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.

(5) Approval by voters.

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:

Fig. 49

Sec. ... **LOCAL APPROVAL; EFFECTIVE DATE.**

Notwithstanding Minnesota Statutes, section 645.021, subdivision 2, this act must be approved by a majority of the voters of the city (county, school district) of ..... voting on the question at an election on the question of its approval. It is effective the day after the chief clerical officer of ….. timely completes compliance with Minnesota Statutes, section 645.021, subdivision 3.

or, if appropriate, it may read:

Fig. 50

Sec. ... **LOCAL APPROVAL; EFFECTIVE DATE.**

Notwithstanding Minnesota Statutes, section 645.021, subdivision 2, this act must be approved by a majority of the electors of the town of ... voting on the question at the annual town meeting or any special town meeting called for that purpose. It is effective the day after the town clerk timely files a certificate of compliance with the secretary of state under Minnesota Statutes, section 645.021, subdivision 3.

If the request requires submission of the question to the voters in the event that the governing body refuses or neglects to approve the law within a given time, the approval section may read:

Fig. 51

Sec. ... **LOCAL APPROVAL.**

This act must be approved by the governing body (town board) of the city (town, county, school district) of .... If the governing body (town board) does not approve this act within ... days after its enactment, and notwithstanding Minnesota Statutes, section 645.021, subdivision 2, the governing body (town board) shall submit the question of approval to the voters of the city (town, county, school district) at the next general election (town meeting) in the city (town, county, school district). If approved by a majority of the voters voting on the question, this act 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.

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:

Fig. 52

Sec. ... **BALLOT QUESTION.**

At the election on the question of approval of section ... the question submitted to the voters must be:

"Shall the 20.. legislative act that authorizes the city of Gotham to provide ambulance service be approved?

Yes …….....

No ……......"

The ballot question describes the purpose of the act that is to be voted on.

(6) Public hearing.

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:

Fig. 53

Sec. ... **PUBLIC HEARING REQUIRED.**

Before approval of this act by the governing body (town board) of the city (town, county, school district) of ..., the governing body shall hold a public hearing on the question. Notice of the time and place of the hearing must be published in a newspaper of general circulation in the city (town, county, school district) once in each week for two successive weeks before the hearing. The published notice must be in a form determined by the governing body (town board). The form must be sufficient in size and prominent in format in order to attract the attention of the reader. The notice shall set forth the intent of the city council (town board, county board, school board) to consider approval of this act. The text of sections 1 to ... of this act must be included in the notice.

3.6 TAXES

(a) State constitutional considerations.

The power of taxation is inherent in the sovereignty of the state. The constitution establishes limitations on the inherent authority to tax. *In re Petition of S.R.A., Inc.*, 7 N.W.2d 484 (Minn. 1942). Article X of the Minnesota Constitution contains the special limitations on the power of the state to tax.

- First, the constitution states that taxes "shall be levied and collected for public purposes." Minnesota Constitution, article. X, section 1. A public purpose is defined as 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." *Visina v. Freeman*, 89 N.W.2d 635, 643 (Minn. 1958). For further discussion on the public purpose doctrine, see section 3.2, paragraph (c).

- Second, taxes "shall be uniform upon the same class of subjects." Minnesota Constitution, article X, section 1. 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, 736 (Minn. 1979); *Rio Vista Non-Profit Housing Corp. v. Ramsey County*, 335 N.W.2d 242 (Minn. 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.*, 136 N.W.2d 782 (Minn. 1965); *Elwell v. County of Hennepin*, 221 N.W.2d 538 (Minn. 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*, 254 N.W. 443 (Minn. 1934). The assessment of homestead property at graduated rates has also 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).

- Third, there are certain provisions in the Minnesota Constitution that limit and define the legislature's power to tax mining operations. Minnesota Constitution, article X, sections 3 and 6. 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.

- Fourth, 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. Minnesota Constitution, article IV, section 18. Interpretation of this section and an identical provision in the United States Constitution, each commonly referred to as the Origination Clause, 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 (Minn. 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.

  A bill that raises revenues, including taxes, but has at its core another principal purpose, such as establishing a program, is not a bill to raise revenue. *Twin Cities National Bank of Brighton v. Nebeker*, 167 U.S. 196 (1897). This same principle applies even if the bill raises more funds than necessary to finance the program, and the excess funds flow to the general treasury. *U.S. v. Munoz-Flores*, 495 U.S. 385 (1991).

  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 of representatives. *United States v. Norton*, 91 U.S. 566, 569 (1875); *Millard*, 202 U.S. at 437; *State v. Wheeler*, 155 N.W. 90 (Minn. 1915).

(b) Federal constitutional considerations.

In addition to state constitutional limitations, the drafter should have a general understanding of federal constitutional limitations on state taxation. It is common to introduce legislation aimed at tax policy that may favor Minnesota businesses. The drafter should consider whether such a proposal violates the Commerce Clause of the United States Constitution. In *Complete Auto Transit v. Brady*, 430 U.S. 274 (1977), the Court established a four-prong test that a state tax must pass in order to be valid under the Commerce Clause:

(1) there must be a substantial nexus or connection between a state and a potential taxpayer that is clear enough to impose a tax;

(2) the tax should be fairly apportioned to an entity's activities within the state;

(3) the tax must not treat out-of-state taxpayers differently than in-state taxpayers; and

(4) the tax must be fairly related to services provided to the taxpayer by the state.

The drafter should review tax legislation to assure that it complies with these requirements of the federal constitution. 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.

(c) Exempt entities under state constitution.

In addition to state and federal constitutional limitations, the drafter should be aware that the Minnesota Constitution provides that the following entities shall be exempt from taxation: public 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. However, the legislature may by law define or limit these exempt entities other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities, and seminaries of learning. Minnesota Constitution, article X, section 1. When preparing a bill involving property taxation, the drafter should be aware that the exemption of churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities, and seminaries of learning may not be defined or limited.

(d) State and federal tax law interaction.

The starting point for calculating Minnesota taxable income is federal taxable income. Therefore, a drafter is often 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*, 184 N.W.2d 588 (Minn. 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.

Fig. 54

Subd. 31. **Internal Revenue Code.** Unless specifically defined otherwise, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended through March 18, 2010.

(e) Definition of tax.

The drafter should be aware that a definition of "tax" was codified in Minnesota Statutes, section 645.44, subdivision 19, in 2006. The definition provides that any "fee," "charge," or similar term that "satisfies the functional requirements" of a tax must be treated as a tax for all purposes of the law. Laws 2006, chapter 259, article 13, section 15. However, the definition also states that the definition of tax found in statute is not intended to "extend or limit" the Origination Clause of the Minnesota Constitution.

(f) Tax expenditure purpose statement.

Minnesota Statutes, section 3.192, states that if a bill "creates, renews, or continues a tax expenditure," the bill "must include a statement of intent that clearly provides the purpose of the tax expenditure and a standard or goal against which its effectiveness may be measured." A tax expenditure is "a tax provisions which provides a gross income definition, deduction, exemption, credit, or rate for certain persons, types of income, transactions, or property that results in reduced tax revenue." Minnesota Statutes, section 270C.11, subdivision 6, clause (1). Thus, if a bill contains a tax expenditure, the drafter must ensure that the bill complies with the requirements of section 3.192. Figure 55 is an example of a section 3.192 purpose statement.

Fig. 55

Sec. 7. **PURPOSE STATEMENTS; TAX EXPENDITURES.**

Subdivision 1. **Authority.** This section is intended to fulfill the requirement under Minnesota Statutes, section 3.192, that a bill creating, renewing, or continuing a tax expenditure provide a purpose for the tax expenditure and a standard or goal against which its effectiveness may be measured.

Subd. 2. **Federal update.** The provisions of article 2, conforming Minnesota individual income, corporate franchise, and estate taxes to changes in federal law, are intended to simplify compliance with and administration of those taxes.

Subd. 3. **Sales tax exemption for sales to townships.** The provisions of article 3, sections 10 and 11, exempting goods and services purchased by townships, is intended to provide state assistance for the functions of Minnesota townships not exempted under current law.

Subd. 4. **Emergency vehicles.** The provisions of article 3, section 12, extending the sales tax exemption for lease of ambulances to other emergency vehicles are intended to clarify the exemption and to provide consistent treatment of emergency vehicles. The underlying purpose of the exemption is to provide state assistance to local governments and other organizations that provide emergency response services.

EFFECTIVE DATE. This section is effective the day following final enactment.

(g) Effective dates.

Every tax bill, with the exception of a few administrative bills, needs an effective date. An effective date in a tax bill typically accompanies each individual section of a bill. The text of an effective date for tax bills differs depending on what tax area the legislation applies to, such as property, income, or sales and use.

(i) Income tax.

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.

Fig. 56

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 20...

(ii) Property tax.

Most property tax laws should be effective for taxes payable in a specific year, and thereafter.

Fig. 57

> 1.11 **EFFECTIVE DATE.** This section is effective for taxes payable in 20.. and
> 1.12 thereafter.

(iii) Sales tax.

Most sales tax laws should be effective for sales and purchases made after a specific date, and typically coincide with the state's fiscal calendar.

Fig. 58

> 1.11 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
> 1.12 June 30, 20...

(iv) Estate tax.

Most estate tax laws should be effective for estates of decedents dying after a specific date.

Fig. 59

> 1.11 **EFFECTIVE DATE.** This section is effective for estates of decedents dying after
> 1.12 December 31, 20...

(h) Links to Minnesota tax information.

For more information on Minnesota taxes, visit the following Web sites:

- Office of the Revisor of Statutes:
  - www.revisor.mn.gov
  - Session laws, statutes, rules, and the status of legislation

- House Research Department
  - http://www.house.leg.state.mn.us/hrd/hrd.htm
  - House Research publications on all tax subject areas

- Minnesota Department of Revenue
  - http://www.revenue.state.mn.us/
  - Research reports, revenue analyses, revenue notices, and tax forms and instructions

- Minnesota Legislative Reference Library
  - http://www.leg.state.mn.us/lrl/links/taxation.asp
  - Taxation – "Links to the World"

3.7 ORGANIZATION OF STATE GOVERNMENT

(a) General considerations.

A bill creating a new agency, board, commission, or department to administer a new program or regulate an occupational group should be drafted with the following general considerations in mind:

- The drafter must provide for all necessary features of a well-functioning operation. See paragraph (b).

- 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.

- 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.

- 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.

- 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 creating a new agency.

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

- 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.

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

- Specify the qualifications of either the person or the members of the board or commission that controls the agency.

- 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.

- 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.

- State the duties or responsibilities of the agency.

- 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 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.

- 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 statutory 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.

- 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.

- Provide for administrative rulemaking. See section 3.9 for further analysis of the considerations involved when drafting a bill that grants rulemaking authority to an agency.

- 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, sections 116J.69 to 116J.71, and chapter 214.

- 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.

- State the relationship, as appropriate, to the governor, the legislature, or the Supreme Court, as the ultimate supervisor.

- State any sanctions or penalties either for persons dealing with the agency or for agency officers or employees.

- Indicate any temporary provisions, such as initial terms of office or temporary powers.

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

- Consider the name to be given the new agency. Is there any agency with a similar name or performing a similar function? Consider a naming convention that will distinguish between the two agencies.

(c) Creating boards, commissions, task forces, and advisory groups.

General provisions relating to boards, commissions, task forces, and advisory groups can be found in Minnesota Statutes, sections 15.014 to 15.059. The drafter should address the following issues in any bill that creates such an entity:

- Specify the name of the group.

- Specify the total number of members and who has the authority to appoint the members of the group. Also determine the convening authority and who will chair the group.

- Specify any compensation and expenses or any restriction on compensation and expenses of the person, board, or commission members who control the agency. See Minnesota Statutes, chapter 15A.

- State the powers and duties of the person, board, or commission that controls the agency, including subpoena power. The relationship of the agency head to any assistants or employees should be specifically set out. The drafter should also spell out the reporting responsibilities of the group, specifically determining who the group is accountable to. In addition, the drafter should state whether any of the powers may be delegated to subordinates.

- Specify the duration of existence of the group.

- Determine staffing for the group and relationship to state agencies.

- Indicate any temporary provisions, such as initial terms of office or temporary powers.

- 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.

- Specify the number of meetings and quorum needed to conduct business.

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

- For the initial bill creating the group, provide an appropriation.

See the example of a working group in paragraph (g).

(d) Altering existing agencies.

When a bill draft requires modifications to existing agencies, a drafter should use special care, and at a minimum consider the following problem areas:

- 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.

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

(e) 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, the following issues should be specifically addressed in the bill:

- If positions but not employees are transferred, determine what happens to employees.

- 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.

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

- 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.

- Specify whether employees are "grandfathered" into the same or a different class with or without a selection process or probation.

(f) Reorganization of existing agencies.

The commissioner of administration has authority under Minnesota Statutes, section 16B.37, to reorganize state agencies by transferring personnel, powers, duties, or any combination of these from one state agency to another if the following requirements are met:

- The agency has been in existence for at least one year prior to the date of transfer.

- The transfer has the prior approval of the governor.

- The reorganization is in the form of a reorganization order that is submitted to the chairs of the government operations committees in the house and senate at least 30 days prior to being filed with the Secretary of State. The order is effective upon filing with the Secretary of State and remains in effect unless amended or superseded. However, a reorganization order which transfers all or substantially all of the powers, duties, or personnel of a department, the Housing Finance Agency, or the Pollution Control Agency is not effective until ratified by a concurrent resolution or enacted into law.

The commissioner must submit a bill to the legislature by January 15th of each year making all statutory changes required by a reorganization order from the preceding calendar year.

(g) Example of a working group.

Fig. 60

A bill for an act

relating to state government; creating a working group; appropriating money.

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

Section 1. **..... WORKING GROUP.**

Subdivision 1. **Creation.** The ..... working group consists of the following members:

(1) ... senator(s), including ... member(s) from the majority party and ... member(s) from the minority party, appointed by the Subcommittee on Committees of the Committee on Rules and Administration of the senate;

(2) ... member(s) of the house of representatives, including ... member(s) appointed by the speaker of the house and ... member(s) appointed by the minority leader;

(3) commissioners of the following agencies, or their designees: .....;

(4) the chairs of committees with jurisdiction over ....., who will serve as ex officio nonvoting members; and

(5) ... public members who have an interest in ....., including ... public members appointed by the speaker of the house of representatives and ... public members appointed by the majority leader of the senate. The appointing authorities must use their best efforts to include at least one representative from each of the following sectors: .....

The membership of the working group must include balanced representation from .....

Subd. 2. **Duties.** The working group must identify strategies, recommendations, and a process for ..... The working group must report proposed strategies, recommendations, and draft legislation to the legislative committees with jurisdiction over ..... and the governor by .....

Subd. 3. **Administrative provisions.** (a) The commissioner of ..... or the commissioner's designee must convene the initial meeting of the working group. Upon request of the working group, the commissioner must provide meeting space and administrative services for the group. The members of the working group must elect a chair or cochairs from the legislative members of the working group at the initial meeting.

(b) Public members of the working group serve without compensation or payment of expenses.

2.7 (c) The working group expires ....., or upon submission of the report required under
2.8 subdivision 2, whichever is earlier.
2.9 (d) The working group may accept gifts and grants, which are accepted on behalf of the state and
2.10 constitute donations to the state. Funds received under this paragraph are appropriated to the
2.11 commissioner of ..... for purposes of the working group.
2.12 Subd. 4. **Deadline for appointments and designations.** The appointments and designations
2.13 authorized by this section must be completed by August 1, ...
2.14 Sec. 2. **APPROPRIATION.**
2.15 $..... in fiscal year is appropriated from the general fund to the Legislative Coordinating
2.16 Commission for the purposes of the working group established in section 1.

3.8 ORGANIZATION OF COUNTIES, CITIES, AND METROPOLITAN GOVERNMENT

(a) Relationship of state and local governments.

The Minnesota Constitution provides in article XII, section 3, as follows:

> "The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions, for the change of boundaries thereof, for their elective and appointive officers including qualifications for office and for the transfer of county seats. 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."

Municipalities possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers. *Breza v. City of Minnetrista*, 725 N.W. 2d 106 (Minn. 2006).

(b) 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. See Minnesota Constitution, article XII, section 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, surveyor, and coroner or medical examiner each are the subject of a chapter in Minnesota

Statutes in the series, chapters 384 to 390. Several counties have merged their auditor and treasurer's offices under special laws.

The general law in chapters 370 to 402 is comprehensive, but special laws for counties are frequently passed. Individual counties often find it easier to meet unique needs 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. Special laws have also been passed to allow certain counties to appoint, rather than elect, certain county officers. 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.

(c) Cities.

City governments fall into two types, 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. Most sessions of the legislature produce several special laws relating to individual cities.

Most cities have city councils for governing bodies. Most, but not all, have mayors. Their primary responsibilities are police and fire protection, street maintenance, health, water and sewers, zoning and land use, and public safety in general. Minnesota cities have lost most of their former involvement with welfare and education.

(d) 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. One type of organized town is the "urban town." 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 a 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, are comprehensive. A chief responsibility of towns is maintenance of town roads but they possess numerous other powers and duties. The exercise of many of the other powers is needed in urbanized territory but urbanization is often followed at some point 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.

(e) 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 3.5, paragraph (c).

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*, 237 N.W.2d 620, 623 (Minn. 1975). The commissions have not been so characterized, *see Lifteau v. Metropolitan Sports Facilities Commission*, 270 N.W.2d 749, 757 (Minn. 1978). 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.

Fig. 62

```
11.1      Sec. . . . APPLICATION.
11.2  This act applies in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey,
11.3  Scott, and Washington.
```

(f) 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.

3.9 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 3D and sections 3.841 to 3.843, provide for legislative oversight of administrative rules and the rulemaking process. 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, 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:

- the entity receiving rulemaking authority meets the definition of "agency" in Minnesota Statutes, section 14.02, subdivision 2;
- the authority being granted meets the definition of a "rule" in Minnesota Statutes, section 14.02, subdivision 4; and
- 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. Figure 63 uses an effective date provision to provide immediate rulemaking authority to the relevant government entity.

Fig. 63

Subd. 5. **Rulemaking.** The commissioner of public safety shall adopt rules to carry out the provisions of this section. Notwithstanding section 16A.1283, the rules must specify the fee to be assessed under subdivision 3.

EFFECTIVE DATE. Subdivisions 1 to 4 are effective one year after publication in the State Register of rules adopted under subdivision 5. Subdivision 5 is effective the day following final enactment.

(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." Figure 64 contains the language commonly used to require adoption of an exempt rule under section 14.386.

Fig. 64

> Subd. 2. **Rulemaking.** The rules adopted by the commissioner under this section are exempt from the rulemaking provisions of chapter 14. The rules are subject to 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, except that section 14.386, paragraph (b), does not apply." Figure 65 includes the language used to make exempted rules permanent.

Fig. 65

> (d) The statutory fees and the filing fees imposed under paragraph (a) may be paid by credit card or debit card. The driver's license agent may collect a convenience fee on the statutory fees and filing fees not greater than the cost of processing a credit card or debit card transaction. The convenience fee must be used to pay the cost of processing credit card and debit card transactions. The commissioner shall adopt rules to administer this paragraph using the exempt procedures of section 14.386, except that section 14.386, paragraph (b), does not apply.

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 Minnesota Statutes, section 14.388, paragraph (a), 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 Minnesota Statutes, section 14.388, paragraph (a), 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. Figure 66 provides an example of how to draft an explicit rule repeal.

Fig. 66

Sec. 8. **RULE REPEALER; RESTRICTING THE CAPITALIZATION OF PERMANENT IMPROVEMENTS TO OTHER REAL ESTATE OWNED BY A BANK.**

Minnesota Rules, part 2675.2170, subpart 1, is repealed.

EFFECTIVE DATE. This section is effective the day following final enactment.

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.

Figure 67 provides an example of how to order a rule change subject to the general APA rulemaking procedures.

Fig. 67

Sec. ... **RULE CHANGE.**

The commissioner shall amend Minnesota Rules, part 5432.0050, subpart 1, so that provisional licenses issued under that part are valid for five years and are issued only to qualified applicants. The amendment must be adopted pursuant to Minnesota Statutes, sections 14.131 to 14.20.

The sections of the APA referred to in Figure 67 are the sections establishing the procedure applicable to rules adopted after public hearing.

Figure 68 provides an example of how to order a rule change subject to the special APA rulemaking procedures.

Fig. 68

Sec. ... **RULE CHANGE.**

The commissioner shall amend Minnesota Rules, part 5432.0050, subpart 1, so that provisional licenses issued under that part are valid for five years and are issued only to qualified applicants. The commissioner shall comply with Minnesota Statutes, section 14.389, in adopting the amendment.

The sections of the APA referred to in Figure 68 are sections establishing an expedited procedure for the adoption of rules.

3.10 STATE LAND TRANSFERS

(a) Preparing 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, called "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. *See* 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. *See* 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, now renumbered as Minnesota Statutes, section 84.0263, 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 under Minnesota Statutes, section 84.0273, certain road easements under Minnesota Statutes, sections 84.63 and 84.631, and flowage and other easements under 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. The examples in Figures 69 to 72 illustrate the use of legal description language.

(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. *See* 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. *See* 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. *See* 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.

(b) Common drafting requests.

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*, 144 N.W. 960 (Minn. 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 (D. Minn. 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. Ct. 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 94.347. 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.

Conveyances of state land to local governments for no consideration generally contain a reversion clause, requiring that the land reverts to the state if the local government fails to use it for a public purpose.

(c) State land transfer examples.

(1) Tax-forfeited land bordering public waters.

Fig. 69

A bill for an act

relating to state lands; authorizing public sale of certain tax-forfeited land that borders public water.

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

Section 1. **PUBLIC SALE OF TAX-FORFEITED LAND BORDERING PUBLIC WATER; . . . COUNTY.**

(a) Notwithstanding Minnesota Statutes, sections 92.45 and 282.018, subdivision 1, . . . County may sell the tax-forfeited land bordering public water that is described in paragraph (c), under the remaining provisions of Minnesota Statutes, chapter 282.

(b) The conveyance must be in a form approved by the attorney general. The attorney general may make changes to the land description to correct errors and ensure accuracy.

(c) The land to be sold is located in . . . County and is described as:

(1) .....;

(2) .....

(d) The county has determined that the county's land management interests would best be served if the lands were returned to private ownership.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

(2) Tax-forfeited private sale.

Fig. 70

A bill for an act

relating to state lands; authorizing private sale of certain tax-forfeited land.

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

Section 1. **PRIVATE SALE OF TAX-FORFEITED LAND; . . . COUNTY.**

(a) Notwithstanding the public sale provisions of Minnesota Statutes, chapter 282, or other law to the contrary, ... County may sell by private sale the tax-forfeited land described in paragraph (c).

(b) The conveyance must be in a form approved by the attorney general. The attorney general may make changes to the land description to correct errors and ensure accuracy.

(c) The land to be sold is located in..... County and is described as:

(1) .....;

(2) .....

(d) The county has determined that the county's land management interests would best be served if the lands were returned to private ownership.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

(3) Surplus state land bordering public water private sale.

Fig. 71

A bill for an act

relating to state lands; authorizing public sale of certain surplus state land bordering public water.

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

Section 1. **PRIVATE SALE OF SURPLUS STATE LAND BORDERING PUBLIC WATER; . . . COUNTY.**

(a) Notwithstanding Minnesota Statutes, sections 92.45, 94.09, and 94.10, the commissioner of natural resources may sell by private sale the surplus land bordering public water that is described in paragraph (c).

(b) The conveyance must be in a form approved by the attorney general for consideration no less than the appraised value of the land. The attorney general may make changes to the land description to correct errors and ensure accuracy.

(c) The land to be sold is located in ..... County and is described as:

(1) .....;

(2) .....

(d) The commissioner has determined that the land is no longer needed for any natural resource purpose and that the state's land management interests would best be served if the land was returned to private ownership.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

(4) Surplus state land conveyance.

Fig. 72

A bill for an act
relating to state lands; authorizing conveyance of certain surplus state land.

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

Section 1. **CONVEYANCE OF SURPLUS STATE LAND; …….. COUNTY.**

(a) Notwithstanding Minnesota Statutes, sections 16B.281 to 16B.287, the commissioner of administration may convey to the city of …. for no consideration the surplus land that is described in paragraph (c).

(b) The conveyance must be in a form approved by the attorney general and provide that the lands revert to the state if the city of …….. stops using the land for the public purpose described in paragraph (d). The attorney general may make changes to the land description to correct errors and ensure accuracy.

(c) The land to be sold is located in ..... County and is described as:

(1) .....;

(2) .....

(d) The commissioner has determined that the land is no longer needed for any state purpose and that the state's land management interests would best be served if the land was conveyed to and used by the city of …… to ……...

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

3.11 STATE PARKS, MONUMENTS, RECREATION AREAS, AND WAYSIDES

(a) Formatting a new state park in session law.

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.

(b) State parks examples.

(1) Creating a state park.

Fig. 73

A bill for an act

relating to natural resources; creating a state park.

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

Section 1. **GLENDALOUGH STATE PARK.**

Subdivision 1. **[85.012] [Subd. 23a.] Glendalough State Park, Otter Tail County.** Glendalough State Park is established in Otter Tail County.

Subd. 2. **Acquisition.** The commissioner of natural resources is authorized to acquire by gift or purchase the lands for Glendalough State Park. The commissioner shall give emphasis to the management of wildlife within the park and shall interpret these management activities for the public. Except as otherwise provided in this subdivision, all lands acquired for Glendalough State Park shall be administered in the same manner as provided for other state parks and shall be perpetually dedicated for that use.

Subd. 3. **Payment in lieu of taxes for private tracts.** (a) If a tract or lot or privately owned land is acquired for inclusion within Glendalough State Park and, as a result of the acquisition, taxes are no longer assessed against the tract or lot or improvements on the tract or lot, the following amount shall be paid by the commissioner of natural resources to Otter Tail

County for distribution to the taxing districts:

(1) in the first year after taxes are last required to be paid on the property, 55 percent of the last required payment;

(2) in the second year after taxes are last required to be paid on the property, 40 percent of the last required payment; and

(3) in the third year after taxes are last required to be paid on the property, 20 percent of the last required payment.

The commissioner shall make the payments from money appropriated for state park maintenance and operation. The county auditor shall certify to the commissioner of natural resources the total amount due to a county on or before March 30 of the year in which money must be paid under this section. Money received by a county under this subdivision shall be distributed to the various taxing districts in the same proportion as the levy on the property in the last year taxes were required to be paid on the property.

Subd. 4. **Boundaries.** The following described lands are located within the boundaries of Glendalough State Park: Government Lots 3 and 4 and that part of Lake Emma and its lake bed lying in Section 7; all of Section 18; Government Lot1, the Northeast Quarter of the Northwest Quarter and the Southwest Quarter of the Northwest Quarter of Section 19; all in Township 133 North, Range 39 West. All of Section 13; Government Lots 1 and 2, the West Half of the Southeast Quarter, the Northeast Quarter and the Southwest Quarter of Section 14; Government Lots 1 and 2, the East 66 feet of the West Half of the Southeast Quarter and the Northeast Quarter of Section 23; Government Lots 1, 2, 3, 4, 5, 6, and 8, the Northwest Quarter of the Northwest Quarter, the East Half of the Southeast Quarter of Section 24; that part of Government Lot 7 of Section 24 lying easterly of the following described line: commencing at the northeast corner of Government Lot 1 of Section 25, Township 133 North, Range 40 West; thence North 89 degrees minutes 29 seconds West on an assumed bearing along the north line of said Section 25 a distance of 75.00 feet to the point of beginning; thence on a bearing of North 37 feet, more or less, to the shoreline of Molly Stark Lake and there terminating; that part of Government Lot 1 of Section 25 lying northerly of County State-Aid Highway No. 16 and westerly of the following described line: commencing at the northeast corner of said Government Lot 1; thence on an assumed bearing of South along the east line of said Government Lot 1 a distance of 822.46 feet; thence North 77 degrees 59 minutes 14 seconds West 414.39 feet to the point of beginning; thence North 04 degrees 28 minutes 54 seconds East 707 feet, more or less, to the shoreline of Molly Stark Lake and there terminating; the westerly 50 feet except the northerly 643.5 feet of Government Lot 1 of Section 25;

Government Lot 1 of Section 26 except the easterly 50 feet of the northerly 643.5 feet; all in Township 133 north, Range 40 West. Northwest Quarter of the Northwest Quarter, the East Half of the Southeast Quarter of Section 24; that part of Government Lot 7 of Section 24 lying easterly of the following described line: commencing at the northeast corner of Government Lot 1 of Section 25, Township 133 North, Range 40 West; thence North 89 degrees minutes 29 seconds West on an assumed bearing along the north line of said Section 25 a distance of 75.00 feet to the point of beginning; thence on a bearing of North 37 feet, more or less, to the shoreline of Molly Stark Lake and there terminating; that part of Government Lot 1 of Section 25 lying northerly of County State-Aid Highway No. 16 and westerly of the following described line: commencing at the northeast corner of said Government Lot 1; thence on an assumed bearing of South along the east line of said Government Lot 1 a distance of 822.46 feet; thence North 77 degrees 59 minutes 14 seconds West 414.39 feet to the point of beginning; thence North 04 degrees 28 minutes 54 seconds East 707 feet, more or less, to the shoreline of Molly Stark Lake and there terminating; the westerly 50 feet except the northerly 643.5 feet of Government Lot 1 of Section 25; Government Lot 1 of Section 26 except the easterly 50 feet of the northerly 643.5 feet; all in Township 133 north, Range 40 West.

Figure 74 creates a state park. Note that "amending section 85.012, by adding a subdivision" does not appear in the title. See paragraph (a).

(2) Adding and renaming a state park.

Fig. 75

A bill for an act

relating to natural resources; renaming a state park; adding to state parks; authorizing a land exchange in a state park; transferring land from a state wayside to a state park and abolishing a state wayside; amending Minnesota Statutes 20.., section 85.012, subdivision 19; repealing Minnesota Statutes 20.., section 85.013, subdivision 8.

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

Section 1. Minnesota Statutes, 20.., section 85.012, subdivision 19, is amended to read:

Subd. 19. **Forestville Mystery Cave State Park, Fillmore County.**

Sec. 2. **ADDITIONS TO STATE PARKS.**

Subdivision 1. **[85.012] [Subd. 2.] Banning State Park, Pine County.** The following area is added to Banning State Park, all in Section 15, Township 42 North, Range 20 West, Pine County: That part of the Northeast Quarter of the Northwest Quarter of Section 15 lying easterly of the following described line: Commencing at the northeast corner of the intersection

of Division Street and Palisade Avenue in the recorded plat of Sandstone, Pine County, Minnesota; thence southerly along the east line of said Palisade Avenue 868 feet, more or less, to the south line of said Northeast Quarter of the Northwest Quarter; thence easterly along said south line 360 feet to the point of beginning; thence northwesterly to a point 160 feet easterly along the easterly extension of the north line of said Division Street from the point of commencement; thence northerly parallel with the northerly extension of the east line of said Palisade Avenue to the north line of said Northeast Quarter of the Northwest Quarter and there terminating.

Subd. 2. **[85.012] [Subd. 10.] Camden State Park, Lyon County.** The following areas are added to Camden State Park, all in Township 110 North, Range 42 West, Lyon County:

…….

Sec. 3. **EXCHANGE OF LAND IN LAKE BRONSON STATE PARK.**

[85.012] [Subd. 34.] Lake Bronson State Park, Kittson County. Notwithstanding Minnesota Statutes, section 94.342, subdivision 4, the commissioner of natural resources may exchange, subject to the approval of the land exchange board as required by the Minnesota Constitution, article XI, section 10, the state-owned Lot 11 of Block 7 for the privately owned Lot 5 of Block 5 in Lakeside Subdivision according to the plat thereof, all in Section 33, Township 161 North, Range 46 West.

Sec. 4. **TRANSFER OF LAND FROM CROSS RIVER STATE WAYSIDE TO TEMPERANCE RIVER STATE PARK AND WAYSIDE ABOLISHMENT.**

Subdivision 1. **[85.012] [Subd. 55.] Temperance River State Park, Cook County.** (a) The lands described within Cross River State Wayside are transferred to Temperance River State Park.

(b) The commissioner of natural resources shall administer the area transferred under paragraph (a) according to Minnesota Statutes, section 86A.05, subdivision 2, but in addition to other activities authorized in Temperance River State Park, shall allow public hunting.

Subd. 2. **[85.013] [Subd. 8.] Cross River State Wayside, Cook County.** The Cross River State Wayside is abolished and its lands transferred according to subdivision 1.

Sec. 5. **REPEALER.**

Minnesota Statutes 20.., section 85.013, subdivision 8, is repealed.

Figure 75 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 paragraph (a).

3.12 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, drafters outside the revisor's office should 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 paragraph (e), clause (1). 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 example shown in Figure 78. In section 1 of Figure 78, 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 Figure 79, 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 Figures 80 and 81. In Figure 80, the revisor is instructed to renumber the sections in a particular manner. In Figure 76, the revisor is

given the duty 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) 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. Ct. App. 1986).

Fig. 76

Sec. 10. **OTHER AMENDMENTS.**

If a provision of Minnesota Statutes, chapter 10, is amended or repealed in the 20.. regular legislative session, the revisor of statutes shall codify the amendment or repealer in Minnesota Statutes, chapter 10A, notwithstanding any other law to the contrary.

Drafters may also wish to add some language stating that the recodification is not intended to change the law. See Figure 77.

Fig. 77

Sec. 11. **EFFECT OF CHANGES IN THIS ACT.**

This act is intended to be a clarification and reorganization of laws relating to juvenile delinquency and child protection in Minnesota Statutes, chapters 257 and 260. The changes that have been made are not intended to change the meaning or prior interpretation of those laws.

(e) Examples.

(1) Repeal and reenactment.

Fig. 78

Section 1. **[260C.451] AGE LIMIT FOR BENEFITS TO CHILDREN.**

For purposes of any program for foster children or children under state guardianship for which benefits are made available on June 1, 20.., unless specifically provided otherwise, the age of majority is 21 years of age. [260.40]

Sec. 2. **REVISOR'S INSTRUCTION.**

(a) The revisor of statutes shall publish the statutory derivations of the laws repealed and recodified in this act in Laws of Minnesota and report the derivations in Minnesota Statutes.

(b) The revisor of statutes shall correct cross-references in Minnesota Statutes and Minnesota Rules to sections that are repealed and recodified by this act, and if Minnesota Statutes, chapter 257 or 260, is further amended in the 20.. (same legislative session), shall codify the amendments in a manner consistent with this act.

(2) Reporting of derivations in Minnesota Statutes.

Fig. 79

TABLE II ALLOCATION OF ACTS

Chap.	Art.	Sec.	Coding
139	3	18	60C.176, subd. 3 (Formerly 260.171, subd. 4)
139	3	18	260C.176, subd. 4 (Formerly 260.171, subd. 5)
139	3	18	260C.176, subd. 5 (Formerly 260.171, subd. 5a)

(3) Recodification by renumbering.

Fig. 80

Sec. 10. **REVISOR'S INSTRUCTION.**

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

Column A	Column B
120.01	120A.01
120.011	120A.02
120.0112	120A.03
120.02, subd. 1	120A.04, subd. 1
120.02, subd. 2	120A.04, subd. 4
120.02, subd. 3	120A.04, subd. 8

Fig. 81

Sec. 10. **REVISOR'S INSTRUCTION.**

In Minnesota Statutes the revisor of statutes shall renumber as chapter 354D the professional and supervisory employee individual retirement account law that is currently coded as chapter 354C and shall revise any statutory cross-references consistent with that recoding.

3.13 INSTRUCTIONS TO THE REVISOR

(a) 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:

Fig. 82

Sec. ... **REVISOR'S INSTRUCTION.**

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

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.

(b) 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:

Fig. 83

Sec. … **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change the terms "fraternal beneficiary association," or similar terms to "fraternal benefit society," "society," or similar terms wherever they appear in Minnesota Statutes and Minnesota Rules when referring to those entities regulated under Minnesota Statutes, chapter 64B. The revisor shall also make grammatical changes related to the changes in terms.

(c) Renumbering.

In bills requiring the extensive revision, renumbering, or reorganization of statutory sections, cross-references that are located elsewhere in statutes to those revised 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:

Fig. 84

Sec. ... **REVISOR'S INSTRUCTION.**

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

Column A	Column B	Column C
3.855, subd. 3	43.064	43A.04, subd. 4

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

(d) 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 3.12. 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. The revisor will respond to the request so that the requestor will know if and when the change will be implemented.

(e) 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, ..."

(f) Examples.

(1) Correcting cross-references.

Fig. 85

Sec. ... **REVISOR'S INSTRUCTION.**

In each section of Minnesota Statutes referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C.

Column A	Column B	Column C
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

(2) Recodifying statutes.

Fig. 86

Sec. ... **REVISOR'S INSTRUCTION.**

If a provision in Minnesota Statutes, chapter 16, is amended by the 20.. regular session and this act is enacted by the 20.. regular session, the revisor of statutes shall codify the amendment consistent with the recodification of Minnesota Statutes, chapter 16, by this act, notwithstanding any law to the contrary.

Fig. 87

Sec. ... **REVISOR'S INSTRUCTION.**

The revisor of statutes shall include in Minnesota Statutes, and edit as authorized by law, the uncoded permanent law relating to Independent School Districts Nos. 287, 916, and 917.

Fig. 88

Sec. ... **REVISOR'S INSTRUCTION.**

The revisor of statutes shall renumber the provisions of Minnesota Statutes listed in column A to the references listed in column B. The revisor shall also make necessary cross-reference changes in Minnesota Statutes and Minnesota Rules consistent with the renumbering.

Column A	Column B
15.0411, subd. 2 (third and fourth sentences)	14.02
15.0411, subd. 2 (except the third and fourth sentences)	14.03
15.0412, subds. 1, 1a, 2, 2a, 3, 4a, 4b	14.04, subds. 1 to 7
15.0412, subds. 4, 4c, 4e, 4f, 4g	14.05, subds. 1 to 5
15.0412, subd, 4h	14.06
15.0412, subd. 5	14.07
15.0412, subd. 4d	14.15, subds. 1 to 4

(3) Changing terms and phrases.

Fig. 89

Sec. ... **REVISOR'S INSTRUCTION.**

In Minnesota Statutes and Minnesota Rules, the revisor of statutes shall change the terms "fireman" and firemen" to "firefighter" and "firefighters" respectively, wherever the terms appear in respect to those persons engaged in fighting fires as distinguished from maintaining fires in boilers, or other machines or devices.

Fig. 90

Sec. ... **REVISOR'S INSTRUCTION.**

In Minnesota Statutes, sections 121.904, 121.912, 121.914, 121.917, 122.531, 123.71, 124.225, 124.08, 136C.28, and 136C.69, the revisor of statutes shall change change the phrases in column A to the phrases in column B.

Column A	Column B
reserved fund balances	unreserved fund balances
appropriated for AVTI equipment	reserved for AVTI equipment
appropriated for AVTI repair and betterment	reserved for AVTI repair and betterment
appropriated for unemployment insurance	reserved for unemployment insurance
appropriated for building construction	designated for building construction
unappropriated statutory	undesignated statutory

Fig. 91

Sec. ... **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change the term "children's health plan" and similar terms to "MinnesotaCare program" and similar terms, wherever in Minnesota Statutes and Minnesota Rules the term "children's health plan" and similar terms appear, except that the revisor shall retain the reference to "children's health plan" in Minnesota Statutes, section 256.9357, subdivision 1.

(4) Reorganizing government powers and duties.

Fig. 92

Sec. ... **REVISOR'S INSTRUCTION.**

(a) Except when used in the phrases to be changed by the revisor under paragraph (b), the revisor of statutes shall change the word "board" or "board's," or similar term or phrase, when it refers to the Transportation Regulation Board, to the term

"commissioner," "commissioner's," or "commissioner of transportation," as appropriate, where it appears in:

(1) Minnesota Statutes, sections 174A.02, subdivision 3; 221.025; 221.031, subdivision 1; 221.041, subdivisions 1, 2, and 3; 221.051; 221.061; 221.071, subdivision 1; 221.081; 221.101; 221.121, subdivisions 1, 2, 3, 4, 5, 6, 6a, and 6b; 221.122, subdivisions 1 and 3; 221.123; 221.124; 221.151; 221.161, subdivisions 2, 3, and 4; 221.165; 221.171, subdivision 1; 221.185, subdivisions 2 and 3a; 221.221, subdivision 2; 221.291, subdivision 5; 221.293; 221.296, subdivisions 3, 4, and 8; and 221.55; and

(2) Minnesota Rules, chapters 8855; 8900; 8910; and 8920.

(b) The revisor shall change the phrases "board or commissioner," "commissioner or board," "board or the commissioner," "commissioner or the board," "commissioner and the board," "commissioner and board," "board and the commissioner," "board and commissioner," "department and board," "board or department," and "board and the department," when the word "board " refers to the Transportation Regulation Board, to the term "commissioner," or "commissioner of transportation," as as appropriate, where it appears in:

(1) Minnesota Statutes, sections 221.011, subdivision 15; 221.021; 221.031, subdivision 5; 221.061; 221.081; 221.121, subdivisions 1 and 5; 221.122, subdivision 1; 221.151, subdivision 2; 221.221, subdivisions 1 and 3; 221.261; 221.271; 221.281; 221.291, subdivisions 1 and 3; 221.293; 221.295; 221.296, subdivisions 3 and 4; and 221.68; and

(2) Minnesota Rules, chapter 8850.

(c) Except when amended accordingly in this article, the revisor shall change the words "Transportation Regulation Board" to "commissioner of transportation" wherever they appear in Minnesota Statutes and Minnesota Rules.

(d) In Minnesota Statutes, the revisor shall renumber sections 174A.02 as 174.64; 174A.04 as 174.65; and 174A.06 as 174.66.

(e) The revisor shall make other changes in chapter titles; section, subdivision, part, and subpart headnotes; and in other terminology necessary as a result of the enactment of this article.

Fig. 93

Sec. ... **REVISOR'S INSTRUCTION.**

The revisor of statutes shall renumber the sections in Minnesota Statutes, chapters 261, 262, and 263, to comprise one chapter.

(5) Recodification by renumbering.

Fig. 94

Sec. 10. **REVISOR'S INSTRUCTION.**

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

Column A	Column B
120.01	120A.01
120.011	120A.02
120.0112	120A.03
120.02, subd. 1	120A.04, subd. 1
120.02, subd. 2	120A.04, subd. 4
120.02, subd. 3	120A.04, subd. 8

Fig. 95

Sec. 10. **REVISOR'S INSTRUCTION.**

In Minnesota Statutes the revisor of statutes shall renumber as chapter 354D the professional and supervisory employee individual retirement account law that is currently coded as chapter 354C and shall appropriately revise any statutory cross-references consistent with that recoding.

Chapter 4
Amendments

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4.1 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 practice.

When drawing an amendment, the drafter 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 see that the amendment does what the drafter and the member intend. If the intent is unclear, the drafter should consult with the member and revise the amendment as necessary.

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 considered.

After the amendment is drafted, the drafter should review it to see that it fits into the bill being amended and that persons unfamiliar with the amendment could fit it into the bill.

4.2 AMENDMENT FORM EXAMPLES

1.1 …… moves to amend H.F. No. 1000 as follows:

House floor and committee motion, pg. 192-194

1.1 Senator …… moves to amend S.F. No. 1000 as follows:

Senate committee, pg. 192

1.1 Senator …… moved to amend S.F. No. 1000 as follows:

Senate floor, pg. 192, 198, 199

1.2 Page 1, line 19, after the period, insert "The property value is designated under this subdivision."

1.3 Page 2, line 20, delete "This act" and insert "Section 1"

1.4 Page 3, line 2, strike everything before the semicolon

1.5 Page 15, delete section 21 and insert:

1.6 "Sec. 21 Minnesota Statutes 2012, section 297A.68, subdivision 4, is amended to read:

1.7 Subd. 4. **Taconite production materials**. Mill liners, grinding rods, and grinding balls that…"

1.8 Page 17, delete the new language and strike the old language

1.9 Page 18, reinstate "~~Meals~~"

Page and line, pg. 183

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2012, section 297A.68, subdivision 4, is amended to read:

1.4 Subd. 4. **Taconite production materials**. Mill liners, grinding rods, and grinding balls that are

1.5 substantially consumed in the production of taconite are not exempt when sold."

Delete everything, pg. 191

1.2 Page 2, delete lines 10 and 11 and insert "and deposit the same with the commissioner. The

1.3 commissioner must forward the amount to the commissioner of management and budget.

1.4 The applicant is responsible for…."

Partial delete, pg. 191

1.2 Delete the title and insert:

1.3 "A bill for an act

1.4 relating to Chisago County; …"

or

1.5 Amend the title as follows:

1.6 Page 1, line 3, after "valid" insert "; extending the expiration of certain licenses;"

Title, pg. 190

1.2 Renumber the sections in sequence and correct the internal references

1.3 Adjust the amounts accordingly

1.4 Amend the title accordingly

1.5 Correct the title numbers accordingly

End instructions, pg. 183, 190

1.6 The motion prevailed. #did not prevail. So the amendment was #not adopted.

Senate floor ending, pg. 192

4.3 THE AMENDING TECHNIQUE

For any of the kinds of documents discussed in this section or in subsequent sections, 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, referred to as 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.

(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 seven basic operations performed by an amendment. They are:

- deleting, removing, new, underscored text from a bill;
- striking, adding a line through a word or words;
- reinstating, removing a line drawn through a word or words in a bill;
- inserting new underscored text into a bill;
- renumbering sections, subdivisions, paragraphs, clauses, or proposed coding;
- amending the title language of the bill; and
- correct the title numbers.

An amendment may contain numerous instructions, each of which contains an amending operation. Each instruction may contain a different kind of operation.

(2) Amendment structure.

There are several specific rules for the structure of an amendment.

First, when an amendment contains more than one instruction, the instructions 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 instruction that amends the title. An instruction that amends the title is always last.

Second, the amendment should contain at least one of the seven operational command words or phrases. 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:"
"correct the title numbers accordingly"

Third, the entire amending operation to be performed by each instruction must be contained within that instruction.

Fourth, the page that is amended must be specified before the line or lines that are amended. A drafter should, for instance, give a location as:

Fig. 1

1.2 Page 1, lines 14 to 17, …..

(3) Amendments that delete.

When drafting an amendment to remove new, underscored text from a bill, the instruction is to "delete:"

- specific text;
- a line or lines;
- a section or sections;
- a subdivision or subdivisions; or
- article.

Proper occasions to use these amendments are as follows:

Delete a line:

Fig. 2

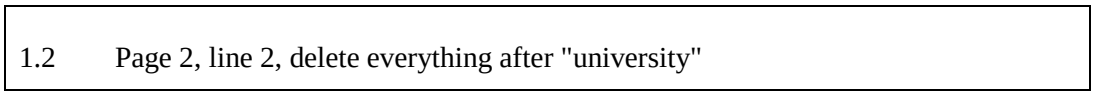
1.2 Page 2, delete line 1

Delete multiple lines in numerical order:

Fig. 3

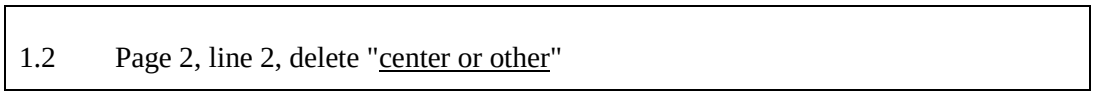
Delete all the words, that are not current law, following an indicated word, figure, or punctuation mark in a stated line:

Fig. 4



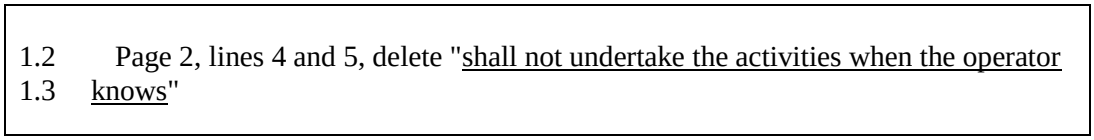
Delete specified words, figures, or punctuation marks that are not current law, in a line:

Fig. 5



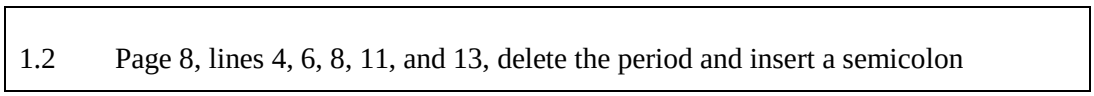
Delete specific words, figures, or punctuation marks, that are not current law:

Fig. 6



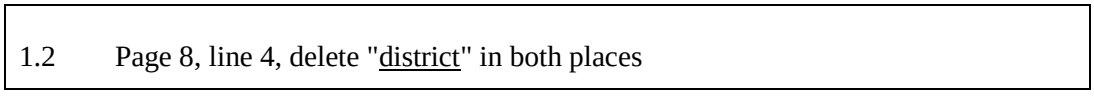
Delete the same word, figure, or punctuation mark that is not current law, in several lines:

Fig. 7



Delete repeated word, figure, or punctuation mark that is not current law, in same line:

Fig. 8



Delete all new, underlined, words, figures, and punctuation marks in a line and any number of additional lines:

Fig. 9

1.2 Page 2, lines 5 to 17, delete the new language

Delete a section (Only include the page number that the section begins on):

Fig. 10

1.2 Page 12, delete section 4

Delete multiple sections in numerical order:

Fig. 11

1.2 Pages 9 to 12, delete sections 4 to 6

Delete a subdivision if there is only one subdivision 6 on the page (only include the page number that the subdivision begins on):

Fig. 12

1.2 Page 4, delete subdivision 6

When a punctuation mark, unaccompanied by text, is amended, the drafter should express the mark in words rather than by showing the mark itself:

Fig. 13

1.2 Page 1, line 17, delete the comma

When the amending operation refers to words or figures that appear more than once on a line, they should refer to the “first” or “second” appearance as appropriate to indicate where the amendment is to be placed:

Fig. 14

1.2 Page 9, line 2, delete the first "and"

The deletion operation must never be used to change text that is not underlined in a bill, other than title language. Rather, in this case, the "striking" operation must be used.

(4) Amendments that strike.

When drafting an amendment to a bill that removes text from a law or statute, the instruction is to "strike" the text. When striking text, the drafter shows the text that the drafter wants removed with a line through it. 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.

When drafting an amendment to add additional words to a bill, the instruction is to "insert" the new text. When inserting new text, the drafter must underline the new text.

Types of amendments that insert are as follows:

Insert one or more numbered subdivisions, paragraphs, or clauses after or before a line:

Fig. 15

1.2 Page 2, after line 2, insert:
1.3 "……..……..."

Insert specified words, figures, or a punctuation mark after or before specified words, figures, or punctuation marks in a line:

Fig. 16

1.2 Page 3, line 9, after "operation" insert "<u>, college</u>"

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:

Fig. 17

1.2 Page 4, line 6, delete "<u>university</u>" and insert "<u>college</u>"

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:

Fig. 18

1.2 Page 6, strike lines 1 to 18 and insert "A high school principal may"

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:

Fig. 19

1.2 Page 2, line 2, delete everything after "university" and insert ", college, and high
1.3 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 and is intended to continue on the same line as the language in the bill referenced in the amendment, the language to be inserted is contained within the amendment operation as shown in Figure 16, but 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 Figure 15.

Amendments may remove new, underscored text from a bill and replace it with other text. This is accomplished by using the operational commands “delete” and “insert.” 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.

Fig. 20

1.9 Page 1, line 10, delete "and includes" and insert "but does not include"

When drafting an amendment to change the wording in an existing law, the drafter must strike the text that the drafter wants removed. The drafter must then add the new text immediately after the stricken text. 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.

Fig. 21

1.9 Page 1, line 10, strike "and includes" and insert "<u>but does not include</u>"

(6) Amendments that reinstate.

Amendments that reinstate are used solely to restore stricken text in existing law.

Proper occasions to use these amendments are as follows:

Reinstate specified stricken text in a line:

Fig. 22

1.2 Page 1, line 8, reinstate the stricken "college" 1.3 Page 1, line 11, reinstate "~~college~~"

Reinstate specified stricken text in two lines. The words, figures, or punctuation marks affected by the reinstatement operation must be enclosed in quotation marks:

Fig. 23

1.2 Page 1, lines 8 to 9, reinstate the stricken "university, college, and high school"

Reinstate all stricken text following an indicated word, figure, or punctuation mark in a stated line:

Fig. 24

1.2 Page 4, line 12, reinstate everything after "indication"

Reinstate all stricken text in a line and any number of additional lines:

Fig. 25

1.2 Page 2, lines 17 to 21, reinstate the stricken language

Reinstate an entirely stricken line:

Fig. 26

1.2	Page 1, line 4, reinstate the stricken language

Reinstate multiple entirely stricken lines in numerical order:

Fig. 27

1.2	Page 4, lines 9 to 18, reinstate the stricken language

(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." If subdivisions or sections are renumbered, a further instruction to correct internal cross references may be appropriate. See examples in section 4.8.

(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. When inserting new title language, the words are not underlined. Amendments that strike or reinstate do not occur in the title.

Fig. 28

1.12	Amend the title as follows:
1.13	Page 1, after the semicolon, insert "modifying bond requirements;"
1.14	Correct the title numbers accordingly

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. A direction to "correct the title numbers accordingly" is sufficient direction to the revisor to add or remove references in the title to reflect the amendments added to the bill.

(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 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, subdivision, or paragraph 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:

Delete a section and insert a new section:

Fig. 29

1.2 Page 12, delete section 4 and insert:
1.3 "……."

Delete multiple sections in increasing numerical order and insert new sections:

Fig. 30

1.2 Pages 9 to 12, delete sections 4 to 9 and insert:
1.3 "……..……."

Delete multiple lines and insert new lines:

Fig. 31

1.2 Pages 71, delete lines 10 to 16 and insert:
1.3 "……..……."

Delete a subdivision and insert a new subdivision:

Fig. 32

1.2 Page 4, delete subdivision 5 and insert:
1.3 "……..……."

(d) Senate amendments; tense.

Senate floor amendments are drafted in the past tense for easy transfer to the senate journal although they are read on the senate floor in the present tense. They also contain language at the end of the amendment that can be altered to indicate whether or not the motion prevailed and the amendment was or was not adopted. Senate committee amendments should use the present tense. See the examples in section 4.8, paragraph (a).

4.4 AMENDMENTS AND COMMITTEE REPORTS

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 to amend 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 of representatives, 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 of representatives, the text of the amendment then follows. Identifying information may be marked on the amendment document, usually in the upper right hand corner.

(b) Committee reports.

After a bill is heard by a committee, the committee will report its recommendation to the full body. The report will include the committee's recommended amendments.

Fig. 33

Senator Smith from the Committee on Local Government and Elections, to which was referred

S.F. No. 170: A bill for an act relating to political subdivisions; regulating certain interests in contracts by public officials; amending Minnesota Statutes 20.., section 471.88, subdivisions 2, 5, 8.

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

Page 2, line 11, delete "$3,000" and insert "$5,000"

Page 2, line 16, delete "$3,000" and insert "$2,000"

Page 2, after line 18, insert:

"Sec. 4. **EFFECTIVE DATE.**

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

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

……..…….

(Committee Chair)

January 19, 20.. …….

(Date of Committee recommendation)

For additional examples of committee reports containing amendments, see the examples in section 4.8.

A minority report may also be offered to the full body. A minority report contains the recommended amendments of a minority of the members of a committee. Minority reports are authorized by House Rule 6.32 and Mason's Legislative Manual section 674. See section 4.8, paragraph (d), clause (4).

(c) Floor amendments.

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

Fig. 34

1.1 ..... moves to amend H.F. No. 1271, the first engrossment, as follows:

When a senate floor amendment is prepared on the legislature's bill drafting 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."

Fig. 35

1.1 Senator ..... moved to amend S.F. No. 1234 as follows:

For additional examples of floor amendments, see section 4.8, paragraphs (e) and (f).

(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 section 4.8, paragraphs (i) and (j).

If the house of representatives had prepared an unofficial engrossment of its amendments to the senate file, it is not proper to amend that unofficial engrossment in the conference committee report. Only documents that can be found in the house of representatives or senate journals are referenced or amended in a conference committee report.

4.5 THE DOCUMENT BEING AMENDED

(a) Identifying the document being amended.

The drafter must be sure to work from the most current version of the document being amended. For example, the drafter must determine if the amendment should be drawn to the original bill or to the first or a subsequent engrossment of the bill. If the amendment is drawn to an engrossment, the drafter must determine if the engrossment is an official or unofficial engrossment. In addition, instead of drafting the amendment to the bill itself, a drafter may be asked to draft an amendment 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.

In the house of representatives, the motion language always refers to the latest engrossment of the house or senate file being amended, while the senate just refers to the senate or house file without identifying the engrossment or version that is being amended. In the senate, it is presumed that the amendment is drawn to the latest engrossment of the bill.

(b) Bills amended in a subcommittee or division.

(1) Subcommittee or division reports.

If a bill has been amended in a subcommittee or division, the drafter of an amendment for the full committee must determine 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 or division report, either through changes to the amendments adopted by the subcommittee or division, or by amending the report to reflect changes to the bill itself.

Fig. 36

1.1	Senator ..... moves to amend S.F. No. .... as follows:
1.2	Amend the report from the Subcommittee on ..... as follows:
1.3	Page 1, after line 10, insert:
1.4	"Page 3, line 7, delete "5" and insert "7""
1.5	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 or division 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 subsequent amendments should refer to this amendment and not to the base bill.

(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 of representatives.

(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 sometimes drawn to the prior committee report and to the bill as introduced, as appropriate, or to the unofficial engrossment of the house file. See the example in section 4.8, paragraph (c), clause (4).

In the house of representatives, 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. See Senate Rule 48.2.

Fig. 37

1.1 Senator ..... moved to amend H.F. No. ...., the unofficial engrossment, as follows:

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

(3) Rule 45 amendments.

The senate operating under its substitution rule, Rule 45, often amends a house file to make it identical to the senate file. It then proceeds with the house file as amended in substitution for the senate file. 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 senate 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 in section 4.8, paragraph (b), clause (3).

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

Fig. 38

Senator ..... moved to amend H.F. No. ...., as amended pursuant to Rule 45, adopted by the Senate ....., 20.., as follows:

(The text of the amended House File is identical to S.F. No. .....)

When the house file is considered on General Orders and the senate author wants to yield to the house of representatives position and strike the Rule 45 amendment, the motion is as follows:

Fig. 39

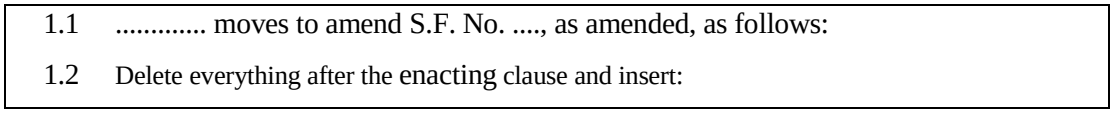
Senator ..... moved that the amendment made to H.F. No. .... by the Committee on Rules and Legislative Administration in the report adopted ....., 20.., pursuant to Rule 45 be stricken.

(4) House of representatives delete everything amendments.

The house of representatives 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 file.

The example in Figure 40 of the proper opening language used to amend a senate file that has been amended by the house of representatives to insert the house language.

Fig. 40



A subsequent amendment to these bills are drawn to the page and line numbers of the house file.

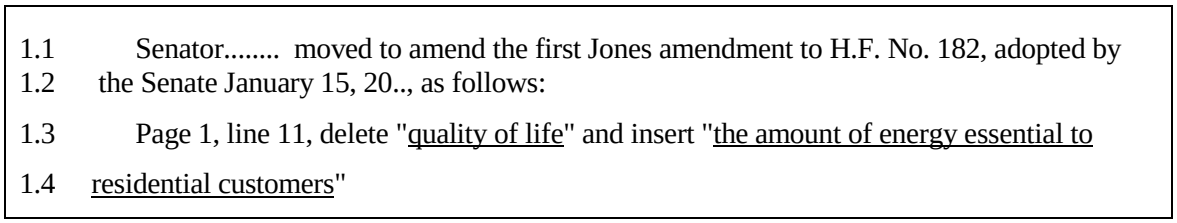
4.6 AMENDMENTS TO AMENDMENTS

Amendments to amendments must sometimes be drafted. All rules regarding the drafting of amendments apply equally to the drafting of amendments to amendments. When identifying the amending document in this instance, the drafter should identify the amendment by including the name of the author of the amendment being amended. This is done to ensure that the amendments can be more easily tracked in the house of representatives or senate journals. If the author of the amendment being amended has offered more than one amendment to the same bill, the drafter should identify the amending document by referencing the number of the amendment in the order it was offered. In addition, when drafting an amendment to an amendment that was adopted on a previous day, the drafter should identify that amendment by providing the date that the amendment was adopted.

Mason's Manual of Legislative Procedure, section 408, and House Rule 3.20 prohibit third degree amendments. "An amendment may be amended, but an amendment to an amendment must not be amended." House Rule 3.20.

The format for an ordinary amendment to an amendment is simple. For example:

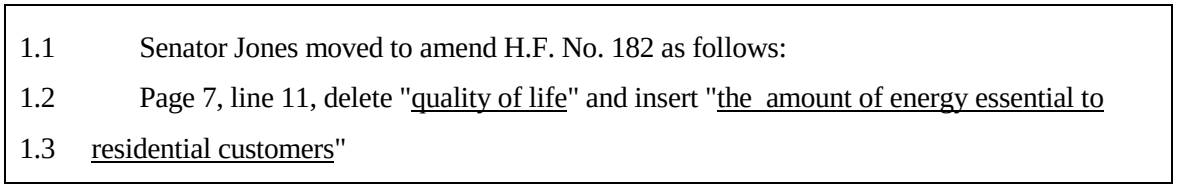
Fig. 41



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:

Fig. 42



might be amended as follows:

Fig. 43

1.1 Senator ..... moved to amend the Jones amendment to H.F. No. 182, adopted by the
1.2 Senate January 15, 20.., as follows:

1.3 Page 1, delete lines 2 and 3 and insert:

1.4 "Page 7, line 11, after "life" insert "as indicated by the amount of energy essential to

1.5 residential customers""

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

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

Fig. 44

1.1 ..... moves to amend H.F. No. 3840, the first engrossment, as amended by the
1.2 Johnson amendment, as follows:

1.3 Page 14, line 11 of the Johnson amendment, delete "1.3" and insert "1.25"

1.4 Page 27, line 3, delete "2.3" and insert "1.7"

In Figure 44, line 1.3 amends the amendment, while line 1.4 amends the underlying bill.

4.7 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 5, on engrossing, should be consulted.

4.8 EXAMPLES

(a) Motion in committee.

(1) Senate form.

1.1 Senator ..... moves to amend S.F. No. 1000 as follows:

1.2 Page 1, line 19, after the period, insert "A member of the legislature may not serve on

1.3 the subcommittee."

(2) House of representatives form.

1.1 ……..... moves to amend H.F. No. 1000 as follows:

1.2 Page 1, line 19, after the period, insert "A member of the legislature may not serve on the

1.3 subcommittee."

(b) Senate committee report.

(1) Page and line amendment; no title amendment.

1.1 **Senator Smith from the Committee on Local Government and Elections, to**
1.2 **which was referred**

1.3 **S.F. No. 170:** A bill for an act relating to political subdivisions; regulating certain interests in
1.4 contracts by public officials; amending Minnesota Statutes 20.., section 471.88, subdivisions 2, 5, 8.

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

1.6 Page 2, line 11, delete "$3,000" and insert "$5,000"

1.7 Page 2, line 16, delete "$3,000" and insert "$2,000"

1.8 Page 2, after line 18, insert:

1.9 "Sec. 2. **EFFECTIVE DATE.**

1.10 Section 1 is effective the day following final enactment."

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

1.12 ……..……
1.13 (Committee Chair)

1.14 January 19, 20.. …….
1.15 (Date of Committee recommendation)

The senate committee report is prepared by the engrossing secretary for the senate.

(2) Delete everything amendment with page and line title amendment.

Senator Jones from the Committee on Taxes, to which was referred

S.F. No. 267: A bill for an act relating to taxation; defining "common carrier" for certain purposes in connection with the sales and use tax; amending Minnesota Statutes 20.., section 297A.01, by adding a subdivision.

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

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 20.., section 297A.211, subdivision 1, is amended to read:

Subdivision 1. **Applicability.** (a) Every person, as defined in this chapter, who is engaged in ~~the transportation of property as a common carrier in interstate commerce~~ interstate for-hire transportation of tangible personal property by motor vehicle may at their option, under rules and regulations prescribed by the commissioner, register as retailers and pay the taxes imposed by this chapter in accordance with this section. Persons referred to by this subdivision are:

(1) persons possessing a certificate or permit authorizing for-hire transportation of property from the Interstate Commerce Commission or Public Utilities Commission; or

(2) persons transporting commodities defined as "exempt" in for-hire transportation in interstate commerce.

(b) Persons qualifying under paragraph (a) must maintain on a current basis the same type of mileage records required by the United States Department of Commerce.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment."

Amend the title as follows:

Page 1, line 2, delete "common carrier" and insert "for-hire transportation"

Amend the title numbers accordingly

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

……..
(Committee Chair)

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

(3) Rule 45 amendment.

Senator Black, from the Committee on Rules and Legislative Administration, to which was referred

H.F. No. 1561 for comparison with companion Senate File, reports the following House File was found not identical with companion Senate File as follows:

GENERAL ORDERS		CONSENT CALENDAR		CALENDAR	
H.F. No.	S.F. No.	H.F. No.	S.F. No.	H.F. No.	S.F. No.
1561	1417				

Pursuant to Rule 45, the Committee on Rules and Administration recommends that H.F. No. 1561 be amended as follows:

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

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

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

(4) House file as amended by a prior senate committee.

Senator ..... from the Committee on Taxes, to which was re-referred

H.F. No. 1234: A bill for an act relating to comprehensive local planning; reestablishing local control of comprehensive planning; repealing metropolitan land use planning and metropolitan council review of local comprehensive plans; making conforming changes; amending Minnesota Statutes 20.., sections 103B.231, subdivision 7; 103B.255, subdivision 8; 473.146, subdivision 1; 473.1551, subdivision 1; 473.173, subdivisions 3, 4; 473.867, subdivisions 1, 6; 473.871; 473H.02, subdivisions 4,7; repealing Minnesota Statutes 20.., sections 103B.205, subdivisions 6, 7, 10; 462.355, subdivision 1a; 473.175; 473.851; 473.852; 473.853; 473.854; 473.856; 473.857; 473.858; 473.859; 473.86; 473.861; 473.862; 473.863; 473.864; 473.865; 473.866; 473.868; 473.869; 473.87.

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

Page 4, line 5, delete "4" and insert "9"

Amend the title as follows:

Page 1, line 2, after the semicolon, insert "increasing the motor vehicle registration tax and the tax on dealer's licenses;"

Amend the report from the Committee on Finance, adopted by the Senate March 7, 2002, as follows:

Delete the amendment to page 4, line 2, and insert "Section 1 is effective July 1, 2003, for registration taxes due on and after that date. Sections 3 to 6 are effective May 1, 2003, and apply to ……."

Amend the title numbers accordingly

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

.....
(Committee Chair)

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

The report always includes the title of the bill as introduced in the senate. The report amends both the bill and the prior committee report.

(d) House of representatives committee report.

(1) Page and line amendment; no title amendment.

1.1	..... from the Committee on Government Operations and Elections to which was
1.2	referred:
1.3	H.F. No. 2224, A bill for an act relating to the city of Nashwauk; increasing
1.4	police relief pensions and widows' benefits; amending Laws 1943, chapter 196, sections
1.5	4, as amended; 8.
1.6	Reported the same back with the following amendments:
1.7	Page 2, line 11, after "department" insert "<u>, plus an additional $3 per month for each</u>
1.8	<u>year of service</u>"
1.9	Page 3, line 20, after the period, insert "<u>The increases provided for in section 1 apply</u>
1.10	<u>to service pensioners or widows who are receiving service pensions or widows' benefits</u>
1.11	<u>on the effective date of this act. The increases begin to accrue on the first day of the</u>
1.12	<u>month next following the effective date of sections . . . .</u>"
1.13	With the recommendation that when so amended the bill pass.
1.14	This Committee action taken ....., 20..
1.15	....., Chair

(2) Delete everything amendment with a delete everything title amendment.

..... from the Committee on Government Operations and Elections to which was referred:

H.F. No. 2451, A bill for an act relating to elections; amending Minnesota Statutes 20.., section 202A.15, by adding a subdivision.

Reported the same back with the following amendments:

Delete everything after the enacting clause and insert:

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

A statutory city, home rule charter city, county, town, school district, and other public agency, including the University of Minnesota and other public colleges and universities, must make its facilities available for the holding of precinct caucuses and legislative district or county conventions required by this chapter. A charge for the use of the facilities may be imposed in an amount that does not exceed the lowest amount charged to any other public or private group.

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

Subd. 3. **Nominating petitions; time for filing.** In all cases other than those provided in subdivision 2, nominating petitions shall be filed not later than the ~~seventh~~ eighth day during the filing period preceding the election at which the vacancy is to be filled.

Sec. 3. **EFFECTIVE DATE.**

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

Delete the title and insert:

"A bill for an act

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

With the recommendation that when so amended the bill pass.

This Committee action taken ....., 20..

....., Chair

(3) Senate file, as amended by a prior house of representatives committee.

> ..... from the Committee on ..... to which was referred:
>
> S.F. No. 1438, A bill for an act relating to public employment; ratifying certain labor agreements and proposals; modifying public employee compensation provisions; amending Minnesota Statutes 20.., sections 3.855, subdivision 3; 15A.0815, subdivision 1, by adding a subdivision; 136F.07; 36F.40, subdivision 2; 79A.15; repealing Minnesota Statutes 20.., section 43A.18, subdivisions 4a, 5.
>
> Reported the same back with the following amendments to the second unofficial engrossment:
>
> Page 1, line 10, delete "and includes" and insert "but does not include"

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

(4) Minority report.

MINORITY REPORT

May 18, 20..

We, the undersigned, being a minority of the Committee on Health and Human Services, recommend that H.F. No. .... do pass with the following amendments:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 20.., section 256B.431, is amended by adding a subdivision to read:

Subd. 37. **Designation of areas to receive metropolitan rates.** For rate years beginning on or after July 1, 2003, nursing facilities located in areas designated as metropolitan areas by the federal Office of Management and Budget using Census Bureau data shall be part of the metropolitan array for purposes of calculating a median, determining a historical base reimbursement rate, or otherwise establishing a statistical measure of nursing facility payment rates, in order to:

(1) determine future rate increases under this section, section 256B.434, or any other section; and

(2) establish nursing facility reimbursement rates for the new nursing facility reimbursement system developed under Laws 2001, First Special Session chapter 9, article 5, section 35."

Delete the title and insert:

"A bill for an act

relating to human services; designating certain nursing facilities as metropolitan facilities for purposes of medical assistance reimbursement; amending Minnesota Statutes 20.., section 256B.431, by adding a subdivision."

Signed

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

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

(e) Senate floor amendment

(1) Delete everything amendment with delete everything title amendment.

Senator ..... moved to amend S.F. No. 1286 as follows:

Delete everything after the enacting clause and insert:

"Section 1. **GENERAL OBLIGATION NURSING HOME BONDS.**

Subdivision 1. **Authorization.** The board of commissioners of Chisago County may by resolution sell and issue general obligation bonds of the county in an amount up to $1,500,000 to finance the acquisition and betterment of additional facilities for the county nursing home, comprising apartment units.

Subd. 2. **Eligibility.** The county may by ordinance adopt regulations establishing age, health, and income eligibility requirements for the rental of the apartment units. The regulations may provide different rental terms and conditions for persons of different ages, health conditions, and incomes.

Subd. 3. **Bond security; referendum petition.** The bonds must be issued and secured in accordance with Minnesota Statutes, sections 445.45 to 445.50, and chapter 475, except that in authorizing the bonds the board of commissioners shall:

(1) adopt an initial resolution stating the amount, purpose, and, in general, the security to be provided for the bonds; and

(2) publish the resolution once each week for two consecutive weeks in the official newspaper.

The bonds may be issued without the submission of the question of their issuance to the electors unless within 30 days after the second publication of the resolution a petition requesting the election signed by more than ten percent of the qualified electors voting in the county at the last general election is filed with the county auditor."

Delete the title and insert:

"A bill for an act

relating to Chisago County; authorizing the issuance of general obligation bonds to finance the cost of facilities for the county nursing home; providing for the administration and rental of the facilities."

The motion prevailed. #did not prevail. So the amendment was #not adopted.

(2) Page and line amendment; page and line title amendment.

Senator ..... moved to amend S.F. No. 1234 as follows:

Page 1, line 10, after the period, insert "These licenses do not expire until January 1, 2010."

Amend the title as follows:

Page 1, line 3, after "valid" insert "; extending the expiration of certain licenses"

The motion prevailed. #did not prevail. So the amendment was #not adopted.

(3) House file amended by Rule 45 amendment.

Senator ..... moved to amend H.F. No. 1991, as amended pursuant to Rule 45, adopted by the Senate March 29, 20.., as follows:

(The text of the amended House File is identical to S.F. No. 2084.)

Page 4, lines 12 to 20, delete the new language and reinstate the stricken language

The motion prevailed. #did not prevail. So the amendment was #not adopted.

(4) Motion striking Rule 45 amendment.

Senator ..... moved that the amendment made to H.F. No. 1561 by the Committee on Rules and Administration in the report adopted March 29, 20.., pursuant to Rule 45, be stricken.

(5) Unofficial engrossment.

Senator ..... moved to amend H.F. No. 1616, the unofficial engrossment, as follows:

Page 1, line 17, strike "four" and insert "six"

Amend the title as follows:

Page 1, line 4, after the semicolon, insert "increasing the number of citizen board members;"

The motion prevailed. #did not prevail. So the amendment was #not adopted.

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

(f) House floor amendment

(1) Page and line amendment; title amendment.

1.1	..... moves to amend H.F. No. 1234 as follows:
1.2	Page 31, lines 28 to 30, reinstate the stricken language
1.3	Page 34, delete sections 23 to 25
1.4	Page 59, line 29, delete "60A.13, subdivisions 3 and 4;"
1.5	Correct the title numbers accordingly

(2) Unofficial engrossment.

1.1	..... moves to amend S.F. No. 1616, the unofficial engrossment, as follows:
1.2	Page 1, line 17, strike "four" and insert "six"
1.3	Amend the title as follows:
1.4	Page 1, line 4, after the semicolon, insert "increasing the number of citizen board
1.5	members;"

(3) Page and line amendment; page and line title amendment.

1.1	..... moves to amend H.F. No. 438, the first engrossment, as follows:
1.2	Page 2, after line 26, insert:
1.3	"Sec. 3. **LEOTA, TOWN OF; DETACHED BANKING FACILITY;**
1.4	**AUTHORIZATION.**
1.5	With the prior approval of the commissioner of commerce, a bank doing business in
1.6	this state may establish and maintain not more than one detached facility in the town of
1.7	Leota in Nobles County. A bank desiring to establish a detached facility shall follow the
1.8	approval procedure prescribed in Minnesota Statutes, section 47.54. The establishment of
1.9	a detached facility in the town of Leota is subject to Minnesota Statutes, sections 47.51
1.10	to 47.57."
1.11	Page 2, line 28, delete "This act" and insert "Section 1"
1.12	Amend the title as follows:
1.13	Page 1, line 2, after "to" insert "banking"
1.14	Page 1, line 7, after the semicolon, insert "authorizing the establishment of a detached
1.15	banking facility in the town of Leota in Nobles County;"

(g) Amendment to amendment.

(1) House of representatives.

> …..... moves to amend the Jones amendment (……..) to H. F. No. 182, the first engrossment, as follows:
>
> Page 1, line 11, delete "quality of life" and insert "the amount of energy essential to residential customers"
>
> Page 1, line 13, after "encouraged" insert "and the quality of life protected"
>
> Page 2, delete line 1
>
> Page 2, line 3, reinstate the stricken "revenue"
>
> Page 2, line 7, strike "and any lost revenues"

In the opening language, note the precise identification of the old amendment.

Note that all lines of the new amendment are numbered.

(2) Senate.

> Senator …..... moved to amend the Jones amendment to S. F. No. 2391, adopted by the Senate May 8, 2012, as follows:
>
> Page 1, delete line 3
>
> Page 1, line 4, delete "lines 9 to 19 and insert:" and insert "line 9, before "Any" insert"
>
> Page1, line 5, delete "(a)"
>
> Page 1, delete lines 8 to 14
>
> The motion prevailed. #did not prevail. So the amendment was #not adopted.

(h) Section renumbering; page and line amendment requiring renumbering of sections in bill.

.... moves to amend H.F. No. 1702 as follows:

Page 1, after line 13, insert:

"Sec. 2. Minnesota Statutes 20.., section 330.02, is amended to read:

330.02 BOND.

Every auctioneer, before making sales, shall give a corporate surety bond to the ~~county~~ state in ~~a~~ the penal sum of ~~not less than $1,000 nor more than $3,000 to be fixed by the treasurer and with sureties approved by the treasurer~~ $5,000, conditioned that ~~he~~ the auctioneer will pay all sums required by law and in all things conform to the laws relating to auctioneers. ~~The treasurer shall endorse his approval upon such bond, and file it in his office.~~ The bond must be approved and filed as provided in chapter 574."

Renumber the sections in sequence

Amend the title as follows:

Page 1, after line 2, insert "modifying bond requirements;"

Correct the title numbers accordingly

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

(i) House conference committee report.

(1) House concurring in the senate amendment.

CONFERENCE COMMITTEE REPORT ON H.F. No. 317

A bill for an act

relating to traffic regulations; prescribing penalties and providing remedies for passing a stopped school bus displaying stop arm signals; amending Minnesota Statutes 20.., section 169.44, by adding a subdivision.

May 19, 20..

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

The Honorable .....
President of the Senate

We, the undersigned conferees for H.F. No. 317, report that we have agreed upon the items in dispute and recommend as follows:

That the House concur in the Senate amendment.

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

House Conferees: (Signed)

…… ……

…… ……

……

Senate Conferees: (Signed)

…… ……

…… ……

……

If more than one amendment must be accounted for, use the plural form: "That the House concur in the Senate amendments."

(2) Senate receding from its amendment.

CONFERENCE COMMITTEE REPORT ON H.F. No. 624

A bill for an act

relating to counties; fixing the amounts that may be spent for Memorial Day observances; amending Minnesota Statutes 20.., sections 375.34; 375.35.

May 18, 20..

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

The Honorable .....
President of the Senate

We, the undersigned conferees for H.F. No. 624, report that we have agreed upon the items in dispute and recommend as follows:

That the Senate recede from its amendment.

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

House Conferees: (Signed)

……. …….

…… ……

……

Senate Conferees: (Signed)

…… ……

…… ……

……

If more than one amendment must be accounted for, use the plural form: "That the Senate recede from its amendments."

(3) Delete everything amendment with delete everything title amendment.

CONFERENCE COMMITTEE REPORT ON H.F. No. 2466

A bill for an act

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

May 18, 20..

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

The Honorable .....
President of the Senate

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

That the Senate recede from its amendments and that H.F. No. 2466 be further amended as follows:

Delete everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 20.., section 15.162, subdivision 2a, is amended to read:

Subd. 2a. **Confidential data on individuals.** "Confidential data on individuals" means data which is (1) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (2) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (2) shall terminate and cease to have force with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the granting or refusal to grant an emergency classification pursuant to section 15.1642 of both criminal and civil investigative data, or on July 31, ~~1978~~ 2013, whichever occurs first.

Delete everything amendment with delete everything title amendment, Continued

Sec. 2. Minnesota Statutes 20.., section 15.1642, subdivision 5, is amended to read:

Subd. 5. **Expiration of emergency classification.** All emergency classifications granted under this section and still in effect shall expire on July 31, ~~1978~~ 2013. No emergency classifications shall be granted after July 31, ~~1978~~ 2013.

Sec. 3. **[15.1643] INTERNATIONAL DISSEMINATION PROHIBITED.**

A state agency or political subdivision shall not transfer or disseminate private or confidential data on individuals to the private international organization known as Interpol.

Sec. 4. **REPEALER.**

Minnesota Statutes 20.., sections 144.151, subdivisions 8 and 9; and 144.175, subdivision 2, are repealed.

Sec. 5. **EFFECTIVE DATE.**

Sections 1, 2, and 4 are effective the day following final enactment. Section 3 is effective July 1, 20..."

Delete the title and insert:

"A bill for an act

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

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

House Conferees: (Signed)

…… ……

……

Senate Conferees: (Signed)

…… ……

……

(4) Page and line amendment with no title amendment.

CONFERENCE COMMITTEE REPORT ON H.F. No. 921

A bill for an act

relating to public employees; designating the number of arbitrators to resolve labor dispute; amending Minnesota Statutes 20.., section 179.72, subdivision 6.

May 16, 20..

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

The Honorable .....
President of the Senate

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

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

Page 2, lines 8 to 12, reinstate the stricken language

Page 2, line 11, strike "$100" and insert "$180"

Page 2, line 14, after the period, insert "When a single arbitrator is hearing a dispute, the costs of the arbitrator must also be shared by the parties to the dispute."

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

House Conferees: (Signed)

…… ……

…… ……

……

Senate Conferees: (Signed)

…… ……

…… ……

……

(j) Senate conference committee report.

(1) Page and line amendment with no title amendment.

CONFERENCE COMMITTEE REPORT ON S.F. No. 274

A bill for an act

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

May 18, 20..

The Honorable .....
President of the Senate

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

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

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

Page 6, after line 14, insert:

"Subd. 7. **[85.012] [Subd. 6.] Big Stone State Park; deletion.** The following area is deleted from Big Stone State Park: The Northeast Quarter of the Northwest Quarter of Section 20 in Township 123 North, Range 48 West and that part of Government Lot 2, Section 10, Township 122, Range 47 lying south of Highway No. 7 and west of the following described line:...."

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 of representatives conferees.

Chapter 5
Engrossing

5.1 The Engrossing Process
5.2 Origin and Action upon Documents by the Engrossing Process
(a) Motions in committee
(b) Floor amendments
(c) Conference committee reports
5.3 Examination of an Engrossment
5.4 Unengrossable Amendments
(a) Conflicting amendments
(b) Technically unengrossable amendments
5.5 Identification of Engrossments
5.6 Unofficial Engrossments
5.7 Examples

5.1 THE ENGROSSING PROCESS

Engrossing is the process of incorporating into a bill the amendments adopted by the house of representatives or senate. A drafter needs to understand the engrossing process 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. See Minnesota Statutes, section 3C.04, subdivision 5. 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.

In preparing an engrossment, the revisor may correct misspelled words and other minor clerical errors. These corrections do not constitute an alteration or departure from the text as shown in the house or senate journals. See Minnesota Statutes, section 3C.04, subdivision 5.

5.2 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 of representatives 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. As a practical matter, the revisor pre-engrosses each house and senate committee report, both to expedite the engrossing process once the body adopts the report, and also to correct the report as necessary so that the engrossment is accurate and complete.

(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 on. 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 example in section 5.7, paragraph (c), 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.

5.3 EXAMINATION OF AN ENGROSSMENT

The engrossing process requires double-checking to ensure that:

- the correct version of the bill is being engrossed;
- all directed changes to the bill in amendments have been made;
- all changes have been made 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;
- additional amendments are not necessary to fully accomplish any amendment's intent;
- no changes have been inadvertently incorporated into a bill that were not directed or required by an amendment;
- amendments to the bill are not in conflict;
- the amendments have been adopted by the committee or the body, as appropriate; and
- all necessary title changes have been made.

In order to ensure that this is correctly done, the revisor's staff uses an extensive procedure of checking and rechecking by the drafting and editing assistants, legal editors, and attorneys.

5.4 UNENGROSSABLE AMENDMENTS

(a) Conflicting amendments.

In engrossing 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 irreconcilable, that is, they cannot be read together, and effect given to each, the later amendment prevails over the previously adopted amendment. See Minnesota Statutes, section 645.33.

(b) Technically unengrossable amendments.

An amendment will be unengrossable if, for example, any of the following occurs:

- the page number, line number, or locator words are wrong;
- words to be inserted are underlined or stricken when they should not be or are not underlined or stricken when they should be;
- the amendment amends text that was changed or deleted by a previously adopted amendment, with the exception of an amendment to strike lines of text that have been already stricken or amended;
- the amendment directs the insertion of text following a locator word, line, or section which was deleted by a previously adopted amendment;
- the amendment is equivocal as to what text should be stricken or deleted or as to where it should be inserted; or
- 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.

As part of the close examination and preparation of each engrossment, the revisor will see that the underlying amendments are corrected so that they are engrossable.

5.5 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. The drafter must always confirm that he or she is working from the latest 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. The house of representatives and senate bill information systems also provide accurate and current information on the status of house and senate files, and can be queried to identify the latest engrossment of a bill.

5.6 UNOFFICIAL ENGROSSMENTS

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

The senate also unofficially engrosses senate committee and floor amendments to house files and amends unofficial engrossments of house files.

5.7 EXAMPLES

(a) House of representatives committee report on a senate file.

..... from the Committee on Commerce and Regulatory Reform to which was referred:

S.F. No. 971, A bill for an act relating to insurance; providing financial requirements for nonprofit health service plan corporations; amending Minnesota Statutes 20.., section 62C.09, subdivision 3.

Reported the same back with the following amendments:

Page 1, line 17, strike "calendar" and insert "fiscal"

Page 1, line 18, delete "dental" and insert "medical"

Page 1, line 20, after "specified" insert "benefits" and after "and" insert "limits for average"

Page 1, line 21, after "benefits" insert "of not greater than $1,000 per year per insured"

With the recommendation that when so amended the bill pass.

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

(b) Senate committee report on a senate file.

Senator ..... from the Committee on Environment, Energy and Natural Resources Policy and Finance to which was referred

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

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

Page 1, lines 8 to 9, delete "the Department of Natural Resources" and insert "Stearns County"

Amend the title as follows:

Page 1, lines 2 to 3, delete "the Department of Natural Resources" and insert "Stearns County"

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

.....
(Committee Chair)

February 12, 20.. .....
(Date of Committee recommendation)

Copy of bill prior to engrossing sent to revisor with committee report on page 223 attached:

A bill for an act

relating to natural resources; appropriating money to the Department of Natural Resources to install a box culvert under a highway in Stearns County; providing a waterway connection between certain lakes to enable watercraft to cross from one lake to the other.

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

Section 1. **APPROPRIATION.**

$47,000 is appropriated from the general fund to the Department of Natural Resources to install a 12-foot by ten-foot concrete box culvert, approximately 90 feet in length, under Stearns County state-aid highway 71, providing a waterway connection between Big Cedar Lake and Little Cedar Lake in Stearns County that enables boats, pontoons, and recreational watercraft, up to ten feet in width, to cross between the lakes. The sum is available until spent.

S.F. No. 344 after committee report amendments engrossed.

A bill for an act

relating to natural resources; appropriating money to Stearns County to install a box culvert under a highway in Stearns County; providing a waterway connection between certain lakes to enable watercraft to cross from one lake to the other.

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

Section 1. **APPROPRIATION.**

$47,000 is appropriated from the general fund to Stearns County to install a 12-foot by ten-foot concrete box culvert, approximately 90 feet in length, under Stearns County state-aid highway 71, providing a waterway connection between Big Cedar Lake and Little Cedar Lake in Stearns County that enables boats, pontoons, and recreational watercraft, up to ten feet in width, to cross between the lakes. The sum is available until spent.

(c) Floor amendment.

1.1	..... moves to amend H.F. No. 187 as follows:
1.2	Delete everything after the enacting clause and insert:
1.3	"Section 1. Minnesota Statutes 20.., section 128A.03, subdivision 3, is amended to
1.4	read:
1.5	Subd. 3. **Councils.** The ~~councils shall expire and~~ terms, compensation, and
1.6	removal of members <u>of the councils</u> shall be as provided in section 15.059<u>. The</u>
1.7	<u>councils expire on December 31, 20..</u>.
1.8	Sec. 2. **<u>EFFECTIVE DATE.</u>**
1.9	<u>Section 1 is effective the day following final enactment.</u>"
1.10	Correct the title numbers accordingly

H.F. No. 187 before engrossing the amendment.

1.1	A bill for an act
1.2	relating to education; braille and deaf schools; providing for appointment
1.3	of advisory councils; proposing coding for new law in Minnesota Statutes,
1.4	chapter 123.
1.5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
1.6	Section 1. **<u>[123.45] ADVISORY COUNCILS; SPECIAL SCHOOLS.</u>**
1.7	<u>The governor shall appoint an advisory council for each school for the visually</u>
1.8	<u>or hearing impaired.</u>

H.F. No. 187 after engrossing.

A bill for an act

relating to education; braille and deaf schools; providing for appointment of advisory councils; amending Minnesota Statutes 20.., section 128A.03, subdivision 3.

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

Section 1. Minnesota Statutes 20.., section 128A.03, subdivision 3, is amended to read:

Subd. 3. **Councils.** The ~~councils shall expire and~~ terms, compensation, and removal of members of the councils shall be as provided in section 15.059. The councils expire on December 31, 20...

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Chapter 6
Resolutions

6.1 Resolutions; Generally
  (a) What they are
  (b) Choosing the correct form
6.2 Congratulatory Resolutions
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6.1 RESOLUTIONS; GENERALLY

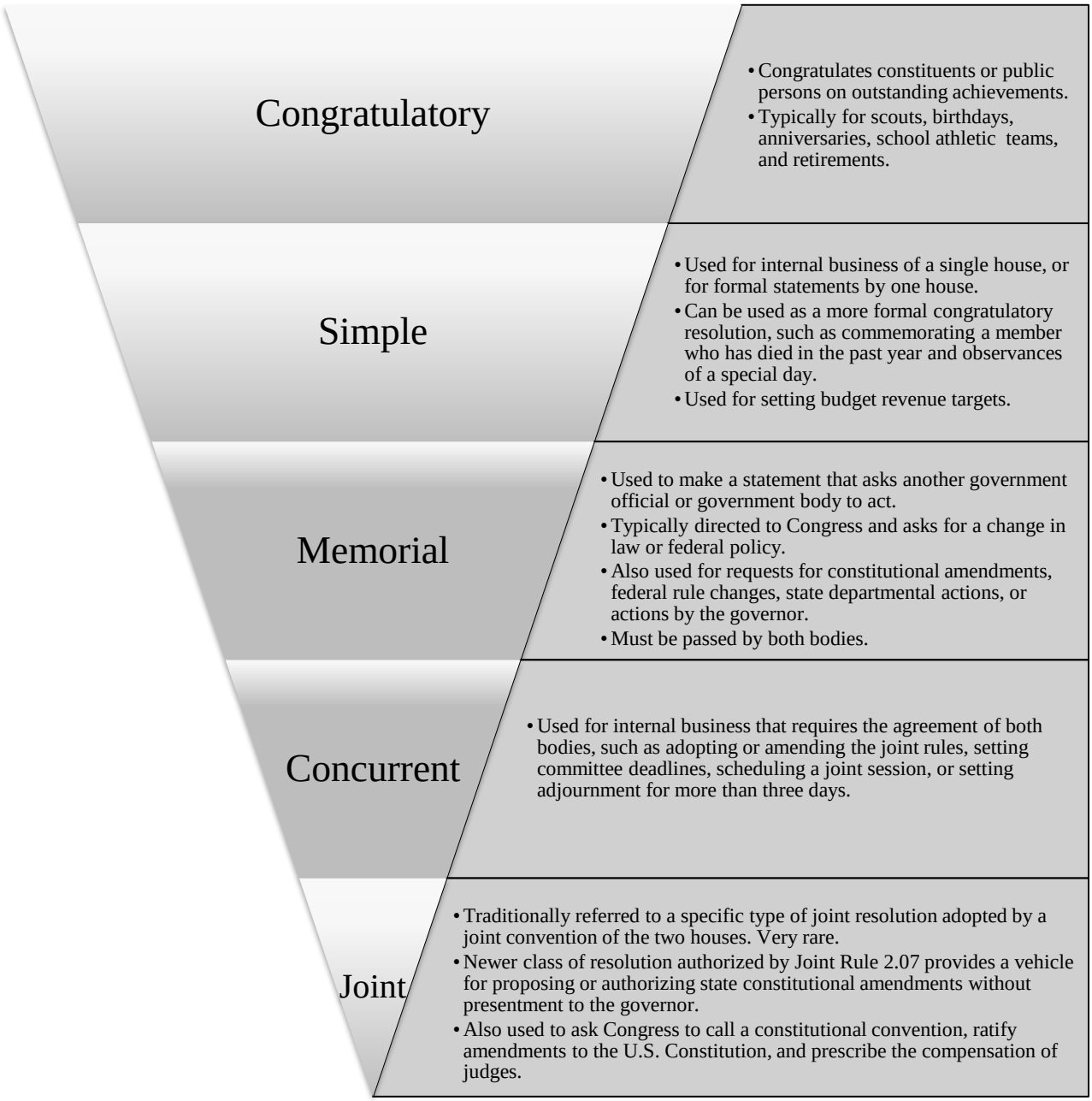
(a) What they are.

A resolution is a vehicle by which the legislature can express policy or opinion or conduct internal legislative business. Unlike the expression of policy in a bill, resolutions do not usually result in a legal obligation, but express policy in a nonbinding way.

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.

(b) Choosing the correct form.

The first thing to be decided in taking a resolution request is which type to use. 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. The following illustration explains the different types of resolutions in order from most requested to least requested.



6.2 CONGRATULATORY RESOLUTIONS

(a) What they are.

Congratulatory resolutions are documents that can be produced with a minimum of procedure. If a house of representatives member requests a private congratulation, such as a boy scout Eagle Award or a wedding anniversary, the usual practice is to draft a congratulatory resolution.

(b) Governing rules.

In the house of representatives, congratulatory resolutions are governed by house rules 1.11 and 4.02. In the senate, all rules that discuss "resolutions" generally govern congratulatory resolutions as well as all the others. See the rules index in section 6.7.

(c) Form.

(1) Title.

Congratulatory resolutions have opening phrases that specify one house or the other: "A House resolution" or "A Senate resolution." The second part of the title briefly states the subject, such as "congratulating Jane Doe on her Girl Scout Gold Award."

(2) Preambles, or "Whereas" clauses.

The preamble lists the reasons why the house or senate has decided to take the action in the resolving clause. If someone is being congratulated on an achievement, the preamble will describe it, usually in a detailed way.

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

(3) Resolving clause.

Instead of an enacting clause, resolutions have a resolving clause. The form differs based on type of resolution and between the house of representatives and senate.

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

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

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."

(4) Transmittal clause.

Senate congratulatory resolutions also contain a transmittal clause, which directs that copies be sent to the recipient. See the discussion in section 6.4, paragraph (c), clause (4) for further discussion on transmittal clauses. The transmittal clause reads:

"BE IT FURTHER RESOLVED that the Secretary of the Senate is directed to prepare an enrolled copy of this resolution, to be authenticated by the Secretary's signature and that of the Chair of the Senate Rules and Administration Committee, and transmit it to < recipient >"

(5) Document type.

In the house of representatives, the revisor's office drafts these resolutions and produces the final copy on ceremonial paper. 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 of representatives is not in session.

For the senate, the revisor's office produces three copies with blue covers for introduction, like a simple resolution, and one for presentation on ceremonial paper.

In both bodies, 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 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. Different formats like verse form or centered lines are possible.

(d) Procedure.

(1) House of representatives.

House congratulatory resolutions are not introduced in or adopted by the house of representatives. Therefore, congratulatory resolutions do not receive file numbers of any kind. Because they are not introduced, they cannot be retrieved through the legislature's Web site for legislation and bill tracking.

Current practice is to draft them as resolutions of the house of representatives rules committee, and not the house of representatives as a body, although the committee does not really act on them.

House congratulatory resolutions are given a ceremonial seal by the speaker of the house, and signed by the speaker of the house, the majority leader, and the requesting member.

(2) Senate.

Senate blue covers are sent to the requesting member, who will send them to the secretary of the senate for introduction. The resolution is given a Senate Resolution number. The resolution is introduced during session and generally referred to the Senate Committee on Rules and Administration, and will not be considered by committee. On rare occasions they are adopted by the senate. The blue covered copies of the senate congratulatory resolution are identical to a senate simple resolution. See the discussion on procedure of simple resolutions under section 6.3, paragraph (d).

The senate presentation copy is printed on ceremonial paper. The revisor's office sends this copy to the secretary of the senate where it is given a ceremonial seal and signed by the secretary of the senate, the chair of the Senate Committee on Rules and Administration, and the requesting member.

(e) Drafting advice.

Sometimes a house of representatives member might want a congratulatory resolution that is more formal, and that requires action by the house of representatives. If a house of representatives member wants a document for introduction, a simple resolution can be drafted using the same type of congratulatory language described in this section.

Another common request is when members want a congratulation to come from both houses and to be produced quickly. The forms of resolution that involve both houses require floor action. The only two-house congratulation that doesn't require floor action is a house congratulatory resolution with additional signature lines for senate members. The alternative solution, during session, is to draft identical simple resolutions for both houses.

6.3 SIMPLE RESOLUTIONS

(a) What they are.

A simple resolution is a statement made by either body, or relating to internal business of either body. A simple resolution is used when a member wants a document that is introduced to the body. 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.

(b) Governing rules.

There are no specific rules governing simple resolutions, but all rules that discuss "resolutions" generally govern simple resolutions as well as all the others. See the index at section 6.7.

When the rules specifically call for a house resolution or a senate resolution, the simple resolution is the form traditionally used. 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 at section 6.8, paragraph (d), clause (1).

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."

(c) Form.

(1) Title.

Simple resolutions have opening phrases that specify one house or the other: "A House resolution" or "A Senate resolution". The second part of the title briefly states the subject, such as "congratulating the city of Plymouth on being named most livable city in America."

(2) Preambles, or "Whereas" clauses.

Simple resolutions contain preamble clauses that describe the reasons why the body is moving the resolution, identical to congratulatory resolutions. Preamble clauses may be omitted if there is no reason to explain the resolving clause. See the example at section 6.8, paragraph (c), clause (1).

(3) Resolving clause.

House:	"BE IT RESOLVED by the House of Representatives of the State of Minnesota…"
Senate:	"BE IT RESOLVED by the Senate of the State of Minnesota"
Senate; internal business:	"BE IT RESOLVED by the Senate:"

(4) Transmittal clause.

Simple 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, referred to as a transmittal clause. House simple resolutions direct the chief clerk to send the copies; senate resolutions direct the secretary of the senate.

Simple resolutions that pertain to the business of one house do not have a transmittal clause.

House of representatives:

"BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is directed to prepare a copy of this resolution, to be authenticated by his signature and that of the Speaker, and transmit it to the <recipient>."

Senate:

"BE IT FURTHER RESOLVED that the Secretary of the Senate is directed to prepare a copy of this resolution, to be authenticated by the Secretary's signature and that of the Chair of the Senate Rules and Administration Committee, and transmit it to < recipient >"

(5) Document type.

House simple resolutions are prepared by the revisor's office with blue covers.

Senate simple resolutions are prepared like senate congratulatory resolutions, with blue covers, but without a ceremonial presentation copy.

Internal, unnumbered resolutions can be prepared by any office and are printed on regular paper.

(d) Procedure.

Simple resolutions are introduced and are numbered "HR" or "SR." With an HR or SR number, a searcher can retrieve a simple resolution's title, text, and revisor number on the legislature's Web site. 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.

Simple resolutions are referred to committee and if reported back to the body are printed in the journal. They have no legal effect, do not get three readings, are not subject to bill deadlines, and are not presented to the governor. Joint Rule 2.04 states that any resolution passed in one house can be amended in the other house, although amendments are not common.

(e) Drafting advice.

Rather than acting on a simple resolution, sometimes the house of representatives may act on unnumbered resolutions that pertain to internal business such as interim parking, or setting the time for adjournment sine die. These resolutions are not introduced, but are acted on by the body on the floor.

For a discussion of "sense of the house of representatives" and "sense of the senate" simple resolutions, see section 6.5, paragraph (e).

When drafting "sense of the house of representatives" and "sense of the senate" resolutions, avoid using the terms "proclaim" or "declare," which denote an official proclamation. Instead use "recognize." See the example in section 6.8, paragraph (d), clause (5).

6.4 CONCURRENT RESOLUTIONS

(a) What they are.

A document having to do with the business of both houses is drafted as a concurrent resolution. 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.

(b) Governing rules.

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 under House Rule 4.02 or Senate Rule 2, or follow bill procedure under Senate Rule 6.

Session deadlines and resolutions allowing adjournment for more than three days are governed by special provisions of law and rules:

Adjournment: Minnesota Constitution, article IV, section 24; Senate Rule 6

Session deadlines: Joint Rule 2.03

(c) Form.

(1) Title.

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

(2) Preambles, or "Whereas" clauses.

When concurrent resolutions concern internal business of both houses, they do not contain preambles.

(3) Resolving clause.

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

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

Unlike other resolutions that require a secondary resolving clause that reads "BE IT FURTHER RESOLVED," for resolving clauses that require two paragraphs, concurrent resolutions do not require a secondary resolving clause.

(4) Transmittal clause.

A house or senate concurrent resolution that relates to internal business such as deadlines, does not contain a transmittal clause.

All other concurrent resolutions direct the secretary of the senate and the chief clerk of the house, respectively, to transmit copies of the resolution to the recipient. See section 6.8, paragraph (e), clause (6), for an example.

House of representatives:

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and those of the Speaker of the House of Representatives, the Chair of the Senate Rules and Administration Committee, and the Secretary of the Senate, and transmit it to <recipient>.

Senate:

BE IT FURTHER RESOLVED that the Secretary of the Senate is directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and those of the Senate Majority Leader, the Speaker of the House of Representatives, and the Chief Clerk of the House of Representatives, and transmit it to <recipient>.

(5) Document type.

Concurrent resolutions are prepared with yellow covers for both bodies.

(d) Procedure.

Concurrent resolutions are introduced and numbered "HC" or "SC." Text and revisor numbers for house and senate 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 on the legislature's bill tracking Web site, search "HC*" or "SC*" in the bill number field or the word "concurrent" in the short description field.

Concurrent resolutions may be referred to committee and if reported back to the body are printed in the journal. They have no legal effect, are not subject to bill deadlines, do not get three readings, and are not presented to the governor. Concurrent resolutions can be amended, either on the floor or in committee.

(e) Drafting advice.

If a member requests a document that can be introduced in both bodies, the concurrent is the best choice, and requires floor action. Other options include offering identical simple resolutions in the house of representatives and senate.

6.5 MEMORIAL RESOLUTIONS

(a) What they are.

Any resolution that is to be sent to some other body and tells or asks them to do something is a memorial and must be drafted in that form.

(b) Governing rules.

House Rule 4.02 states: "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 of representatives, 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. See the discussion in paragraph (e).

For a list of other provisions that govern memorial resolutions, see the rules index at section 6.7.

(c) Form.

(1) Title.

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

(2) Preambles, or "Whereas" clauses.

Memorial resolutions contain preambles that describe, in detail, why the legislature is requesting the action in the memorial.

(3) Resolving clause.

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

(4) Transmittal clause.

Memorials direct the Secretary of State to prepare copies:

"BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare enrolled copies of this memorial and transmit them to ....., the President of the United States, the President and the Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, the chair of the Senate Committee on ....., the chair of the House Committee on ....., and Minnesota's Senators and Representatives in Congress."

(5) Document type.

Memorials are prepared like bills with green house jackets and yellow senate jackets.

(d) Procedure.

Memorial resolutions are introduced and 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 by chapter posted on the Internet.

Memorial resolutions follow bill procedure and, unlike simple or concurrent resolutions, have legal effect, are subject to bill deadlines, must be given three readings on three different days in each house, and require presentation to the governor.

Memorial resolutions are more often debated and amended. The text of these resolutions and the text of amendments to them is not underscored. Partial deletes and delete everything amendments may be used to amend them. "Delete everything" amendments have one difference: Because resolutions have no enacting clause, the direction to delete reads, "Delete everything after the title and insert:".

(e) Drafting advice.

Drafters might be requested to draft a resolution that has the form of a memorial, but without the presentment requirement. 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 or presentment requirements. Such a resolution must not contain a transmittal clause, or it becomes a memorial. See the example at section 6.8, paragraph (d), clause (5).

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.

A resolution directing television producers to reduce the amount of violence on television would have to be in memorial form in the house of representatives, and would have to be in simple form in the senate because the senate rules do not allow memorials directed to nongovernment entities. Members should be advised that if they want their memorial to pass, it must meet the rules of both bodies.

6.6 JOINT RESOLUTIONS

(a) What they are.

Joint resolutions are used when the house of representatives and senate wish to act together on a single matter. They fall into four categories:

- those asking Congress to call a constitutional convention;
- those ratifying amendments to the United States Constitution;
- those proposing amendments to the Minnesota Constitution; and
- those prescribing the compensation of judges.

An older type of joint resolution which is adopted by a joint convention of the two houses, is extremely rare.

(b) Governing rules.

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 joint resolutions not be presented to the governor and simply be deposited with the secretary of state.

Joint Rule 2.07 makes it clear that at least these 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*, 62 N.W. 2d 52 (Minn. 1954).

For a list of other provisions that affect joint resolutions, see the index at section 6.7.

(c) Form.

(1) Title.

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

(2) Preambles, or "Whereas" clauses.

Joint resolutions contain preamble clauses describing the action the bodies are undertaking. In the case of joint resolutions proposing an amendment to the Minnesota Constitution, the form of the whereas clauses depends on whether or not enabling legislation is being included. See section 6.8, paragraph (h), clause (3), for an example.

(3) Resolving clause.

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

In the rare case of joint convention resolutions, the resolving clause is:

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

(4) Transmittal clause.

- Ratifying a constitutional amendment

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare copies of this joint resolution and transmit them to the Administrator of the General Services Administration, the Speaker and Clerk of the

United States House of Representatives, and the President and Secretary of the United States Senate.

- Proposing a constitutional amendment

BE IT FURTHER RESOLVED that the proposed amendment shall be submitted to the people at the 20.. general election. The question submitted shall be:

- Prescribing the compensation of judges

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare a copy of this resolution and transmit it to the Chief Justice of the Supreme Court of the State of Minnesota.

- Apply to Congress to call a constitutional convention

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota is directed to prepare copies of this resolution and transmit it to the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, the United States Secretary of State, and Minnesota's Senators and Representatives in Congress.

- Joint convention resolutions

BE IT FURTHER RESOLVED that the Secretary of the joint convention is directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and that of the President of the joint convention, and that it be presented to <recipient>.

(5) Document type.

Joint resolutions are prepared like bills with green house of representatives jackets and yellow senate jackets.

(d) Procedure.

Joint resolutions are introduced and numbered as house files or senate files just as bills are, and all the information available for bills is available for them. They follow bill procedure, and like memorials, they have legal effect, must be given three readings on three different days in each body, are subject to bill deadlines, and do not have underscored text. See section 6.5, paragraph (d), for amending conventions. Joint resolutions are enrolled, but not presented to the governor.

Joint 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 by chapter posted on the Internet.

(e) Drafting advice.

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. See section 3.3 for a detailed discussion of state constitutional amendments.

Avoiding presentment in other matters is controversial. The redistricting process has prompted a series of cases. In 1931, the house of representatives 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)

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6.8 EXAMPLES

(a) Congratulatory resolution – house of representatives.

(1) Congratulating students on an honor.

A House resolution

congratulating the . . . . . grade students of . . . . . Elementary School for participating in the Drug Abuse Resistance Education program

WHEREAS, the ..... grade students of . . . . . Elementary School have participated in the Drug Abuse Resistance Education (DARE) program for the required period; and

WHEREAS, their instructor was DARE Officer ..... of the ..... Police/Sheriff's Department; and

WHEREAS, the instruction covered many areas, such as self-esteem, peer pressure, and assertiveness; and

WHEREAS, the students learned eight different tactics to say "no" if offered drugs; and

WHEREAS, each student wrote an essay and completed a workbook; and

WHEREAS, on the day of DARE graduation ceremonies, ..., 20.., each student will be making a commitment to remain drug-free; NOW, THEREFORE,

BE IT RESOLVED by the Committee on Rules and Legislative Administration of the House of Representatives of the State of Minnesota that it congratulates the ..... grade students of ..... Elementary School for participating in the Drug Abuse Resistance Education program.

Dated: ...., 20..

……......., Speaker
Minnesota House of Representatives

....., Chair
Rules and Legislative Administration

…….....
State Representative

(2) Congratulations to an athletic team.

A House resolution

congratulating the .... basketball team from .....
High School for winning the 20.. State High School
Class AA ..... basketball tournament

WHEREAS, high school athletic championships are highly sought honors and the achievements they represent are worthy of respect and recognition; and

WHEREAS, athletic competition teaches the principles of cooperation, self-control, and fair play; and

WHEREAS, the ..... High School ..... team participated in the State High School Class ..... basketball tournament on .... and .., 20..; and

WHEREAS, the ..... gave an outstanding and determined effort to win the final game of the tournament over ..... High School; and

WHEREAS, the ..... are the 20.. State High School Class ..... basketball champions and have an outstanding ../.. win-loss record; and

WHEREAS, ... High School's players, coaches, managers, cheerleaders, and fans have exhibited good sportsmanship throughout the season; NOW, THEREFORE,

BE IT RESOLVED by the Committee on Rules and Legislative Administration of the House of representatives of the State of Minnesota that it congratulates the ..... High School basketball team members and coach on their accomplishments, skill, and efforts.

(3) Athletic honor naming team members.

Jane Doe

A House resolution

congratulating Jane Doe and the ..... hockey team for winning the 20.. State
High School Class … hockey championship

WHEREAS,..... .....; and

WHEREAS,..... .....; and

WHEREAS, ...; NOW,THEREFORE,

BE IT RESOLVED by the Committee on Rules and Legislative Administration of the House of representatives of the State of Minnesota that it congratulates ……..
State High School hockey team on winning the state championship.

(b) Congratulatory resolution – senate.

(1) Congratulating an individual honor.

A Senate resolution

recognizing . . . . . of . . . . . for 63 years of services at the …. corporation.

WHEREAS, …. worked for 38 years in various departments learning all aspects of …., Inc.; and

…..

WHEREAS, in 1990 … was promoted to his current position as Senior Manager;

NOW, THEREFORE, BE IT RESOLVED by the Senate of the State of Minnesota that it congratulates … for his 60 years of outstanding service to …, Inc.

BE IT FURTHER RESOLVED that the Secretary of the Senate is directed to prepare an enrolled copy of this resolution, to be authenticated by the Secretary's signature and that of the Chair of the Senate Rules an Administration Committee, and transmit it to …..

…….....
<Name>
Secretary of the Senate

.....
<Name>
Chair, Senate Committee on
Rules and Administration

…….....
<Name>
State Senator, District X

(2) Presentation copy – without page and line numbers but with signature lines.

Congratulations on 100th birthday.

A Senate resolution

honoring the Staples Public Library on the occasion of its 100th birthday.

WHEREAS, those public facilities that have enriched our cultural heritage and withstood the test of time are deserving of special legislative recognition; and

WHEREAS, as it celebrates 100 years since its founding, the new Staples Library, along with City Hall, will be located downtown, providing better accessibility to residents and visitors and helping to support the downtown business core; and

WHEREAS, a party for the 100th birthday of the Staples Public Library was held on Sunday, August 2, 2009, at Northern Pacific Park; and

WHEREAS, the Centennial Celebration featured a magician, a picnic supper, and birthday cake, along with a concert featuring the Staples Community Band; **NOW, THEREFORE,**

BE IT RESOLVED by the Senate of the State of Minnesota that it congratulates the Staples Public Library on its 100th birthday and extends best wishes for the future.

BE IT FUTHER RESOLVED that the Secretary of the Senate is directed to prepare an enrolled copy of this resolution, to be authenticated by his/her signature and that of the Chair of the Senate Rules and Administration Committee, and transmit it to the director of the Staples Public Library.

.....
Secretary of the Senate

……
Chair, Senate Committee on
Rules and Administration

……..
State Senator, District 11

(3) Blue covered copy- with page and line numbers but without signature lines. Congratulations on 100th birthday.

A Senate resolution

honoring the Staples Public Library on the occasion of its 100th birthday.

WHEREAS, those public facilities that have enriched our cultural heritage and withstood the test of time are deserving of special legislative recognition; and

WHEREAS, as it celebrates 100 years since its founding, the new Staples Library, along with City Hall, will be located downtown, providing better accessibility to residents and visitors and helping to support the downtown business core; and

WHEREAS, a party for the 100th birthday of the Staples Public Library was held o on Sunday, August 2, 2009, at Northern Pacific Park; and

WHEREAS, the Centennial Celebration featured a magician, a picnic supper, and birthday cake, along with a concert featuring the Staples Community Band; **NOW, THEREFORE,**

BE IT RESOLVED by the Senate of the State of Minnesota that it congratulates the Staples Public Library on its 100th birthday and extends best wishes for the future.

BE IT FUTHER RESOLVED that the Secretary of the Senate is directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and that of the Chair of the Senate Rules and Administration Committee, and transmit it to the director of the Staples Public Library.

1

(c) Simple resolution – senate.

(1) Internal operation of the senate; rules.

A Senate resolution

relating to the adoption of temporary rules.

BE IT RESOLVED by the Senate of the State of Minnesota:

That The Permanent Rules of the Senate for the.... session of the Legislature are adopted as the temporary rules of the.... session, to be effective until the adoption of Permanent Rules by a majority vote of the Senate, subject to the following conditions:

Any resolution or other question before the Senate may be brought to a vote at any time by a majority vote of the members present. A bill may not be introduced on the first day.

The rules referred to above are amended as follows:

13. HOUR OF CONVENING [2]

The Senate shall convene on days of meeting at 10 a.m. unless the Senate directs otherwise.

. . . .

(2) Congratulations for a personal honor.

A Senate resolution

congratulating ..... for receiving the award of being designated one of America's Ten Outstanding Young Men for 20..

WHEREAS, ... of ....., Minnesota, has invented and developed numerous products for persons afflicted with cardiac and renal problems; and

WHEREAS, his inventions have led to longer, safer, and more productive lives for persons with cardiac and renal problems and simplified the work of physicians, nurses, and technicians; and

WHEREAS, the manufacture and distribution of the products invented by ..... as well as the development of new products have provided employment for many Minnesotans; and

WHEREAS, despite the heavy demands of work and community activities, he maintains a strong family life including frequent boating and fishing trips with his children; and

WHEREAS, in recognition of his life and work, ... has been selected as one of America's Ten Outstanding Young Men for 20.. by the United States Jaycees; **NOW, THEREFORE,**

BE IT RESOLVED by the Senate of the State of Minnesota that ..... is congratulated for not only his award as one of America's Ten Outstanding Young Men for 20.. from the United States Jaycees, but also for his work and achievements.

BE IT FURTHER RESOLVED that the Secretary of the Senate is directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and that of the Chair of the Senate Rules and Administration Committee, and transmit it to . . . . . .

(d) Simple resolution – house of representatives.

(1) Limiting general fund expenditures.

A House resolution

setting the maximum limit on general fund expenditures for the biennium.

BE IT RESOLVED by the House of Representatives that the sum of $27,072,400,000 is the maximum limit on state appropriations and transfers from the general fund for fiscal years 2002 and 2003.

BE IT FURTHER RESOLVED that the House of Representatives finds that a cash flow account of $350,000,000 and a budget reserve of $622,000,000 are necessary.

BE IT FURTHER RESOLVED that the limit on appropriations and transfers from the general fund established in this resolution may be automatically adjusted to reflect forecast adjustments and consolidation of other funds into the general fund. This resolution is adopted under House Rule 4.03.

(2) Recognizing a special observance day.

A House resolution

recognizing Sunday, ... as ..... Day in the State of Minnesota.

WHEREAS, the Congress of the United States, in an effort to raise awareness of the present and future potential of ...., has recognized Sunday, ….... .. as ..... Day; and

WHEREAS, the policy of the State of Minnesota is consistent with the goal of the Congress of the United States; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota that Sunday, ….. .. is recognized to be ..... Day. All citizens and residents of Minnesota are encouraged to participate and support all state and private agencies in ..... Day activities.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is directed to prepare a copy of this resolution, to be authenticated by his signature and that of the Speaker, and transmit it to . . . .

(3) Expression of condolence.

A House resolution

expressing condolences to the family of the late Senator . . . . . .

WHEREAS, the House of Representatives has been informed of the death of the Honorable ....., Senator, District .., State of Minnesota; NOW, THEREFORE,

BE IT RESOLVED that the House of Representatives in session assembled this .... day of ....., 20.., does by this resolution express to the family of ..... its appreciation for his leadership and dedication to the welfare of Minnesotans and extends its heartfelt sympathy to them in their bereavement.

BE IT FURTHER RESOLVED that a committee of ten members of the House shall be appointed to represent the House of Representatives at the funeral of . . . . . .

(4) Eulogizing a person's life.

A House resolution

eulogizing ..... and commemorating the exemplary nature of his life and work.

WHEREAS, ... was born on his father's farm in Havana Township, Steele County, Minnesota, on August 6, 1891; and

WHEREAS, ... attended the country schools in Steele County, graduated from Owatonna High School in 1908, and with his father and brother operated the family farm for many years; and

WHEREAS, ... was elected to the House of Representatives of the State of Minnesota and served there continuously from 1935 until he chose not to stand for reelection in 1968; and

WHEREAS, during his seventeen terms in the House of Representatives he served thirteen terms on the Tax Committee including one as its chair; nine terms as a member of the Civil Justice Committee including four as its chair; three terms on the Ways and Means committee including one as its chair; twelve terms on the Insurance Committee; seven terms as a member of the Highways Committee; six terms as a member of the Rules Committee; three terms as a member of the budget committee; five terms as a member of the Finance Committee; and for a single term as a member of fourteen other committees; and

WHEREAS, from 1949 through 1953, ... was elected to and served as Speaker of the House of Representatives; and

WHEREAS, ... was principally responsible for the 1967 tax reform bill which provided for the state sales tax and he also was the principal author of many other laws that benefited the people of the State of Minnesota and of Steele County; and

WHEREAS, after retirement from the Legislature, he continued to work for the betterment of the people of the State of Minnesota; and …..... died on April 5, 1984; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota that it commends to the people of the State of Minnesota the record of ..... as a life, work, and spirit worth emulation. It extends its condolences to his wife, ..., to his son and daughter, to his godson, to his sister and two brothers, and to all the people of Steele County who knew him.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is directed to prepare a copy of this resolution, to be authenticated by his signature and that of the Speaker, and transmit it to . . . . . .

(5) Expressing the sense of the house of representatives.

A resolution

expressing the sense of the Minnesota House of Representatives concerning the Freedom to Farm Act.

WHEREAS, the 1996 Farm Bill, known as the Freedom to Farm Act, reduced traditional safety nets designed to protect agricultural producers during periods of low commodity prices and weather-related disasters; and

WHEREAS, the Freedom to Farm Act eliminated production controls available to the United States Secretary of Agriculture to reduce surplus agricultural commodity stocks and has had the effect of increasing surpluses in farm commodities and thereby depressing prices; and

WHEREAS, because of depressed commodity prices and the lack of an adequate financial safety net in agricultural producers, the United States Congress has been forced to approve annual emergency farm aid packages as farm incomes continue to decline, and in 2000 alone sent out payments exceeding $22 billion with much of this money going to large farms; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the State of Minnesota that it believes that the Freedom to Farm Act is ineffective and damages the farm economy.

BE IT FURTHER RESOLVED that the House of Representatives . . . . . .

(e) Concurrent resolution.

(1) Establishing a study commission.

A Senate concurrent resolution

establishing a commission on . . . . . .

WHEREAS, the Legislature is concerned about .....; NOW, THEREFORE,

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

(1) A commission on ..... is established. The commission shall be composed of ..... The members shall be appointed by . . . . . .

(2) The commission shall/must report to the Legislature on its first day in session in 20.. recommendations on:

.....

….....

(3) The expenses of the commission shall be divided equally between the Senate and the House of Representatives and paid from the Legislative expense funds of the Senate and House of Representatives following approval of a budget for that purpose by the Committee on Rules and Administration of the Senate and the Committee on Rules and Legislative Administration of the House of Representatives.

Note the simplified form used in this draft. Different provisions are divided into separate paragraphs and each paragraph is numbered. "BE IT FURTHER RESOLVED" is unnecessary. The preamble gives direction to the study committee.

(2) Joint operation of house of representatives and senate.

A Senate concurrent resolution

relating to the adoption of temporary joint rules.

BE IT RESOLVED by the Senate of the State of Minnesota, the House of Representatives concurring: The Joint Rules of the Senate and the House of Representatives for the .... session are adopted as the temporary joint rules of the .... session, to be effective until the adoption of Permanent Joint Rules by the Senate and the House of Representatives.

The rules referred to above are amended as follows:

.....

(3) Joint convention of both houses.

A House concurrent resolution

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

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

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

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

(4) Amendments to Joint Rules.

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

A Senate concurrent resolution

adopting Joint Rules of the Senate and House of Representatives.

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

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

ARTICLE I: JOINT CONVENTIONS

HOW GOVERNED

1.01 The Speaker of the House shall preside at all Conventions of the two houses of the Legislature and shall call the members to order. The Chief Clerk of the House shall be the Secretary and the Sergeant at Arms of the House shall be the Sergeant at Arms of the Convention.

PRESIDENT'S DUTIES

1.02 The President of the Convention shall preserve order and decorum. The President may speak on all points of order in preference to other members and shall decide questions of order, subject to an appeal to the Convention by any member. The President shall rise to put a question but may state it while seated.

(5) Adjournment of legislature for more than three days.

A House concurrent resolution

relating to adjournment until 20...

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

(1) Upon its adjournment ...., 20.., the House of Representatives may set its next day of meeting for ...., 20.., at 12:00 noon, and the Senate may set its next day of meeting for ...., 20.., at 12:00 noon.

(2) By the adoption of this resolution, each house consents to adjournment of the other house for more than three days.

(6) Congratulatory.

A House concurrent resolution

honoring the life and service of the late Regents' Professor John R. Borchert for his countless contributions to the University and the state of Minnesota.

WHEREAS, Dr. John R. Borchert served his country with distinction in World War II as part of "The Greatest Generation"; and

WHEREAS, Dr. Borchert constantly challenged people to make existing institutions respond to newly identified needs, displayed unbounded curiosity about every place he visited and studied, and saw something positive in every person he met; and

WHEREAS, Dr. Borchert served with distinction as a University of Minnesota Regents' Professor Emeritus of Geography, as President of the Association of American Geographers, as a contributing member of the National Academy of Sciences, as writer of several important books on national and state issues, and as the winner of several national and state awards; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives, the Senate concurring, that it honors the great and many contributions Dr. Borchert made to our University, to the state entities that he wisely counseled, to the many students urged on to make further contributions, and to all the state's citizens.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is directed to prepare enrolled copies of this resolution, to be authenticated by his signature and those of the Speaker of the House of Representatives, the Chair of the Senate Rules and Administration Committee, and the Secretary of the Senate, and transmit them to the family of Dr. John R. Borchert, the President of the University of Minnesota, the Chair of the Board of Regents, the Chair of the University of Minnesota Geography Department, the Director of the Center for Urban and Regional Affairs, and the Governor of Minnesota..

(7) Expressing policy of the legislature.

A House concurrent resolution

expressing regret for conflicts between Native Americans and Europeans settlers.

WHEREAS, Minnesota native peoples are spiritual peoples with a deep and abiding belief in the Creator, and have maintained a powerful spiritual connection to the land; and

WHEREAS, the arrival of Europeans in the land now called Minnesota opened a new chapter in the history of Minnesota native peoples; and

WHEREAS, the policies toward Minnesota Indian tribes and the breaking of covenants with these Indian tribes have contributed to the severe social ills and economic troubles in many Minnesota, South Dakota, North Dakota, Nebraska, Montana, and Canadian native communities today; NOW, THEREFORE,

BE IT RESOLVED that the members of the Minnesota legislature:

(1) express regret at the deaths of Minnesota Indians and European settlers as the result of past conflicts;

(2) acknowledge that on many occasions conflicts resulted in cruel and inhumane acts;

(3) express regret for the ramifications of former offenses and commitment to build on the positive relationships of the past and present to move toward a brighter future where all the people of what is now known as the State of Minnesota live reconciled as brothers and sisters, and harmoniously steward and protect this land together;

(4) urge indigenous American people and Americans of European descent to treat each other with respect and to resolve disputes in a spirit of compromise and recognition of our mutual humanity; and

(5) commend other state governments that have begun reconciliation efforts with Indian tribes located in their boundaries and encourage all state governments similarly to work toward reconciling relationships with Indian tribes within their boundaries.

BE IT FURTHER RESOLVED by the House of Representatives of the State of Minnesota, the Senate concurring, that this resolution is an expression of regret and does not affect land titles or other legal claims.

(f) Memorial resolution.

(1) Memorializing the President and Congress to take certain action.

A resolution

memorializing the President and Congress to .....

WHEREAS, the United States …….....

.....

…….....; and

WHEREAS, the several states have …….....

…….....

.....; and

WHEREAS, these requirements impede .....

…….....; and

WHEREAS, it would be of great value to .....

.....; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that it urges the President and the Congress of the United States to …….. .

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare copies of this memorial and transmit them to the President of the United States, the President and Secretary of the United States Senate, the Speaker and the Clerk of the United States House of Representatives, and Minnesota's Senators and Representatives in Congress.

(2) Applying for a constitutional convention.

A resolution

memorializing Congress; applying for a constitutional convention to propose an amendment to the United States Constitution to provide that …….

WHEREAS, the people of Minnesota as represented by their Legislature find that .....; and

WHEREAS, the United States .....; and

WHEREAS, under Article V of the Constitution of the United States, upon the application of the legislatures of two-thirds of the several states, the Congress shall call a constitutional convention for the purpose of proposing an amendment to the Constitution; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that it applies to the Congress of the United States to call a constitutional convention for the purpose of proposing an amendment to the Constitution of the United States that provides that ……..... .

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota is directed to prepare copies of this resolution and transmit it to the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, the United States Secretary of State, and Minnesota's Senators and Representatives in Congress.

(3) Requesting Congress to propose an amendment to the constitution.

A resolution

memorializing Congress to propose an amendment to the United States Constitution to …….....

WHEREAS, ...;

and

WHEREAS, ...;

and

WHEREAS, under Article V of the Constitution of the United States, amendments to the Constitution of the United States may be proposed by the Congress whenever two-thirds of both houses deem it necessary; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that it requests the Congress to propose an amendment to the Constitution of the United States to be ratified by the legislatures in three-fourths of the several states or by conventions in three-fourths of the several states (requiring) (authorizing) (prohibiting) (regulating) ....

BE IT FURTHER RESOLVED that the Legislature requests that the legislatures of each of the several states comprising the United States apply to the Congress requesting that Congress propose an appropriate amendment to the United States Constitution.

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota shall transmit copies of this memorial to the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, the presiding officers of both houses of the legislature of each of the other states of the Union, and Minnesota's Senators and Representatives in Congress.

(4) Ratifying an amendment to the United States Constitution.

A resolution

memorializing Congress of ratification of a proposed amendment to the Constitution of the United States of America relating to .....

WHEREAS, the Congress of the United States proposed the following amendment to the Constitution of the United States to be ratified by the legislatures of three-fourths of the several states:

"ARTICLE ....

Section 1. .....

……..

Sec. 2. .....

……..; and

Sec. 3. .....; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that the proposed amendment to the Constitution of the United States is ratified by the Legislature of the State of Minnesota.

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare copies of this joint resolution and transmit them to the Administrator of the General Services Administration, the Speaker and Clerk of the United States House of Representatives, and the President and Secretary of the United States Senate.

(g) Joint resolution in joint convention.

Eulogizing a person's life.

A joint resolution

eulogizing ..... for the exemplary nature of his life and work.

WHEREAS, on the .... of ..... the Honorable ..... of ..... will achieve the venerable age of ..; and

WHEREAS, his long and vigorous life stands as a memorable symbol of devoted and broad-visioned public service; and

WHEREAS, over a half century ago in ...., he was elected a member of the House of Representatives of the State of Minnesota, and .... years later was elected a member of the Senate of the State of Minnesota; and

WHEREAS, failing health, though no weariness of spirit, now prompts him to submit his resignation and step aside so that the burdens of ..... responsibility may be carried on other shoulders; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives and the Senate of the State of Minnesota in joint convention that they record their admiration, gratitude, and respect for the manifold contributions made to the welfare and the progress of the State of Minnesota by the Honorable ..... .

BE IT FURTHER RESOLVED that the Secretary of the joint convention is directed to prepare a copy of this resolution, to be authenticated by his signature and that of the President of the joint convention, and that it be presented to the Honorable .....

In the resolving clause note the reference to the senate and house of representatives "in joint convention." In the closing clause note the reference to the "secretary of the joint convention." These are the only differences in form from that of a simple resolution. Resolutions in joint convention are not common.

(h) Joint resolution.

(1) Applying for a constitutional convention.

A joint resolution

applying to Congress to call a constitutional convention to propose an amendment to the Constitution of the United States.

WHEREAS, the people of Minnesota as represented by their Legislature find that ..... ……

WHEREAS, the United States ....;

and

WHEREAS, under Article V of the Constitution of the United States, the Congress, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments to the Constitution of the United States; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that it applies to the Congress of the United States to call a constitutional convention for the purpose of proposing an amendment to the Constitution of the United States that provides .....

BE IT FURTHER RESOLVED that the Secretary of State of Minnesota is directed to prepare copies of this resolution and transmit it to the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate, the United States Secretary of State, and Minnesota's Senators and Representatives in Congress

(2) Ratifying an amendment to the United States Constitution.

A joint resolution

ratifying a proposed amendment to the Constitution of the United States relating to .....

WHEREAS, both houses of the Congress of the United States proposed an amendment to the Constitution of the United States that reads as follows:

"ARTICLE ...

Section 1. .....

…….....

Sec. 2. .....

…….....

Sec. 3. .....

…….....; and

WHEREAS, Article V of the Constitution of the United States provides that amendments to the Constitution proposed by Congress become valid "when ratified by the legislatures of three-fourths of the several states"; NOW, THEREFORE,

BE IT RESOLVED by the Legislature of the State of Minnesota that the proposed amendment to the Constitution of the United States is ratified by the Legislature of the State of Minnesota.

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare copies of this joint resolution and transmit them to the Administrator of the General Services Administration, the Speaker and Clerk of the United States House of Representatives, and the President and Secretary of the United States Senate.

(3) Proposing an amendment to the Minnesota Constitution.

A joint resolution

proposing an amendment to the Minnesota Constitution, article .., section ...

BE IT RESOLVED by the Legislature of the State of Minnesota that the following amendment to the Minnesota Constitution, article .., section .., is proposed to the people. If the amendment is adopted, the section will read:

…….....

…….....

BE IT FURTHER RESOLVED that the proposed amendment shall be submitted to the people at the 20.. general election. The question submitted shall be:

"Shall the Minnesota Constitution be amended to provide that .....

…….....?

Yes .....

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. This form should not be used if implementing legislation is also being included. See section 3.3 for a discussion of this issue.

(4) Prescribing the compensation of judges.

A joint resolution

prescribing the compensation of judges;.....

BE IT RESOLVED by the Legislature of the State of Minnesota that …….

.....

BE IT FURTHER RESOLVED that the Secretary of State of the State of Minnesota is directed to prepare a copy of this resolution and transmit it to the Chief Justice of the Supreme Court of the State of Minnesota.

Chapter 7
Interpretation of Statutes
What Drafters Need to Know

7.1 The Purpose of This Chapter
7.2 The Basics: Minnesota Statutes, Chapter 645
(a) Basic concepts
(b) Definitions
(c) Rules about language and application of laws
7.3 Determining Legislative Intent
(a) Generally
(b) Guiding principles
(c) Application by the courts
7.4 Additional Aids
(a) Intrinsic aids to interpretation
(b) Extrinsic aids to interpretation
7.5 Conclusion

7.1 THE PURPOSE OF THIS CHAPTER

In addition to the drafting advice in Chapter 2, knowledge of statutory interpretation helps a drafter to draft bills that, upon enactment, will not require interpretation by the courts. This chapter is a basic discussion of how the words of a statute might be interpreted, and what guides a court in making that interpretation.

7.2 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.

Minnesota Statutes, 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 and are discussed in greater length in Chapter 2, Bill Drafting. Other matters that are also important but 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.

Unless a different definition is provided in a draft, the definitions in Minnesota Statutes, chapter 645, will control. The list of terms defined includes technical matters like "final enactment" and everyday concepts like "child" or "person." See Minnesota Statutes, sections 645.44, 645.445, 645.45, and 645.451. For more information on how to draft definitions, see section 2.16.

(c) Rules about language and application of laws.

Besides drafting basics and definitions, Minnesota Statutes, chapter 645, also contains a collection of 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. The rules on language use in drafting are discussed in Chapter 8, Clarity. The rules on status and application of laws, including severability, retroactivity, and savings clauses, are found in Chapter 2, Bill Drafting.

7.3 DETERMINING LEGISLATIVE INTENT

(a) Generally.

The last group of provisions in Minnesota Statutes, chapter 645, set out some general rules on how laws are to be interpreted. An understanding of these rules should help the drafter appreciate the importance of drafting language that avoids unintended consequences. If the intent of the legislature is not clear from the language, the courts may then need to determine this intent by applying one or more of the rules of statutory interpretation.

(b) Guiding principles.

(1) Legislative intent controls.

The central question to be answered in interpreting statutes is "what did the legislature intend when it enacted the statute?" As Minnesota Statutes, section 645.16, states, "the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."

Minnesota Statutes, section 645.16, also directs that every law be construed, if possible, to give effect to all of its provisions. In addition, Minnesota Statutes, section 645.17, provides further direction to courts in ascertaining legislative intent:

> In ascertaining the intention of the legislature the courts may be guided by the following presumptions:
>
> (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
>
> (2) the legislature intends the entire statute to be effective and certain;
>
> (3) the legislature does not intend to violate the Constitution of the United States or of this state;
>
> (4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and
>
> (5) the legislature intends to favor the public interest as against any private interest.

(2) Plain meaning rule.

In determining legislative intent, courts will follow the plain meaning rule. This statutory rule, set out in Minnesota Statutes, section 645.16, provides in part that:

> [w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit…..

This rule provides that if the words of a statute, as they apply to an existing situation, are clear, a judge is precluded from disregarding the letter of the law even though the judge believes the legislature intended a different result.

(c) Application by the courts.

The courts have provided their own formulation of the approach to be taken in interpreting statutes. The Minnesota Supreme Court in *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68 (Minn. 2012) expressed this formulation as follows:

> The goal of all statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010); *Brayton v. Pawlenty*, 781 N.W.2d 357, 363 (Minn. 2010). We give words and phrases in a statute their plain and ordinary meanings, and "technical words and phrases … are construed according to [their] special meaning or their definition." Minn. Stat. § 645.08(1) (2010); *accord Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). Further, we construe the statute to give effect to all its provisions. Minn. Stat. § 645.16.
>
> Our first step in interpreting a statute is to examine the statutory language to determine whether the words of the law are clear and free from all ambiguity. *Id*. The words are not free from ambiguity if, as applied to the facts of the particular case, they are susceptible to more than one reasonable interpretation. *See Amaral*, 598 N.W.2d at 384. If the words are free of all ambiguity, we apply the statutory language. *See* Minn. Stat. § 645.16. If the words are not free of ambiguity, the court may look beyond the statutory language to ascertain the Legislature's intent. *Id*.

Consequently, based on the plain meaning rule, a statute that a court finds unambiguous does not require further interpretation, that is, the guidance in Minnesota Statutes, chapter 645, regarding ascertaining legislative intent is not necessary or permitted. *See Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271 (Minn. 1995) (where intention of legislature is clearly manifested by plain unambiguous language, no construction is necessary or permitted.)

The court may disregard a statute's plain meaning only in rare cases where the plain meaning "utterly confounds" a clear legislative purpose. *Hyatt v. Anoka Police Department*, 691 N.W.2d 824 (Minn. 2005). Similarly, a statute that can be reasonably made constitutionally definite by reasonable construction must be given that construction.

Humenansky v. Minnesota Board of Medical Examiners, 525 N.W.2d 559 (Minn. Ct. App. 1994). *See also, State v. Crawley*, 819 N.W.2d 94 (Minn. 2012).

The courts have provided further guidance on interpretation of specific classes of law. For example:

- Criminal statutes are to be strictly construed, with any reasonable doubt resolved in favor of the defendant. *State v. Morin*, 736 N.W.2d 691 (Minn. Ct. App. 2007).

- Statutes creating a liability where none otherwise existed are to be strictly construed. *Hunt v. Burns*, 95 N.W. 1110 (Minn. 1903).

- Unless statute manifests legislative intent to modify, statutes are presumed not to alter common law. *Haage v. Steiss*, 555 N.W.2d 7 (Minn. Ct. App. 1996).

- A remedial statute is to be construed liberally for advancement of the remedy. *Government Research Bureau v. Borgen*, 28 N.W. 760 (Minn. 1947).

7.4 ADDITIONAL AIDS

Minnesota Statutes, chapter 645, provides two types of aids that can be relied upon to assist in ascertaining and effectuating legislative intent.

(a) Intrinsic aids to interpretation.

Because the plain meaning rule relies on applying "the letter of the law," a judge applying this rule will determine the meaning of a statute by using certain intrinsic aids to construction, such as definitions, rules of grammar, punctuation, context, the text of related statutes, and canons of construction. Some of these canons are codified in Minnesota Statutes, chapter 645, and others are discussed in chapter 8 on Clarity in Drafting. These intrinsic aids or canons of construction can be used without first finding that the statute is ambiguous. *Laase v. 2007 Chevrolet Tahoe*, 776 N.W.2d 431 (Minn. 2009).

Minnesota Statutes, section 645.08, provides that in construing the statutes of this state, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

> (1) words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition;
>
> (2) the singular includes the plural; and the plural, the singular; words of one gender include the other genders; words used in the past or present tense include the future;

> (3) general words are construed to be restricted in their meaning by preceding particular words;
>
> (4) words in a law conferring a joint authority upon three or more public officers or other persons are construed to confer authority upon a majority of such officers or persons; and
>
> (5) a majority of the qualified members of any board or commission constitutes a quorum.

(b)Extrinsic aids to interpretation.

Extrinsic aids to interpretation are only considered if it is determined that a statute is ambiguous, or susceptible to more than one reasonable interpretation. Minnesota has set limits on the use of extrinsic aids in determining legislative intent. The permissible types of extrinsic aids are set out in Minnesota Statutes, section 645.16. The statute provides in part that:

> (w)hen the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:
>
> (1) the occasion and necessity for the law;
>
> (2) the circumstances under which it was enacted;
>
> (3) the mischief to be remedied;
>
> (4) the object to be attained;
>
> (5) the former law, if any, including other laws upon the same or similar subjects;
>
> (6) the consequences of a particular interpretation;
>
> (7) the contemporaneous legislative history; and
>
> (8) legislative and administrative interpretations of the statute.

Below are cites to relevant case law discussing some of these extrinsic aids:

(1) Legislative history.

- *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. Ct. App. 1986).

- Journals of either house can be used as evidence. Minnesota Statutes, section 599.12; *Randall Jacques v. Pike Power Co*, 215 N.W. 221 (Minn. 1927) (determining which of two enrolled bills the legislature actually passed); *See State ex rel. Foster v. Naftalin*, 74 N.W.2d 249 (Minn. 1956) (determining that the two houses had never agreed to the exact text of a bill).

- *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.*, 293 N.W. 619 (Minn. 1940) (use of a committee report to show the purpose of a change in wording).

- *Rules of the house and senate and joint rules* are evidence. *See Loper v. State*, 84 N.W. 650 (Minn. 1900) (making use of a legislative rule requiring that when a section is amended, the whole section must be printed).

- *Comparison of new law with old*. *See* Minn. Stat, section 645.16.

- *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*, 235 N.W. 373 (Minn. 1931).

(2) 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.*, 9 N.W.2d 6, 11 (Minn. 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* Minn. Stat., section 645.39; *see also Garberg v. Hennepin County*, 202 N.W.2d 220, 222-223 (Minn. 1972).

(3) Executive construction of statutes.

Certain actions of the executive branch of government can be used to determine legislative intent. Among these are the interpretation of executive orders on which legislation is based; the governor's objections to a law that has been vetoed, entered in the legislative journals); the governor's "state of the state message" or any message given to call a special session, since these become the background of legislation passed at the session; and the opinions of the attorney general. 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*, 112 N.W.2d 340 (Minn. 1961); *Billigmeier v. Hennepin County*, 428 N.W.2d 79 (Minn. 1988).

(4) 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, 665 (Minn. 1971); *Soo Line Ry. Co. v. Commissioner of Revenue*, 277 N.W.2d 7 (Minn. 1979).

(5) Prior judicial construction.

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

(6) Construction of statutes in pari materia.

"In pari material" 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*, 93 N.W.2d 137 (Minn. 1958). The doctrine does not apply when neither statute is ambiguously worded. *State v. Lucas*, 589 N.W.2d 91, 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*, 95 N.W.2d 6 at 11-12 (Minn. 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*, 77 N.W.2d 425 (Minn. 1956); *Lenz v. Coon Creek Watershed District*, 153 N.W.2d 209 (Minn. 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*, 277 N.W. 535 (Minn. 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.*, 293 N.W. 619 (Minn. 1940).

(7) 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." However, some courts regard the adoption of certain future amendments as an unconstitutional delegation of legislative authority. The troublesome questions are: (i) When are future amendments really adopted? and (ii) When may they legitimately be adopted?

Relevant cases on this subject are *Wallace v. Commissioner of Taxation*, 184 N.W.2d 588 (Minn. 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.

(8) Construction of uniform laws.

Uniform laws are proposed by the Uniform Law Commission 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*, 123 N.W.2d 371 (Minn. 1963).

(9) 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*, 180 N.W.2d 870 (Minn. 1970).

7.5 CONCLUSION

A drafter's goal should always be to produce law that does not need to be interpreted. Writing clearly and simply and avoiding ambiguity will help the drafter reach this goal. But even carefully drafted law is litigated, which is why Minnesota Statutes, chapter 645, contains many provisions guiding and limiting a court's interpretation of law. A conscientious drafter should be familiar with those provisions and with the related case law.

Chapter 8
Clarity in Drafting

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8.30 Noun Strings
8.31 Nominal Style, or "Hidden Verbs"
8.32 Gender-Neutral Language

This chapter is about both legal clarity and readability or "plain language" in bills. It is not about form or mechanics, which are treated in chapters 2 and 9. Its aim is to review current thinking on what makes bills hard, or easy, to read and understand.

A glance at section 2 of chapter 12, the Bibliography, will show how much material there is about clarity 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. Drafters are encouraged to study those full-length works, especially their chapters on vagueness and ambiguity.

8.1 THE QUESTION OF AUDIENCE

(a) General audience.

Bills are not all aimed at the same readers. Rather, the primary audience of bills varies with the bill. If a bill regulates migrant labor and orders recruiters and employers to put workers' terms in writing, then employers, recruiters, and workers are its audience, and part of that audience has limited education. On the other hand, if a bill regulates securities sales, then brokers and bankers are its audience, and the bill will have to use the technical vocabulary of their trade. Laws addressed to people in general—for example, traffic regulation laws —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 the drafter an excuse to write long, unwieldy sentences. For sophisticated readers the material can be briefer; you can pack information into specialized words. For other readers the material must be less dense. See Child, *Drafting Legal Documents*, pp. 2-4; Charrow, Erhardt, and Charrow, *Clear and Effective Legal Writing*, pp. 97, 101-110.

(b) Judicial audience.

A special class of audience is the audience of judges who will interpret the law. Interpretation of statutes is discussed in chapter 7. In addition to the canons of construction discussed there, drafters should be aware of some canons that relate particularly to the words of the law.

- *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*, 52 N.W.2d 409 (Minn. 1952); *State v. Taylor*, 594 N.W.2d 533 (Minn. Ct. 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*, 45 N.W. 721 (Minn. 1890); *but see Olson v. Griffith Wheel Company*, 15 N.W.2d 511 (Minn. 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*, 67 N.W.2d 635 (Minn. 1954).

8.2 ORDER AND ORGANIZATION

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

Definitions should come first and basic provisions before special cases, but for everything else the drafter is 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.

8.3 HEADNOTES

Headnotes for sections and subdivisions are not part of the law, except in uniform laws, 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 Charrow, Erhardt, and Charrow, *Clear and Effective Legal Writing*, pp. 148-150.

8.4 SECTION, SUBDIVISION, AND PARAGRAPH LENGTH

The more material printed 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.

8.5 PERSON

Drafters need to compromise between the needs of statutory drafting and the tenets of the plain English movement. 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.

8.6 NUMBER

Even though section 645.08 provides that “the singular includes the plural, and the plural, the singular,” drafters should use the singular form of a noun rather than the plural. This custom is based on the practical difficulty of using plurals consistently. See Child, p. 384

Examples:

Use: A person who . . . .

Do not use: All persons who . . . .

8.7 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.

Why is passive voice a problem? 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 fail to assign responsibilities clearly.

When is the passive voice needed? Voice lets a writer 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 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 the drafter to avoid using *he or she.*

When using 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 . . . .

8.8 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 nearby 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 8.7 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*.

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 guarantee 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.

8.9 AMBIGUITY: AN OVERVIEW

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 8.8 to 8.13.

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.

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 shows that violence, not surgery, is what its drafters had in mind.

The sections that follow discuss the most common drafting problems related to ambiguity.

8.10 AMBIGUOUS WORDS

Ambiguity in drafting is a serious problem. It deserves attention, and it warrants detailed advice about how drafters can avoid it.

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 *Frigaliment Importing Co. v. B.N.S. 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 readers will disagree over the meaning of very common and very small words, words a drafter might 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 8.8. The choice of *and* or *or* in a list is discussed in section 8.20.

The following sections discuss several more situations in which drafters risk using ambiguous wording.

8.11 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	*Say*
From July 1, 2002, to. . .	After June 30, 2002, and before. . .
Between July 1, 2002, and. . .	After June 30, 2002, and before. . .
To (or until or by) June 30, 2002. . .	Before July 1, 2002. . .

Ranges of ages are equally slippery. Here is more of Dickerson's advice:

Don't say	*Say*
between the ages of 17 and 45	17 years old or older and under 46
Don't say	*Say*
who is more than 17 years old	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.

8.12 *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.)*

8.13 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 9.) 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.)

8.14 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 8.1). 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. Ct. App. 1989), in which the court interpreted the phrase "headphones and earphones which are worn on both ears" without any reference to the rule.)

8.15 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, Erhardt, and Charrow, *Clear and Effective Legal Writing*, pp. 157-160.

8.16 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 each party or the party's representative 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, Erhardt, and Charrow, *Clear and Effective Legal Writing*, pp. 162-164.

8.17 CONDITIONS AND EXCEPTIONS

Often a statute sets forth a simple, general proposition, subject to certain conditions and exceptions. Conditions and exceptions are often added by amendment during the legislative process. The more conditions and exceptions 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.

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 difference must be paid to the children* 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 section 145.913; and provides local matching money to support the community health services as provided in section 145.921.

See Charrow, Erhardt, and Charrow, *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.

8.18 PROVISOS

Even though section 645.19 tells how to construe them, drafters should avoid drafting provisos. Most provisos are really conditions, which should begin with "if," or exceptions, which should begin with "except that."

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.

8.19 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. To be parallel, the items in a list must be grammatically the same. The examples in section 8.20 demonstrate parallel form. There are also many good examples in current law. See Minnesota Statutes, sections 15.059, subdivision

5 or 5b; 15.0597, subdivision 2; and 15.471, subdivision 4. Also see section 2.7 of this manual, on specific divisions of text in bills.

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" does not. 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 drafting 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, Erhardt, and Charrow, *Clear and Effective Legal Writing*, pp. 173-175.

8.20 *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.

8.21 TABLES

Use tables to present groups of numbers, as in appropriations, approved complements, and revisor's instructions. See those topics in other parts of this manual for examples.

8.22 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.

8.23 CONSISTENT TERMS

Throughout a 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* that 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.

8.24 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 examples see Wydick, *Plain English for Lawyers*, chapter 2.

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.

8.25 VERBOSE, OBSOLETE, OR VAGUE TERMS

There are many common legalisms that are often unclear and nearly always unnecessary. Wydick, *Plain English for Lawyers.*

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

8.26 WORDY EXPRESSIONS

Replace wordy expressions with shorter substitutes. See Wydick and Charrow for further examples.

Don't Use	Shorter
absolutely null and void and of no effect	void
adequate number of	enough
all of the	the
attains the age of 21 years	becomes 21 years old
at the time, at such time as, at the time as	when
at that (this) point in time	then (now)
by means of	by
does not operate to	does not
due to the fact that	because
during the course of	during
excessive number of	too many
for the duration of	during

8.27 OVERDRAFTING

Usually this manual tells drafters to be as specific as possible, but being specific does not mean naming every single thing being required or forbidden.

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.

8.28 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. Instead of calling something a "programming entity," call it a programming *company*. If certain boards grant licenses, do not 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. A drafter should not preserve bad wording without a compelling legal reason. Consistency is valuable, but so is clarity.

8.29 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)."

8.30 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, Erhardt, and Charrow, *Clear and Effective Legal Writing,* pp. 184-185; *Federal Plain Language Guidelines,* III.2.

8.31 NOMINAL STYLE, OR "HIDDEN VERBS"

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 hides the verbs inside 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 these suffixes appear.

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 verbs in the very first draft.

See Charrow, Erhardt, and Charrow, *Clear and Effective Legal Writing*, pp. 169-171; Schmedemann and Kunz, *Synthesis: Legal Reading, Reasoning, and Writing*, p. 409.

8.32 GENDER-NEUTRAL LANGUAGE

Even though section 645.08 provides that "words of one gender include the other gender," 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 should avoid those words unless they are essential.

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 because they 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." Remember that drafting in the plural can create ambiguity.

Use the passive voice: "After having been certified, the candidate may begin supervised clinical practice." But see section 8.7.

Chapter 9
Punctuation, Mechanics, Style

Introduction

This chapter is organized as a glossary. It 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 drafter to other parts of the manual or to more extensive reference works.

To answer questions about usage, drafters should consult those works in the following order:

(1) For questions about forms of abbreviation, drafters 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, drafters should consult first this manual, then the latest edition of *Merriam-Webster's Collegiate Dictionary*, which may be accessed at www.m-w.com, 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,* and other specialized reference works.

This chapter contains the following entries in alphabetical order:

abbreviations
addresses
apostrophes
assure, ensure, and insure
brackets
capitalization
clauses
coding
colons
commas
dashes
data
dates
geographic names
hyphens
initials
is/are
italics
lists
measurements
money
numbers
official titles
paragraphs
parentheses
periods
place names
punctuation
quotation marks
roads
semicolons
slashes
spelling
state parks
strikeouts
subdivisions
symbols
tables
temperature
that; which
time of day
underscoring

Abbreviations

(a) 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 section 8.29 and clause (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.

(b) Exceptions.

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) Abbreviate the names of the compass points 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* as "*St.*".

(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 8.

Abbreviations should be explained if used. They can be defined in a definition section, or see chapter 8.

For the correct form of an abbreviation not found in this manual, see Authorities, above.

To form the plural of an initialism or acronym, add an s.

Example:

VCRs
RGUs

For the special case of initialisms in section headnotes, see Apostrophes. Such cases will be rare.

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.

In section headnotes only, use apostrophes in the plurals of abbreviations and in plurals formed from letters and figures: MD's, CPA's, TV's, VCR's. The apostrophes are needed to make full-capitals headnotes intelligible.

Use an apostrophe in phrases like "30 days' notice." See discussion at *The Chicago Manual of Style*, section 7.24.

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 specific 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 revisor's office prefers *ensure*, but the use of one of the other words is not an error. 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

Brackets go around 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*.

(a) Capitalized words.

(1) Headnotes for sections are shown in full capitals, but subdivision headnotes are not.

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.

Capitalize the principal words of all state, uniform, and federal acts.

Examples:

Administrative Procedure Act
African-American
Building Construction Division
Bureau of Criminal Apprehension
Carlos Avery Wildlife Refuge
Caucasian
Como Park
Consumer Price Index
Council on Black Minnesotans
Department of Agriculture
Elm and Mississippi Streets
Floyd B. Olson Memorial Highway
Gilbertson Stream
Governor Floyd B. Olson
Head Start
Heartbreak Creek
Hennepin County
Houghton Mifflin Company
Independent School District No. 625
marked Interstate Highway 94
Medicare, Medicaid
(but do not capitalize: medical assistance)
Metropolitan Council
Minnesota Historical Society
Minnesota House of Representatives
Minnesota Senate
Minnesota State Colleges and Universities (MnSCU)
Mississippi River
Moorhead State University
National Guard
Normandale Community College
Office of the Secretary of State
Park Street
Red River Valley
State Capitol
State Office Building
Uniform Commercial Code
United Nations
United States Navy
United Way
University of Minnesota
Weaver Lake
Willow River State Park

For additional information on road and highway designations, see Roads.

(b) 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."

Federal programs should be capitalized as they are in the underlying federal law.

(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. If clauses are sentence fragments, all 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) The enacting clause of a bill must be followed by a colon.

Example:

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

(2) The section headings of a bill must be followed by a colon.

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. 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 Chapter 10.

(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 section 8.13.

The official names of entities should always be used even if they are not consistent with our style preferences.

(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 Collegiate Dictionary*. To simplify decision making, in contexts where data is used often—such as the Data Practices Act—the revisor's office prefers the singular.

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

(a) Generally.

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 this manual, then *Merriam-Webster's Collegiate Dictionary*. If that gives no answer, consult *The Chicago Manual of Style* (7.85 in the 16th edition).

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.

(b) Exceptions.

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 8.18, 8.19, and 8.20.

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, $3,000

Express a dollar amount that begins a sentence as a figure.

Example:

$100 may be paid . . . .

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

(a) Numbers used as designators.

Use figures for numbers used to refer to specific entities: grades K through 8, Independent School District No. 24.

(b) Amounts.

(1) Write numbers ten and under in words; write numbers 11 and over in figures.

Examples:

two sheets and one towel
at least 24 hours

(2) 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 . . . .

(c) 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

(d) 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 "1/12 of one."

(e) 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 8.10.

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.

(f) 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:

Capitalize and use "No." when referring to a route described in Minnesota Statutes, section 161.114, 161.115, 161.117, or 161.12.

> Constitutional Route No. 70, Legislative Route No. 71, Route No. 392.

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.

> Trunk Highway marked 169 or marked Trunk Highway 169.

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.

> County State-Aid Highway 5, County Road J, Elm Street, 12th Street SE (and so forth).

Capitalize the various memorial routes listed in Minnesota Statutes, section 161.14 (no need to use "No.").

> P. H. McGarry Memorial Drive.

Saint or St. See Abbreviations

Semicolons

(1) Use a semicolon after every phrase in a bill's title.

Example:

> A bill for 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 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.

(5) Use semicolons after clauses or phrases in a tabulated 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.

(6) Use semicolons if needed to clarify the limits of items in a series. When elements in a series include internal punctuation, or when they are very long and complex, they may need to be separated by semicolons rather than commas for clarity. If ambiguity seems unlikely, commas may be used. Move the most complex element to the end of the list as an aid to clarity.

Examples:

> With semicolons: The payment must be computed as follows: first, determine the personnel cost, using Bureau of Labor statistics job classifications; second, multiply the personnel cost by the number of units of care; third, add the transportation and related costs specified in subdivision 8.
>
> With commas: In this part, "surety" means a note, stock, bond, collateral trust certificate, or assumption of any obligation or liability as a guarantor, endorser, or surety.

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 online version at www.m-w.com. When you have found the entry that is the right part of speech and has the right meaning, use the first spelling given for that entry. 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 number of other sections are treated the same way: 89.021, state forests; 97A.13, wildlife management areas; 138.662, historic sites; and 138.664, historic places.

A bill creating a new state park, monument, recreation area, or wayside has a unique format.

Example:

Section 1. Minnesota Statutes 2010, section 85.012, is amended by adding a subdivision to read:

Subd. 38a. Lake Vermilion State Park, St. Louis County.

Sec. 2. **LAKE VERMILION STATE PARK.**

Subdivision 1. **Lake Vermilion State Park.** Lake Vermilion State Park is established in St. Louis 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 2.7.

Strikeouts

In amendments, strike out material that is intended to be removed from the text of existing statutes or laws. Example: ~~one year.~~

For information about marking text to be added, 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.

Example: 2:00 p.m.

Underscoring

Underline new material to be inserted or substituted for old material in the text of existing laws. Example: <u>two years</u>

For information about marking text to be removed, see Strikeouts.

Which. See That

Word Division. See Hyphens

Chapter 10
References

10.1 Minnesota Statutes
- (a) In bill section introductions
- (b) In text
- (c) Long citation strings
- (d) Difficult cases
- (e) To proposed new law
- (f) To include future amendments
- (g) To exclude future amendments
- (h) In text not coded in Minnesota Statutes

10.2 Laws of Minnesota
10.3 Bills Not Yet Enacted or Resolutions Not Yet Enacted
10.4 Minnesota Rules
10.5 State Constitution
10.6 Federal Laws and Regulations
- (a) Forms of citation
- (b) Forms of reference
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10.7 Safety Codes
10.8 Court Rules
10.9 Examples
- (a) References to Minnesota Statutes
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- (c) References to federal law
- (d) Safety standards, first reference
- (e) Safety standards, second and later references
- (f) Safety standards, general format

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.*

10.1 MINNESOTA STATUTES

(a) In bill section introductions.

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:"

Always cite to the statutes supplement to refer to statutory language published in an odd-numbered year. Although online sources such as the Minnesota Statutes Archive point to apparent collections such as "2009 Minnesota Statutes," references in drafting should be tied to the print publication.

(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 in section 10.9, paragraph (a).

(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 2 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 is any hint in existing law as to what the unit is called, stick with that name. Despite the rest of these rules, use what is there.

2. If there is 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 is within a clause, it is an item.

5. If it is within an item, it is a subitem.

6. If it does not 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.

Section 1. **[169A.20] DRIVING WHILE IMPAIRED.**

It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or on any boundary water of this state while under the influence of alcohol, a controlled substance, or a hazardous substance.

Sec. 2. Minnesota Statutes 20.., section 629.471, is amended to read:

629.471 MAXIMUM BAIL ON MISDEMEANORS.

For offenses under ~~section~~ sections 169.09 and 169A.20, the maximum cash bail is quadruple the highest cash fine that 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.

Section 1. Minnesota Statutes 20.., section 123.456, is amended to read:

123.456 LEAVE FOR CIVIL AIR PATROL SERVICE.

From July 1, 20.., to June 30, 20.., an employer shall grant a leave of absence ~~without~~ with pay to an employee for time spent rendering service as a member of the civil air patrol. For purposes of this section, "employer" means a person or entity that employs ~~20~~ 25 or more employees at one site . . . . . .

Sec. 2. **GRANT PROGRAM CREATED.**

A grant program is created to reimburse employers for payments made to employees who take leave under section 1 . . ..

Sec. 3. **EXPIRATION.**

The amendments in section 1 to Minnesota Statutes, section 123.456, expire effective June 30, 20...

(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 referenced.

(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.

10.2 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.

Laws 1999, resolution 3.

10.3 BILLS NOT YET ENACTED OR RESOLUTIONS NOT YET ENACTED

2012 S.F. No. 2523, section 1.

2012 H.F. No. 1752, section 32.

2012 H.R. No. 1.

2012 S.R. No. 1.

For the purposes of the session corrections bill, add the words "if enacted." See the discussion in 2.11.

10.4 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."

10.5 STATE CONSTITUTION

Cite the Constitution of Minnesota as "the Minnesota Constitution, article VI, section 1."

10.6 FEDERAL LAWS AND REGULATIONS

(a) Forms of citation.

When citation to federal law or regulation is necessary, it should follow a consistent form. If federal law has been compiled in the *United States Code*, the citation should be to it and not to *Statutes at Large*. If the text is not compiled in *United States Code*, the citation may be to *Statutes at Large*. If the text is not yet published in *Statutes at Large*, its Public Law Number may be used.

(b) Forms of reference.

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.

(c) 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*, 18th 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 ……, 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*.

(d) 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.

10.7 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 the enactment date of the law that adopts the code by reference. The proper form of reference is ". . . as provided by standard 501B of the National Fire Safety Code as in effect on December 31, ……." 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.

10.8 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.

10.9 EXAMPLES

(a) 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:** sections 645.01, subdivisions 2, 3, and 5; 645.04; and 645.08
- **To a choice of sections or subdivisions:** section 5.01 or 5.02, subdivision 2 or 3

(b) 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

(c) 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 …., as amended through December 31, 20..

(d) Safety standards, first reference.

"Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," issued by the U.S. Department of Interior, Bureau of Mines, as Information Circular 8179 (Washington, D.C., Government Printing Office, 1963).

The "American National Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks," issued by the American National Standards Institute as ANSI A17.1-1978, with supplement ANSI A17.1a.-1979 (New York, 1978) is incorporated by reference.

Copper tubing in these installations must conform to standard B 88-81, "Specification for Seamless Copper Water Tube," in the "Annual Book of ASTM Standards," issued by the American Society for Testing and Materials (Philadelphia, 1981).

(e) 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.

> Subd. 4. **Safety recommendations.** "Safety recommendations" means "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents," issued by the U.S. Department of Interior, Bureau of Mines, as Information Circular 8179 (Washington D.C., Government Printing Office, 1963).

> Subd. 4. **Safety practices.** Safety recommendations as described in section 19 shall be followed on all pyramid projects.

(f) Safety standards, general format.

> . . . . . on pages 10 through 14 of "Empire Building," by James J. Hill, issued by the United States Department of Commerce as Pamphlet No. 666 (Washington, D.C.: United States Government Printing Office, 1983). . . . in section 42.42 of "Life, the Universe, and Everything," issued by the State Department of 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 11
Practical Aids to Research and Drafting

11.1 Finding Minnesota Law
- (a) Laws of Minnesota
- (b) Minnesota Statutes
- (c) Minnesota Rules
- (d) Computer searches of statutes

11.2 Finding Minnesota Bills to Use as Drafting Models
- (a) Comparison tables
- (b) Engrossing files
- (c) House of representatives and senate index and bill status system
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11.3 Finding Laws or Bills in Other States

11.4 Finding General Research Materials

11.1 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 13 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) Internal cross-reference table.

Table III 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.

(c) Minnesota Rules.

Minnesota Rules is published biennially in odd-numbered years by the revisor of statutes and is continuously updated online. The last volume contains a subject index and the following tables:

(1) State Register citations table.

This table contains the State Register volume and page range for each publication date of the State Register.

(2) Amendments of rules table.

This table lists, in numerical order, all the rule parts and subparts amended, repealed, or new since the last publication of Minnesota Rules.

(3) Statutory authority for administrative rules.

This table lists the authority in Minnesota Statutes cited by the agency adopting the rule as authority for rule adoption. 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.

(d) 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 revisor's Web page. One search option is restricted to text within statutes. The online statute index also has a search feature. More information about the exact

behavior of the Web search tools is available on the Examples and Explanations page, linked from the search screen through the "help" link.

A different search tool is available within the revisor's office. Because of its different database structure, 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.

11.2 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 of representatives 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. It may also be used to obtain a copy of any engrossment of a senate or house file. All versions of the bill are accessible. 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.

(d) House of representatives 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 of representatives 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 of representatives 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.

11.3 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/about-us/ncslservice/state-legislative-websites-directory.aspx. Also, printed state statutes from around the country can be found at the Minnesota State Law Library. Librarians in the Legislative Reference Library can help identify bills or laws from other states.

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. Subject specialists are available to assist member states' legislative staff members. NCSL provides a 50-state Bill Information Service database, and staff researchers maintain tables of proposed or enacted legislation across states by topic. http://www.ncsl.org/legislative-staff.aspx?tabs=856,34,735#

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 (CSG) 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, and available from 1958 to the present in the Legislative Reference Library. The CSG information service serves state government researchers.

11.4 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 has a broad public policy collection focusing on state legislative issues and the history of the legislature. 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 or supply searching advice.

Contact information:
Reference: Phone 651-296-8338, e-mail refdesk@lrl.leg.mn
Circulation: Phone 651-296-3398, e-mail circdesk@lrl.leg.mn
Library Web site: www.leg.mn/lrl/

LRL is the depository library for state government publications, including consultants reports and reports mandated by the legislature. All reports are included in their online catalog.

Legislative history assistance is provided by staff. Experienced librarians help researchers navigate the print and online resources involved in legislative history research. The library has older printed committee books, audiotapes of floor and committee debate, and supporting materials in the collection. Contact the library for details.

Legislative history guide: www.leg.mn/leg/leghist/histstep.htm

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. They can identify and obtain any materials cited by legislators or other authors of legislation. The librarians are also familiar with and can direct you to the collections of other public and private libraries.

Additional LRL resources of interest to drafters include:

- Newspaper clippings by subject, by district, by state agency, or by individual's name: print clipping files from 1969 through 2009; electronic files from 2009 to the present.
- Electronic access to a broad set of historical and current newspapers.
- Extensive reference collection, with a focus on state-level statistics and state-by-state comparisons.
- *Links to the World*: Librarians maintain subject-based links to relevant public policy Internet sites. www.leg.mn/lrl/links/ The *Links* pages are useful for identifying all of the Minnesota agencies, nonprofits, and other organizations dealing with a particular topic.
- *Resources on Minnesota Issues*: electronic guides to information in the library and the Internet on pertinent legislative issues. www.leg.mn/lrl/issues/
- Online magazine indexes with many full text articles.
- Legislative Manuals: 1887 to date
- Print copies of historical *Session Laws*, *Minnesota Statutes*, and House of Representatives and Senate *Journals.*

- Bills introduced: house of representatives and senate since 1957.
- Extended sets of *Suggested State Legislation* annual volumes from the Council of State Governments (1958 to the present) and the *Sourcebook of State Legislation from the American Legislative Exchange Council* (1980-1996).

Chapter 12
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.

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