A Guide

To Maine Bill Drafting

Office of Legislative Assistants

November 1976

". . . easy writing's curst hard reading."

– Richard Sheridan
(1751 – 1816)

STATE OF MAINE
OFFICE OF LEGISLATIVE ASSISTANTS
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A GUIDE

TO MAINE BILL DRAFTING

FORWARD

> And the joy of creative art comes when one is lured to hope that he has found the cypher, the symbol, the generic shape or scrawl, the heiroglyph, the convention, in short, that will do it.
>
> -Berenson, Seeing and Knowing

For the well drafted bill, what is the convention that will "do it"? This manual tries to answer that question. It is meant as a guide for the beginning bill drafter - lawyer, specialist, legislator, concerned citizen. The manual is designed to:

1. take the reader through the general research steps any bill must undergo;
2. provide the drafter with a comprehensive listing of the substantive and procedural problems a typical bill will encounter;
3. provide the drafter with a series of reference chapters on style, grammar, and mechanics;
4. allow the drafter to confirm that his bill has not violated any of the more common constitutional restrictions or that he has not carelessly clouded the intent of his bill; and
5. finally, give the drafter, in the final chapter, an easy checklist by which he can quickly confirm the correctness of his final product.

This manual is not in any way an official drafting manual for the State of Maine. The Office of Legislative Research is responsible for setting forth the official format of all bills.

The manual was reviewed by the Legislative Assistants. It was typed and edited by Sandy Mathieson.

-James A. McKenna, III
November, 1976

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CHAPTER 1
UNITY, COHERENCE, AND PROPER EMPHASIS: THE ART OF BILL DRAFTING

> True ease in writing comes from art, not chance, as those move easiest who have learned how to dance. Tis not enough no harshness gives offense, the sound must seem an echo to the sense.
>
> -Alexander Pope, An Essay on Criticism

§ 1. The race for quality

Art? Rhythm? Sounds that echo sense? What place do these things have in a bill drafting manual? Well, in many ways they are the bill drafter's North stars. Elevated, distant, rarely peered at by the harried drafter, but still they point toward an ideal: the bill in which form merges with content. Or, in Pope's words, a bill in which the sounds seem an echo to its sense.

To achieve the artistic ideal in statutory drafting is not simply choosing, in key places, the most accurate word or the most telling phrase. Rather, a bill's success rides not only on the soundness of its ideas but equally on its structure or form: the unity,

coherence and differing emphasis of its sections, sentences and words.

Yet, in the rush to draft too many bills, form is frequently a poor second to content. Tired, over-used phrases are called to mind, sections are cut from old bills and existing statutes. And while such short-cuts - prefabricated language - reduce many tough assignments to easy exercises, as Richard Sheridan wrote in the 18th century: "...easy writing's curst hard reading."

To bypass form in bill drafting is to ignore a common principle of communication: that a work's form often contributes to its message as much as its ideas do.

§ 2. The art of a bill is form as well as ideas

It is easy to see how important poetic form (stanzas, rhythm, rhyme, etc.) is to a poem's content; but it is less clear the importance form plays in prose writing, such as an essay, a novel or a legislative bill. In a commentary on the novelist Marcel Proust, art critic Clive Bell said that Proust's psychological insights were overpraised and his novel's true genius was its form: "Whether you call it 'significant form' or something else, the supreme quality in art is formal, it has to do with order, sequence, movement and shape... ."[1/]

Similarly, in the cogitative branch of educational psychology, learning is thought to begin when the student is able to perceive, however imperfectly, the whole or structure of an issue. The parts of a problem - or legislative bill - have meaning only in relation to the overall structure.[2/]

If the parts of a bill are poorly structured - in Bell's phrase, without "order, sequence, movement and shape" - then the readers, whether they are legislators about to vote or citizens striving to obey the law, will learn less than they should.

Where does the form of a legislative bill stand in relation to novels, poems, songs and other artistic forms? Bills are not traditional "art". They are literal statements and not filled with emotion or sales talk. And a bill's form is determined not by poetic feelings or a novelistic plot but rather by the unique information a bill must communicate: a legal duty, function, right, privilege or status.

The building blocks of its form are: the bill sections, the sentences that make up the sections, and the words that form the sentences.

In dividing a bill into sections, the writer must ask: "Does the chosen structure lead the reader through the bill in the most enlightening way; does the form cast light on the idea?"

In choosing sentences, the writer must decide: should they be long or short, convey one idea or many ideas, be indented with numbered divisions and subdivisions? He must also be aware of the

sentence's place in the bill's overall structure and whether its rhythm, the natural rise and fall of language, reinforces meaning and intensifies communication.

And finally, in selecting words, a bill drafter must be aware not only of the words' denotation, or dictionary meaning, but also of their connotation, the different meanings it might suggest to the reader.

§ 3. How improved form improves a bill's ideas

Of the many bill drafting treatises reviewed in preparation of this manual, only one systematically approached bill drafting as a problem in form: Reed Dickerson's, The Fundamentals of Legal Drafting. Professor Dickerson constantly compared bill drafting to the problems of constructing a sound house: the need for extensive planning, a firm foundation and superstructure, and a harmonious and functional interworking of all its parts.

Dickerson's reason for emphasizing form was, as discussed above, that a bill's form influences its ideas:

> One benefit [of attention to form] is that, even while the draftsman is preoccupied with such formal matters as logical arrangements or verbal consistency, the putting of substantive elements into the most favorable juxtapositions, or stating similar ideas similarly, it is almost certain to bring into view important substantive considerations that the draftsman would otherwise overlook. A valuable by-product of a wholesome attention to form, therefore, is the clarification and improvement of substantive policy itself.[3]

This manual, then, is a guide to the effective arrangement and selection of a bill's sections, sentences and words. It views bill drafting as a kind of applied art. For each time a bill is contructed, and sections, sentences and words selected, the rules a drafter follows are no different than those adopted by artists of every kind from time out of mind: unity, coherence and the proper placing of emphasis.

FOOTNOTES

1/ Bell, Proust 67, in Feeling and Form 300 (1953).

2/ See generally Morly, Psychology for Effective Teaching 23-47 (3rd ed. 1973) see also Kennedy, Bill Drafting (1958). "Among leading draftsmen there exists a difference of view as to which phase of the technique of bill drafting demands the most particular attention, the substance of a bill or a regard for matters of form.... there is no irreconcilable difference between the two viewpoints, their requirements are interdependent. Both are inescapable." at 14.

3/ Dickerson, Fundamentals of Legal Drafting 133 (1965).

CHAPTER 2
STATUTORY LAW AND THE LEGISLATIVE PROCESS

> Formerly it was argued that common law was superior to legislation because it was customary and rested upon the consent of the governed. Today we recognize that the so-called custom is a custom of judicial decision, not a custom of popular action. We recognize that legislation is the more truly democratic form of law making.
>
> - Roscoe Pound, Common Law and Legislation [1/]

§ 1. The relation of statutes to other laws

Citizens, when planning their activities, do not often distinguish between the different areas of laws, checking each to ensure that the way is clear. If when preparing a bill the drafter is not aware of the other related laws, the result might be unplanned conflict, contradiction, overlapping, and, ultimately, in the minds of citizens, confusion. [2/]

Basically, there are three expressions of law:

A. common law,

B. legislative statutes, and

C. judicial decisions that interpret statutes, the common law and the decisions of previous judges and rule on their meaning and effect.

The common law grew from ancient local rules and customs of England, eventually becoming a body of national principles. The common law prevails generally throughout the United States, except as modified, changed or repealed (specifically or by inference) by statutes or constitutional provisions of an individual state.

While admittedly the courts have the final say in whether and how the common law or statutes apply to individual disputes, there is little doubt that today statutory law is the most influential:

> Inevitably the work of the Supreme Court reflects the great shift in the center of gravity of law-making. Broadly speaking, the number of cases disposed of by opinions has not changed from term to term. But even as late as 1875 more than 40% of the controversies before the Court were common-law litigation, fifty years later only 5%, while today cases not resting on statutes are reduced almost to zero. It is therefore accurate to say that courts have ceased to be the primary makers of law in the sense in which they "legislated" the common law. It is certainly true of the Supreme Court that almost every case has a statute at its heart or close to it. 3/

§ 2. The legislative process and its effect on a statute's form

From the time a bill is first drafted, until either its final defeat by the Legislature or enactment into law, it can be changed (amended) at a staggering number of stages. The standing committee that holds a public hearing on the bill can amend it. Each House of the Legislature can, for all practical purposes, amend it as often as it wishes. If there is a conflict between Houses, a conference committee can be called to resolve the conflict and it also can amend the bill.[4/]

To the bill drafter an awareness of the legislative process is crucial: the form or structure of any bill should be able to accomodate multiple changes and still not lose its unity, coherence and proper emphasis. How this might be accomplished is explained in succeeding chapters of this manual.

FOOTNOTES

1/ Pound, R. "Common Law and Legislation", 21 Harv. L. Rev. 406 (1908), in Read, et al., Legislation 1-2 (2d ed. 1959).

2/ An excellent introduction to the role of law in maintaining public order and resolving the disputes made inevitable in a society prizing individual freedom is, K.N. Llewellyn, The Bramble Bush 107-118 (1951).

3/ Frankfurter, F., "Some Reflections on the Reading of Statutes", 47 Colum. L. Rev. 527 (1947), in Read, et. al., Legislation, (2d ed. 1959).

4/ Appendix A is a detailed description of Maine bill's evolution into a law. See also, for a description of this process at the federal level, the widely used Government Printing Office Publication, Fisher, J. How Our Laws Are Made (1971).

CHAPTER 3
LEGISLATIVE ACTIONS AND THE STRUCTURE OF MAINE STATUTES

> The Legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any Act, bill, resolve or resolution passed by the joint action of both brances of the Legislature, and the style of their laws and Acts shall be, "Be it enacted by the people of the State of Maine."
>
> Constitution of the State of Maine, Article IV, Part First, Section 1

§ 1. How the Legislature acts

The Legislature can change the law or command an action through many different vehicles. One of the first acts of a bill drafter is to choose the most appropriate format for the action he wishes to make.

Specifically, the drafter must understand the following distinctions:

1. Acts. Acts are the formally declared will of the Legislature. The words, act, law and statute are used synonymously. Acts are divided into:

A. Public Laws. Public Laws related to public matters and deal with persons by class rather than with individuals; these are compiled into the Maine Revised Statutes Annotated; and

B. Private and Special Laws. Private and Special Laws are for the benefit of one or several specified persons, corporations, institutions, municipalities, etc; and operate in connection with particular persons and in private affairs which do not concern the public at large.[1/]

2. Bills. Bills are simply drafts of Acts, prior to their enactment as laws. They are also known as L.D.s (Legislative Documents).

3. Resolves. Resolves are like Acts in that they have the force of law and must be approved by the Governor. However, Acts are used when the intent is to permanently direct and control matters applying to persons or things in general while Resolves are used when the Legislature wishes merely to have only a temporary effect or to express an opinion as to a temporary effect or to express an opinion as to a given question.[2/]

4. Constitutional Resolutions. Constitutional Resolutions are the rarest and perhaps most profound form of legislative action for they propose to the voters of the State a change in the State Constitution. Two thirds of each House must vote for the need for such a resolution.[3/]

5. Joint Resolutions. Joint Resolutions,unlike bills and resolves, do not have the force of law but rather are used merely for expressing

facts, principles, opinions and purposes of the two Houses. Common examples of Joint Resolutions are:

A. Memorials and Proclaimations; and

B. Study Orders. Study Orders direct a joint standing or select committee to study a particular problem area.

6. Simple Resolutions. Simple Resolutions do not have the force of law and concern only the operation of one of the Houses and are considered only in that House.

Examples of each of these legislative forms can be found in Appendix B.

§ 2. The different actions of a bill

In changing laws or adopting new laws, the legislative drafter is limited to the following fundamental tools:

1. repealing the present law;
2. amending the present law;
3. enacting new law.

And since a single bill will often contain examples of each - a phrase of the current law being amended here, a current law section being repealed there, an entirely new chapter being created here - it becomes clear that to research, organize and compose a bill can be a complex task. Not only must a newly enacted chapter be unified, coherent and have proper emphasis but also the

unity, coherence and emphasis of any amendments or partially repealed current laws must be maintained and, finally, all the parts of the bill - the new chapter, the repealed section, the amended phrase - must also come together in a unified, coherent whole. That is an accomplishment! But before proceeding to the next chapter and some steps that might guide us through such a task, it is important that the reader be familiar with the great mass of words the bill drafter must juggle and shape: the statutes of Maine.

§ 3. The structure of Maine statutes

1. The Laws of Maine and Maine Revised Statutes Annotated. There are two basic sources for finding out what is the law in Maine.

A. Laws of Maine. The Laws of Maine is published every two years and contains all Acts and Resolves enacted into law since the last publication.

B. Maine Revised Statutes Annotated (M.R.S.A.). The Maine Revised Statutes Annotated are simply the Public Laws compiled in a more readable format, with explanatory notes on the history of the law. All enacted amendments and all repeals are actually made in the text of M.R.S.A. so the reader does not have to wonder whether a specific statutory section has been changed by a recent legislative act.[4/]

2. Structure of the statutes. Both the Laws of Maine and M.R.S.A. adhere to the following order and designations in their identification of the parts of a law (from general to the most specific).

A. Title designated by "1";

B. Subtitle designated by "1";

C. Part designated by "1";

D. Chapter designated by "1";

E. Subchapter designated by "I";

F. Article designated by "1";

G. Section designated by "§";

H. Subsection designated by "1";

I. Paragraph designated by "A";

J. Subparagraph designated by "(1)";

K. Division designated by "(a)"; and

L. Subdivision designated by "(i)".

The attention to such order and detail in bill drafting is important because often only a word or phrase (e.g., a subparagraph) of the current law is changed in a bill and its identification by the voting legislator must be exact. An example of the above designations is:

Description of the change being made

Subsection

Paragraph

Subparagraph

Sec. 2. 38 MRSA § 451-A, sub-§ 6 is enacted to read:

6. Power to grant variances to owners of private dwellings. The Board of Environmental Protection may grant a variance from any statutory water pollution abatement time schedule for a time certain terminating on or before June 1, 1977 to the owner of a structure which:

A. Is located on any Maine coastal island not connected to the mainland by a bridge, road or causeway;

B. Has been used as his dwelling place either year round or seasonally prior to the effective date of this Act; and

C. Is maintaining a discharge subject to the requirements of sections 413, 414 and 414-A if the following conditions exist and requirements are met:

(1) compliance will cause an undue economic burden;

(2) the water quality of the receiving waters will not be seriously impaired;

(3) the discharge will not differ in kind or be greater in quantity from that which occurred prior to the effective date of this Act on a year round basis or seasonally;

(4) the applicant presents to the department and receives approval of a written contract for installation of an alternate system providing best practicable treatment; and

(5) the approved system in subparagraph (4) shall be completed and operating prior to June 1, 1977.

3. Reference by the bill drafter. When preparing a bill, the drafter must identify not only the subject area's place in the M.R.S.A. but, if necessary, the number of any law which recently changed that subject area. This latter information could be hunted up at great difficulty in the Laws of Maine but fortunately the task is made quite simple because part of the annotation of M.R.S.A. (in addition to recent court cases and Attorney General opinions

which touch on the subject area)[5/] is a reference to just this information. As an illustration, presented below is:

A. a short section from M.R.S.A. (including the annotation);

B. the recent act that amended that section in 1976 (new language is underlined, repealed language is crossed out).

The complete identification of this subject area would be Title 5, Part 12, Human Rights, Chapter 337, Human Rights Act, Subchapter VI, Commission Action, Section 4611. Or, in statutory shorthand: 5 MRSA § 4611.

SUBCHAPTER VI

COMMISSION ACTION

New Sections
4611. Complaint.
4612. Procedure on complaints.
4613. Procedure in Superior Court.

§ 4611. Complaint

Any person who has been subject to unlawful discrimination, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination.

1971, c. 501, § 1, eff. July 1, 1972.

This is the Laws of Maine reference for when § 4611 was enacted.

Amendments:
—1971. Subchapter new.

CHAPTER 357

H.P. 1269—L.D. 1583

Bill title — An Act Relating to the Period for Commencing Civil Actions under the Human Rights Act.

Enacting clause — *Be it enacted by the People of the State of Maine*, as follows:

Reference by the bill drafter to both the M.R.S.A. subject area and Laws of Maine subject area and also the legislative action to be taken. — Sec. 1. 5 MRSA § 4611, as enacted by PL 1971, c. 501, § 1, is amended to read:

§ 4611. Complaint

Any person who has been subject to unlawful discrimination, or any employee of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination, provided, however, that such complaints must be filed with the commission not more than 6 months after the act of unlawful discrimination complained of.

Sec. 2. 5 MRSA § 4613, sub-§ 2, ¶ C, as enacted by PL 1971, c. 501, § 1, is amended to read:

C. The action shall be commenced not more than ~~one year~~ 2 years after the act of unlawful discrimination complained of.

Approved May 27, 1975.

FOOTNOTES

1/ See Director of Legislative Research, Style Rules Governing Revised Statutes and Laws of Maine 37 (1962).

2/ See City of Bangor v. Inhabitants of Etna, 34 A.2d 205, 140 Me. 85(1943).

3/ See Maine Const. Art. X, § 4.

4/ Strictly speaking, the Revised Statutes of 1964 are the law and they have been amended by the Laws of Maine since then.

5/ M.R.S.A. does not include in their annotations the latest (after 1963) Attorney General opinions. The State Law Library or the Attorney General's office, both in Augusta, can provide these.

CHAPTER 4
THE FIRST STEP IN BILL DRAFTING: EXPLORING THE LEGAL STRUCTURE

> A competent architect would not dream of remodeling a house without first taking a close look at it. Similarly, the draftsman of a legal instrument should closely examine all relevant existing instruments, if any, to see what to amend, what to repeal, and what to supplement. Failure to do this results in implied repeals, overlaps, and inconsistent terminology; in a word confusion.
>
> - Dickerson, The Fundamentals of Legal Drafting [1/]

§ 1. The drafter as an architect

Professor Dickerson's advice is sound but perhaps too limited. Often the bill drafter will also feel the need to consult not only other relevant statutes but also current case law, the common law, legal essays, old bills dealing in the same subject and other legal sources. The law library [2/] is arranged logically and, with the help of a librarian, easy to find one's way around in. While the language of some of its books might seem a little obscure, remember, the law is meant to be understandable by everyone. A little perseverance will unravel even the most tortuous legal conditions.

How can the bill drafter conduct an adequate technical search of the general legal structure his bill might be affecting? The following directions should provide more than enough information.

1. Constitutional restrictions. First, establish whether your bill's subject area somehow is affected by either the Federal or State Constitution. Chapter 12 of this manual provides a summary of the most common Constitutional restrictions but a more thorough method is to comb the index of publications similar to the following:

A. The Constitution of the United States, with analytical index, House Document No. 92-157 (1972), Government Printing Office, Washington, D.C.;

B. The Constitution of the State of Maine published by the Secretary of State (also found in Volume 1 of Maine Revised Statutes Annotated).

2. Related statutes. Second, make a thorough search of the Maine Revised Statutes Annotated index for all statutes that affect your bill's subject. Pay special attention to the M.R.S.A. annotations as they will direct you to other legal sources (e.g., cases, encyclopedia articles etc.). The safest way to refer to M.R.S.A. is to check for recent changes in the law by beginning with the pocket parts of the relevant title, next check to see if there is a Supplementary volume and, finally, go to the main text.

3. Additional guides. Next, in order to find out what other drafters and legislators have considered to be the issues your bill deals with (and perhaps to find an initial model for your draft) seek out the following sources.

A. Legislative Documents and Papers (prior to 1975 entitled, Register of All Bills and Resolves), which is an indexed guide to the bills that each year came before the Maine Legislature.

B. If you find an old but relevant bill, look it up in Maine Legislative Documents, which contains all past bills.

C. If you want to find out the issues the legislators thought were crucial in the relevant bills subject area, look up the floor debates on the old bill in Maine Legislative Record.

D. The Laws of Maine will show you the final form, if any, achieved by a relevant bill or resolve.

E. The statutes of other states can likely show you how other states have handled your problem (the State Law Library in Augusta and the University of Maine Law Library in Portland have these).

F. Either the yearly Council of State Governments' publication, Suggested State Legislation or the Advisory Commission on Intergovernmental Relations' (ACIR) State Legislative Program might have a suggested "model" Act that deals with your problem.[3/]

G. Finally, if you do find an old bill that is relevant and you want to discuss it further, you might get in touch with the legislator who sponsored it or one of the legislative support offices: the Legislative Finance Office, the Office of Legislative Research or the Office of Legislative Assistants.

If the relevant bill is from another state, the legislative staffs for each state are listed in the Council of State Government's, Principle Legislative Staff Offices (1975).

A warning: borrowing "language" from other sources must be approached with care; great effort must be taken to ensure that any statutory language borrowed from another bill or law conforms with other sections of your bill and with Maine law in general.

4. Relevant legal decisions. The next general step in discovering the legal environment in which your bill must survive is to look up your general subject area in the Maine Key Number Digest[4/] (West Publishing Co.) which will tell you what Maine State or Federal Courts or the Maine Attorney General has said about your subject. To read any relevant cases in their entirety, go to the Maine Reports. The Key Number Digest will provide the necessary citation (e.g., "162 Me. 367" refers to Volumn 162, page 367 of the Maine Reports).

5. Legal encyclopedias. If your bill touches on a traditional legal issue and you need still further background, proceed next to one of the following legal encyclopedias:

A. Words and Phrases (West Publishing Co.) which gives you the judicial construction and definition of just about any word or phrase from the earliest time;

B. Either American Jurisprudence, Second Edition or Corpus Juris Secundum which are like other encyclopedias except that they deal only in legal issues. Volume 1 of Am. Jur., for example, goes from Abandoned, Lost and Unclaimed Property to Administrative Law.

6. Law reviews. For an even more in depth discussion of a legal area, see if one of this county's many law journals has treated it. The Index to Legal Periodicals is a wonderful tool and will direct you to old and new journals alike. Of particular interest will be the University of Maine's Maine Law Review; in Volume 24, 1972, there is an excellent index that covers the preceding 10 years of publication. More and more law journals are tackling social as well as strictly legal issues.

7. Attorney General opinions. Relatively few bills are the subject of litigation but still there is a chance that the Maine Attorney General has rendered an opinion on it. In the State Law Library are neatly bound and indexed volumes of Attorney General's opinions. Or, easier still, simply go to the Attorney General's office itself and ask if they ever formally considered your problem. They have a master index.

8. Administrative laws. Finally, it may be important to know if any Maine State government agency has promulgated any rules or regulations that affect the subject area in which you are drafting. The Secretary of State has a copy of all of such rules, or one can get them directly from the agency.

FOOTNOTES

1/ Dickerson, Fundamentals of Legal Drafting 40-41 (1965).

2/ Many of the legal research sources described in this section can be found in college libraries or local public libraries or might be ordered through the State library system. The most complete law collections are found in the State Law Library, State House, Augusta, Me., and in the library of the University of Maine School of Law in Portland, Me.

3/ See also Uniform Laws Annotated.

4/ West Publishing Co.'s "key number" system allows the researcher to trace an issue or subject from definition (Words and Phrases) to disucssion (Corpus Juris Secundum) to court case (Maine Key Number Digest).

CHAPTER 5
THE SECOND STEP IN BILL DRAFTING: ARRANGING THE BILL'S PARTS

> Successful poetry is never effusive language. If it is to come alive it must be as cunningly put together and as effectively organized as a plant or a tree. It must be an organism whose every part serves a useful purpose and cooperates with every other part to preserve and express the life that is within it.
>
> - Perrine, Sound and Sense [1/]

§ 1. General Organization

Bill organization begins with an outline. The best outline would break the bill down at least into the different legislative acts (repeals, amendments, enactments) and into smaller parts, if possible. Clearly, the outline is the most important tool a drafter has for solving complicated problems.

In Maine bills each legislative action (a repeal, an amendment, an enactment of new language, sections, chapters, etc.) is set off as a separate bill section. (From now on we will be referring to statutory sections - the law itself - and bill sections, which are the separate legislative actions of a bill.)

Thus, the organizational "problems" in bill drafting are two.

A. How do we organize the different bill sections (the amendments, repeals, enactments)?

B. How do we organize the information (the legal right, privilege, function, duty, or status) in each bill section?

In Maine, the first problem is largely taken out of the drafter's hand; the second is very much left to him.

§ 2. Organization within a bill of the different bill sections

In Maine, this is no problem at all: each bill section is placed in the numerical order it would have in its place in the Maine statutes.[2/] For example, if you were amending 5 MRSA § 722, sub-section 8, repealing 5 MRSA § 726 and enacting 4 MRSA chapter 19-A, then the order of the bill's sections would be:

> Sec. 1. 4 MRSA c. 19-A ... is enacted to read:
> Sec. 2. 5 MRSA § 722, sub-§ 8 ... is amended to read:
> Sec. 3. 5 MRSA § 726 ... is repealed.

§ 3. Organization of the statutory sections contained in each bill section

1. Unity, coherence, proper emphasis. Whether you are drafting an entirely new chapter or only changing a section, the three standards mentioned at the beginning of this manual - ones shared by technical writers, essayists, poets - are still our organizational guides: unity, coherence and proper emphasis.

A. Unity. Unity can best be achieved by discovering for your bill what the Oregon Bill Drafting Manual calls "the single leading principle".[3] For example, this leading principle often will be the rule of law to be followed rather than the provisions creating the agency to administer the rule or establishing the procedure to be followed in administering it. If the drafter anchors only relevant features to this "leading principle" his bill's unity will be assured. As will be discussed in Chapter 8, the bill section stating the leading principle should be short, concise and as near the beginning of the bill as possible. This way the reader is able to quickly grasp exactly what your bill is about. In complex bills that contain more than one "leading" or main principle, a possible structure is one which divides the bill itself into main sections (e.g., Sections A, B and C, at times used in appropriation bills).

B. Coherence. Coherence can be accomplished through the process of division and classification. Select the "cutting" principle most appropriate for dividing the subject matter of the bill (e.g., duties, chronology, restrictions, importance, etc.)? Once the cutting principle has been chosen, what are the most effective classifications it can make (e.g., what subjects, groupings or other elements are most appropriate)?[4]

C. Proper emphasis. Finally, proper emphasis is achieved by arranging the divided and classified pieces in a logical sequence that most effectively conveys the information a citizen must know to carry out the law. As Justice Frankfurter said in Bethlehem v. State Board, 330 U.S. 767, 780 (1943): "In law also emphasis makes the song." Dickerson offers the following rules of thumb:

(1) General provisions normally come before special provisions.

(2) More important provisions normally come before less important provisions.

(3) More frequently used provisions normally come before less frequently used provisions.

(4) Permanent provisions normally come before temporary provisions.

(5) Technical "housekeeping" provisions, such as effective date provisions, normally come at the end.[5/]

A valuable technique is to draft each bill section on a separate sheet so their order can be easily changed. The proper order is not always evident in the earliest drafts.

"Arrange it vigorously and systematically ...", writes Dickerson. "The reason is simply that good architecture directs attention to the nature and relative position of each element in the hierarchy of the client's ideas."[6/]

2. Replacing old but related statutes. One of the great dilemmas of a bill drafter comes when an assignment calls for a change in a chapter or smaller part of the law which is mired in the midst of related but poorly worded, confused laws. Does the drafter adopt the structure and grammar (and confusion) of the surrounding laws? Or does he simply write his part as clearly as possible and not worry whether the reader will be seriously confused by the sudden change in grammar, language and general organization?

No absolute, simple rule is possible. In general, grammar and language should be the drafter's best efforts, no matter how earlier drafters phrased the surrounding laws. Unless an alternative structure offers substantially improved coherence and emphasis, the existing arrangement, because it will cause less confusion to and adjustment by the reader, should be maintained. A future revision of the statutes should address this problem.

FOOTNOTES

1/ Perrine, Sound and Sense 11 (2d ed. 1963).

2/ Maine differs in this area from some states. A commonly used bill structure places the bill sections that amend and repeal after the bill sections that introduce the material to be newly enacted. Such an organization makes for easier and more understandable reading but the benefit of Maine's system - the ability of knowing where to look in a bill to be certain an area of the present law either has or has not been changed - perhaps outweighs the slight loss to ease of comprehension.

3/ Oregon Legislative Council Committee, Bill Drafting Manual 23 (1958).

4/ Dickerson, Fundamentals of Legal Drafting 60-62 (1965).

CHAPTER 6
THE THIRD STEP IN BILL DRAFTING: COMPOSITION

> [L]anguage is something more of a tool of thought. It is part of the process of thinking. Our ideas are clarified in the very attempt to express them.
>
> -Littleton, The Importance of Effective Legal Writing in Law Practices. 1/

§ 1. The Golden Rules of composition

Once a sound arrangement of the bill's parts has been decided upon, composition can begin. There are two golden rules of composition in bill drafting.

A. Strive for consistency.

B. Always choose words according to their normal usage.

§ 2. Consistency

Dickerson holds no virtue higher than consistency: "Probably the most important formal technique for uncovering hidden inade-

quacies is to strive for complete internal consistency of terminology, expression, and arrangement.[2] Drafting manuals without exception urge this idea.[3] Practically, this means the drafter must:

A. Avoid using the same term or word in more than one sense;

B. Avoid using different words to denote the same ideas; and

C. If phrases or sentences or paragraphs or statutory sections are similar in substance, arrange them similarly.[4]

§ 3. Normal usage

Bill drafters, like Lewis Carroll's characters, have the unique power to make words mean whatever they want them to. Unfortunately, a bill which adopts unique meanings for its words has seriously damaged the primary mission of the law: to guide citizens in their everyday tasks. Strive to use a term in the way the reader expects it to be used. Further, writes Dickerson, "ridding an instrument of significantly abnormal uses will make its basic inadequacies more apparent, simply by clarifying what the instrument says."[5]

§ 4. The long sentence

Even sentences of consistent, understandable terms can benumb the mind if served up in law's most favored packaging - the too long sentence:

> Traditional, imprecise words and a traditional imprecise pattern of two-words-for-one have been carried into the twentieth century imbedded in the long sentence. There are only two cures for the long sentence:
>
> (1) Say less;
>
> (2) Put a period in the middle.
>
> Neither expedient has taken hold in the law.[6/]

§ 5. The bill's audience

Like it or not, all bills are not aimed primarily at the average citizen. Often a bill deals not in individual rights but in highly technical directions for the administrators of complex programs. A drafter must use the vocabulary and usage of his primary audience. But even saying this, the drafter must never forget that the public must also be able to understand. There is a fine line

between technical accuracy and general comprehensiveness but it is one the drafter must constantly attempt to follow. In Maine, the popular acceptance of the School Finance Act was certainly hampered by its administrative complexity. Simplify as much as possible! There's hardly a phrase which, if worked over again, could not be made clearer.

Again, then, we hark back to our three drafting goals: unity, coherence and proper emphasis. Unity is certainly aided by a strict adherence to consistency. Coherence will surely result from normal usage. And, if the bill has met these two goals, then the drafter, shifting and arranging phrases, sentences, whole sections, can construct a sequence which properly emphasizes the bill's content.

FOOTNOTES

1/ 9 Student Lawyer 7 (1963) Dickerson, The Fundamentals of Legal Drafting 10 (1965).

2/ Dickerson, Fundamentals of Legal Drafting 11 (1965).

3/ See Kennedy, Bill Drafting 41 (1958); Oregon Legislative Council Committee, Bill Drafting Manual 27 (1958).

4/ Dickerson, Fundamentals of Legal Drafting 11-12 (1965). "These practices are effective because they facilitate comparison and recognition. Nothing will do more to improve the accuracy of a draft than following them, and nothing will do more to obscure its inadequacies than ignoring them." at 12.

5/ Id. at 13.

6/ Mellinkoff, the Language of the Law 366 (1963).

CHAPTER 7
THE FINAL STEPS IN BILL DRAFTING: HORIZONTAL AND VERTICAL REVIEW

Sometimes even good old Homer nods.

-Horace, Ars Poetica

§ 1. Review of the final draft

There is no certain way to avoid errors in bill drafting. Dwell on each word, turn phrases over and over, juggle sections unceasingly, and still there will be errors. The legislative process, with its public hearings, required readings, many different votes, is a recognition of the fact that perfection in bill drafting is just not attainable. Still, the drafter is not defenseless: a systematic review - horizontal and vertical - of the different aspects of a bill offers the best chance of uncovering a bill's flaws:

> One of the virtues of intensive, systematic and specialized across the board checks is that even when they are applied to what appears to be only stylistic aspects of the instrument they often expose substantive discrepancies. This is most likely to happen when the draftsman is checking his definitions and terminology. Once he has made the draft speak with a single tongue, he often finds the draft now states substantive results never before suspected.1/

§ 2. Horizontal review

A "horizontal" review of a final draft refers to concentrating on one type of possible error at a time and checking through the entire bill looking only for that mistake. A good checklist for a horizontal review would be:[2/]

A. Consistency. Are the following used throughout the bill in the same way:

(1) terms,

(2) forms of expression, and

(3) arrangement of parts?

B. Normal usage. Does the bill's vocabulary adopt standard meanings?

C. Ambiguity. Does the bill's language display any of the following types of ambiguity:[3/]

(1) semantic ambiguity (Which dictionary definition is meant?),

(2) syntactic ambiguity (Which word is being modified or referred to?), or

(3) contextual ambiguity (Does one of the bill's sections contradict another of the bill's sections? Does the bill itself contradict a still current law? Which one rules?)?

D. Vagueness. Is the bill so lacking in specificity that the citizen is not guided in his actions and the enforcing officer has too great discretion? Such a bill, as we shall see in Chapter 12, is possibly unconstitutional.

E. Over precision. Similarly, is the bill so precise or unrealistic that no one could obey it or administer it? Dick-

erson offers the following standard:"[L]eave for future interpretation only those borderline cases that are individually insignificant and unlikely to occur often enough to create a significant burden that could be avoided by more specific drafting."[4/]

F. Generality. Are the classes established by the bill too broad (or too narrow)?

G. Overstuffed language. Are your words, even though accurately used, too specialized or ornate for general comprehension or for the persons affected by your bill? In Horace's phrase, do you use "foot and a half long" words?

H. Style. Is your bill grammatically correct (tense, number, etc.)? (See Chapter 9.)

I. Mechanics. Is your punctuation correct and is the mechanical form adopted by you to show group designations the required form? (See Chapter 10.)

§ 3. Vertical review

The final review by the drafter should[5/] seek out mistakes not in the bill's form but in its substance:

A. Appropriate measure. Is the type of legislative measure you are using (e.g., bill, resolve, joint resolution) appropriate for its purpose?

B. Fulfilled intention. Does the bill accomplish only what was

intended and no more?

C. Constitutional limits. Are any constitutional limits on legislation violated? (See Chapter 12.)

D. Relevant statutes. Is your bill properly integrated with the existing relevant law? Will there be conflicts in administration or interpretation?

E. Conflicting laws. Have all conflicting or related statutory sections been appropriately amended or repealed?

F. Definitions. Have you used definitions where desirable (e.g., for words without a single fixed meaning in normal usage)? If you do define a word, is that word used throughout the bill with the same meaning?

G. Administrative powers. If necessary, does your bill provide administrators with the power to make necessary rules or regulations that are reasonable and adopted with proper notice and hearings? (See Chapter 12, § 2.)

H. Pending matters. Does your bill affect pending matters? If so, does it indicate their disposition? (See Chapter 9, § 4,sub-§ 4, "Transitional clause".)

I. Appropriation. Does your bill require an appropriation? If so, have you included an appropriations sections and a fiscal note? (See Chapter 8, § 4 (sub-§ 4), § 5.)

J. Effective date. Is the date your bill, if enacted, becomes effective the correct date? (See Chapter 8,§ 4,sub-§ 4.)

K. Safety clause. Does your bill unfairly endanger any person's existing rights? (See Chapter 8, § 4,sub-§ 4.)

L. Accurate title and statement of fact. Does the title of the bill adequately express the nature of the bill; and is the Statement of Fact a comprehensive review of the bill's workings and effect? (See Chapter 8,§3,§4,sub-§4.)

M. Official names. Are the titles of public officers, agencies and institutions correct?

N. Statutory references. Are all statutory references in your bill correct?

O. New problems. Does your bill, in accomplishing its intention, create new problems without providing a solution for them?

§ 4. Finishing touches

Having thoroughly reviewed his bill, the drafter is now ready for any final polishing. Three rules are good to keep in mind:

1. Request that another person experienced in bill drafting or in the subject area of your bill read it over and suggest improvements.

2. If you feel that some of your language might be even further simplified, proceed cautiously. Logical coherence is more valuable than simple readibility.[6/]

3. Release as a final effort only "clean" drafts. "Drafts that seem to read well but which are badly marked up usually are found to still contain, if re-typed, errors or inconsistencies or awkwardness of expression.[7/]

FOOTNOTES

1/ Dickerson, Fundamentals of Legal Drafting 47 (1965).

2/ See Id. at 22-31.

3/ Id. at 23-27.

4/ Id. at 43.

5/ See Legislative Counsel Committee, Bill Drafting Manual 299 (1958); Legislative Reference Bureau, Wisconsin Drafting 73-78 (1964); Legislative Research Committee, Bill Drafting Manual 41 (1965); Kennedy, Bill Drafting 45 (1958).

6/ Dickerson, Fundamentals of Legal Drafting 49 (1965).

7/ Id. at 45.

CHAPTER 8
THE PARTS AND FORMAT OF A BILL

> Art is the imposing of a pattern on experience, and our esthetic enjoyment in recognition of the pattern.
>
> -Alfred North Whitehead, Dialogues

§ 1. Introduction

The pattern of a bill is the arrangement of its necessary parts. Is a definition section necessary? Are there rights to be protected by a saving clause? When should the bill's effective date be? The bill drafter's selection and arrangement of the bill's parts - the pattern he attempts to impose on the area his bill will regulate - determines the effectiveness of the bill's communication. We have described good communication as possessing unity, coherence, and proper emphasis, but, like Whitehead, we may also describe it as art.

§ 2. Legislative actions and a hypothetical bill

1. Legislative actions. As we stated in Chapter 3, there are three main legislative actions:

A. To repeal the current law;

B. To amend the current law;

C. To enact new law.

Each of these actions is presented as a separate "bill section" (designated in a bill by "sec." as opposed to a statutory section, which is designated by "§"). In Maine, the order of the different bill sections - the amendments, repeals, or enactments - is taken out of the drafter's hand. Bill sections are placed in the same order as they would have in the Maine Revised Statutes Annotated (M.R.S.A.).

While the ordering of separate bill sections is strictly numerical, the ordering of the different parts of the body of an individual bill section (e.g., enactment of new chapter) is not. This is where the drafter's creativity takes over. What, he must ask, is the most effective sequence for the parts of this bill section? For an example of a multi-part bill section, see Chapter 3, §3, sub-§2.

2. Numbering. The bill drafter will make the initial determination as to where in M.R.S.A. his bill should be placed (what Title, what chapter, etc.). There are two rules of numbering he should keep in mind.

A. If you are inserting a new statutory section (chapter) in

the midst of already enacted sequence of sections, use the immediately preceeding section (chapter), followed by a hyphen and the letter "A" (e.g., § 1-A, or c. 1-A). If more than one section (chapter) is inserted, the same number is used and each section hyphenated and lettered "B", "C", "D", etc., respectively.

B. If enacting an entirely new chapter or sub-chapter or article always begin numbering at 1, 11, 21, 31, etc., and leave room at either end for growth by subsequent amendments.

3. Hypothetical bill. Often a bill section will have few or only one part, as in a simple repeal or amendment (e.g., a sentence is repealed and replaced with new wording). But occasionally a drafter establishes an entirely new chapter and then he is faced with many possible subordinate parts and many ordering options. This chapter will discuss briefly the definition and order of the parts of the following hypothetical bill (a simple amendment, a simple repeal and enactment of a new chapter):

Title

Emergency preamble

Enacting clause

Body of the bill (the different bill sections to become law)

Sec. 1. Simple amendment

Sec. 2. Simple repeal

Sec. 3. Enactment of a new chapter

§ 1. Short title

§ 2. Statement of legislative purpose, findings or intent

§ 3. Definitions

§ 4. Basic provisions

§ 5. Penalties clause

§ 6. Severability or nonseverability clause

§ 7. Savings clause

Sec. 4. Limited duration clause

Sec. 5. Liberal interpretation clause

Sec. 6. Non-application clause

Sec. 7. Temporary or transitional clause

Sec. 8. Appropriation clause

Sec. 9. Effective date or emergency clause

Fiscal Note

Statement of Fact

It should be noted that in this hypothetical bill several bill parts (e.g., short title, statement of purpose, penalty clause etc.) were placed within the newly enacted chapter (Sec. 3). In other bills they might simply be separate bill sections and thereby would apply to all other bill sections, not just to the new chapter.

§ 3. The preliminary parts of a bill: the title, emergency preamble and the enacting clause

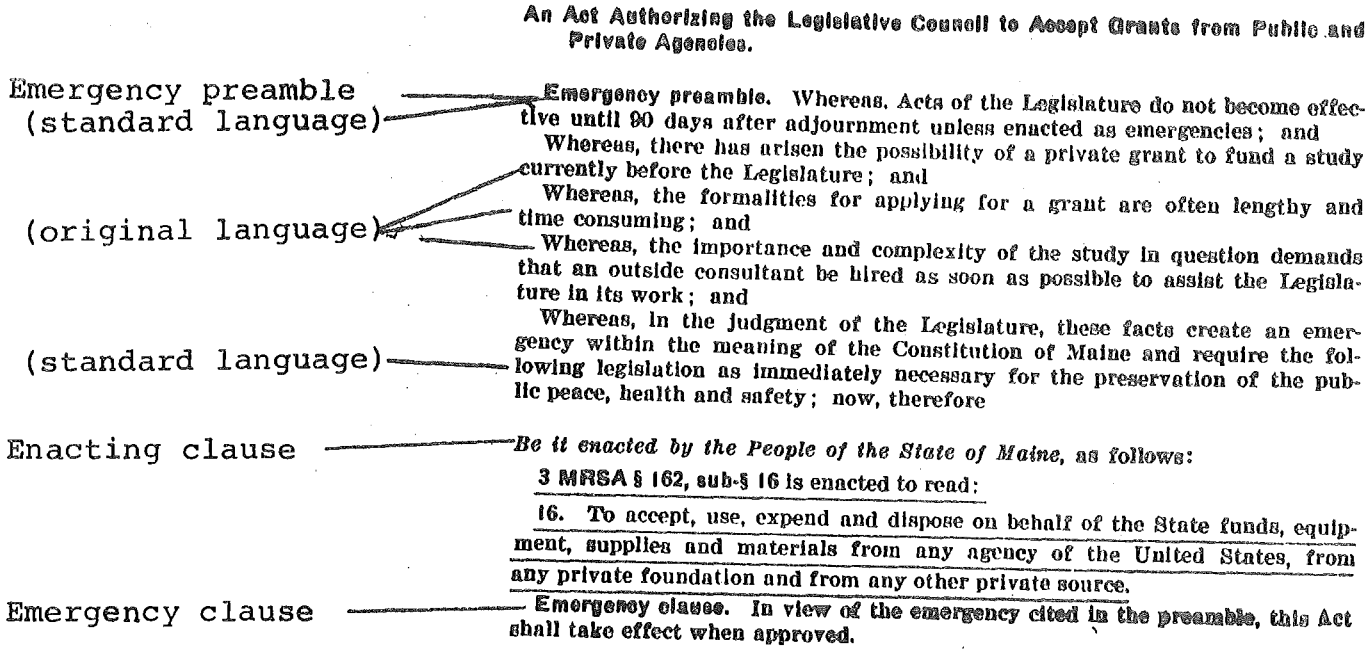
1. The bill's title. The title of a bill should be a clear description of the general contents of the bill. The drafter's goal is to inform legislators of the bill's general purpose. Ideally, a single bill should deal in only one subject. This prevents multi-subject legislation from being passed by the combined votes of the supporters of separate measures, when no single measure could pass on its own merits. 1/

There is no reason why the drafter

cannot adequately describe the bill's subject. Such short (and very common) titles as "An Act Relating to Child Care" are nearly useless as guides for legislators and citizens. A better title might be "An Act to Require Mandatory Reporting of Child Abuse or Neglect." Remember, the title, which is not part of the law, might possibly influence how a court interprets the legislative intent in enacting the bill. (See Chapter 13.)

2. The bill's emergency preamble. Coming before the enacting clause, the emergency preamble is also not part of the law. Its purpose is to state the reasons why the bill must become law either immediately upon signing by the Governor or before the normal period of 90 days after the recess of the Legislature.[2/] Non-emergency preambles - a preliminary statement of the reasons for the Act - are rarely used.

3. The bill's enacting clause. The enacting clause is prescribed by the Maine Constitution; it separates the identification portions of the bill (title, preamble) from the actual body of the law (amendments, repeals, enactments).[3/]



§ 4. The parts of the bill's body

1. Introduction: a combination of amendments, repeals, enactments. The bill sections following the enacting clause are considered, if the bill is enacted, to be the law. This is the bill's body. However, when strictly interpreting laws, courts do not consider as part of the law either punctuation or the different headlines (heavy print) in

the body. The body of a bill may consist of one or any combination of the following: amendments, repeals or enactments. But in this manual we will describe only the parts of a typical but fairly complicated bill: one that contains a simple amendment, a simple repeal and the enactment of an entirely new chapter.

2. Simple amendment. When drafting a bill section that amends a Maine law the following rules[4/] should be followed.

A. Headnotes. In amending any section of the law or inserting a new section of the law in a chapter, a headnote (equivalent to a headline, a heavier type face phrase preceeding the law but not considered part of the law) briefly describing the desired change should be included wherever clarity would be aided. Underline them when typing.

B. Complete text. Each bill intended to amend existing legislation must contain, if practicable, the full official text of each section to be amended. Any material intended to be omitted should have a line drawn through its words. The new material should be inserted in its proper place and underlined.

C. Amendments too confusing. Whenever there are so many changes in a section of the law that the crossing out and underlining would be more confusing than helpful, the old section should be repealed and a new one enacted, "to read as follows:";

D. Amending sections already amended once. In amending (or repealing) any section of any existing legislation, the amendment (or repeal) should also identify the legislative history of the law being changed (see Chapter 3, § 3). Some examples[5/] (the bill section numbering assumes the amendments are the first sections of a bill):

(1) Sec. 1. 32 MRSA § 2102, ¶E, 3rd sentence, as enacted by PL 1973, c. 495, § 2, is amended to read:

(2) Sec. 1. 26 MRSA § 82, first sentence, as amended by PL 1971, c. 620, § 13, is further amended to read:

(3) Sec. 1. 39 MRSA § 52, last sentence of 3rd ¶, as repealed and replaced by PL 1965, c. 408, § 1, is amended to read:

(4) Sec. 1. P&SL 1917, c. 192, § 10, 3rd ¶, as last repealed and replaced by P&SL 1973, c. 306, is amended to read:

(5) Sec. 1. Resolves 1973, c. 26, 3rd ¶ from the end is amended to read:

(7) Sec. 1. 5 MRSA § 1121, sub-§ 2, ¶A, sub-¶ (2-A), last sentence, as enacted by PL 1973, c. 543, § 5, is amended to read:

(8) Sec. 1. 36 MRSA § 962, sub-§ 2-A, ¶C, 3rd ¶ is amend- to read:

(9) Constitution, Art. V. Pt. 2, § 2, is amended to read:

Amendments to the current law become necessary either to change that specific law or to enact a new law that conflicts with current statutes. If the latter, search carefully for any statute that must be changed because of the new law you are creating. If you do not, conflicts and confusion will be the results.

Sec. 128. 22 MRSA § 2387, sub-§ 3, ¶ C, as enacted by PL 1973, c. 524, is amended to read:

C. No conveyance shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used in and for the unlawful manufacturing, ~~dispensing or distributing~~ trafficking or furnishing of any ~~illegal~~ substance ~~covered by the sections referred to in paragraph B of subsection 1~~ in violation of Title 17-A, chapter 45. Proof that ~~said~~ the conveyance was used on 3 or more occasions for the purpose of unlawfully manufacturing, ~~distributing or dispensing~~ trafficking or furnishing any ~~controlled~~ such substance shall be prima facie evidence that ~~said~~ such owner knew thereof or should have known thereof.

---

3. Simple repeal. Similarly, if you are drafting a law that by implication repeals other laws, be sure to make a careful search of all the statutes for provisions that would be inconsistent with your new law and then specifically repeal them (or, if appropriate, amend them) in your bill. In general:

> Do not use a general repeal clause providing that "all laws and parts of law in conflict with this Act are repealed." A general repeal clause does not repeal anything and does not give your bill any effect it would not otherwise have.
>
> All prior conflicting laws and parts of laws are impliedly repealed by conflicting provisions of your bill. The great difficulty in connection with repeals by implication is to determine whether an irreconcilable conflict exists between a subsequent Act and a prior Act or part of the prior Act. A general repealing clause fails to disclose the legislative purpose as to an earlier statute and thereby adds to the burden of construction a question which should properly be settled by the Legislature. Whether your bill requires or makes desirable the repeal of an earlier Act should be determined by you; and, if the repeal of one or more sections is necessary or desirable, you should include a specific repeal provision which specifies the sections repealed.[6]

to protect against mistakenly repealing by implication an existing law, your bill may state no conflict is intended. This is normally done in a saving clause, which is discussed below in sub-section 4, paragraph G. The format of a bill repeal is the same as an amendment. Some examples:

> Sec. 1. 35 MRSA § 246, as enacted by PL 1971, c. 19, is repealed.
>
> Sec. 1. 26 MRSA § 626, is repealed and the following enacted in place thereof:

4. Enactment of a new chapter. The most illustrative example of an enactment would be to consider the many possible parts of an entirely new chapter. Before describing the individual parts, however, it is worthwhile to consider again the problem of organization (see also Chapter 5 , § 3):

> One of the fundamental problems in bill drafting is that of arrangement. The final product must be made as useful as possible. Carefully select the subjects to be covered and arrange them so they can be easily found, referred to and understood. Arrange the provisions relating primarily to the administration of an existing law from the point of view of those who administer them. Arrange the provisions relating primarily to the conduct, rights, privileges or duties of persons from the point of view of the persons affected. The over-all arrangement should be one that will help the users of the statute to interpret it correctly.[7]

In the more complicated bills, the substance of the law is not only preceded by some more formal parts - a short title, purpose clause, definitions - but also succeeded by other formal parts - saving clause, severability clause, penalties clause, etc. The discussion which follows adopts that pattern.

A. Short title. While seldom necessary, a short title is suitable for the more complex bills and ones of public interest; it enables quick identification and easy reference.

B. Statements of legislative purpose, policy or findings. Purpose, policy or findings statements by the Legislature, are part of the law because they come after the enacting clause. These are often used as a guide for judicial construction or administrative application. Several commentators claim such statements are rarely needed in a well drafted bill. However, purpose clauses are particularly useful in more complicated bills to prepare the reader for the actually workings of the bill.

C. Definitions. In order to avoid repetition and ensure clarity, a bill might need a definitions section. The Montana Bill Drafting Manual[8/] cites the reasons:

> (1) To define a general term in order to avoid its frequent repetition, such as "'Employee deductions' means all authorized deductions made from the salary and wages of an officer or employee of a state agency";
>
> (2) To avoid repeating the full title of an officer or of an agency, such as "'Board' means the board of Natural Resources and Conservation";
>
> (3) To give an exact meaning to a word that has several dictionary meanings;
>
> (4) To define a technical word that has no popular meaning in commonly understood language; and
>
> (5) To limit the meaning of a term that, if not defined, would have a broader meaning than intended.

The Maine bill drafter should remember that 1 MRSA § 871, 72 contains legislatively approved uses and definitions of key words and phrases. There are similar lists for some individual titles (see e.g., 21 MRSA § 1). Take care in using the words "means" and "includes". "Means" restricts and "includes" enlarges the meaning of a word. You might wish to use them together, as in: "Inland waters" means all Maine lakes and rivers and includes the Kennebec River." Finally do not use the imperative form (e.g., "shall"). Definitions are not commands.

This chapter has no short title section; it usually is the first section and might be phrased:"This chapter may be referred to as 'the Returnable Container Act'".

A purpose clause with both a findings and intent sub-§

Definitions

Sec. 16. 32 MRSA c. 28 is enacted to read:

CHAPTER 28

MANUFACTURERS, DISTRIBUTORS AND DEALERS OF BEVERAGE CONTAINERS

§ 1861. Purpose

1. Legislative findings. The Legislature finds that beverage containers are a major source of nondegradable litter and solid waste in this State and that the collection and disposal of this litter and solid waste constitutes a great financial burden for the citizens of this State.

2. Intent. It is the intent of the Legislature to create incentives for the manufacturers, distributors, dealers and consumers of beverage containers to reuse or recycle beverage containers thereby removing the blight on the landscape caused by the disposal of these containers on the highways and lands of the State and reducing the increasing costs of litter collection and municipal solid waste disposal.

§ 1862. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

1. Beverage. "Beverage" means beer, ale or other drink produced by fermenting malt, soda water or other nonalcoholic carbonated drink in liquid form and intended for human consumption.

2. Beverage container. "Beverage container" means a glass, metal or plastic bottle, can, jar or other container which has been sealed by a manufacturer and which, at the time of sale, contains one gallon or less of a beverage.

3. Commissioner. "Commissioner" means the Commissioner of Agriculture.

D. Basic provisions. While the arrangement of a bill's basic provisions - legal rights, privileges, functions duties or status - will differ with each bill. A general rule to follow is: precedence should be given to provisions of greatest importance and widest application, with the simpler provisions preceding the more complex and the provisions relating to its administration.[9] From the viewpoint of organization, there are three general types of bills:[10]

(1) One main provision supported by subordinate provisions. Most new legislation is concerned with just one main idea and falls within the first type. Generally the substantive provisions of an Act will be followed by the authority by which it is to be administered and by the means to make it effective;

(2) Several Related Main Provisions. Each main provision with its related subordinate divisions should be separate from the other main divisions and drafted in detail as if it constituted the entire bill; in such bills, the drafter often uses such statutory dividers as "Subchapters" and "Articles";

(3) Series of Related and Equal Provisions. Bills containing equal provisions relating to a common subject are arranged in a logical order if one suggests itself. Otherwise, the bill is arranged in an arbitrary order. Again, it is in such bills that a drafter would use the statutory dividers of "Subchapter" and "Article".

Kennedy in his bill drafting manual[11] declares that the proper way to order typical provisions of a hypothetical bill that has one main provision would be to state:

(1) the main principle concisely and clearly in one or more sections or, in the case of a complex bill, all the principles or objectives;

(2) procedural provisions;

(3) temporary provisions;

(4) creation or assignment of an administrative agency, followed by necessary details as to tenure, removal, salaries, expenses, vacancies, bonds, etc., stated in separate sections;

(5) powers and duties;

(6) details with respect to the exercise of powers; and

(7) review of administrative actions.

E. Penalty clause. A penalty clause is often needed. If it is a criminal penalty, the wording of this section should adhere to that of 17-A MRSA, the new Maine Criminal Code. For example: "Any willful violation of any requirement of this subchapter is a Class E Crime." A variation on the penalty clause is the "forfeiture clause", which might read: "Whoever violates this section shall forfeit to the State not less than $____ nor more than $____ for each violation and each day that such violation continues shall be deemed a separate offense."[12/]

Sec. 10. 25 MRSA § 1550 is enacted to read:

§ 1550. Violations

Any person who fails to comply with the provisions of section 1542, subsections 1 or 3, or with the provisions of section 1542, subsection 4, imposing a duty to transmit criminal fingerprint records to the State Bureau of Identification, or with the provisions of sections 1544, 1547 or 1549 commits a civil violation for which a forfeiture of not more than $100 may be adjudged.

F. Non-severability clause. While 1 MRSA § 71, sub-§ 8, provides by law that any illegal provisions of a statute are severable, thus leaving the rest of the statute in effect (a general severability clause), the bill drafter may want to include in his bill a non-severability clause. Its

wording might read: "It is the intent of the Legislature, in enacting this Act, that each part of the Act be considered to be essentially and inseparably connected with and dependent upon every other part. The Legislature does not intend that any part of this Act be the law if any other part is held unconstitutional."[13/]

G. Saving clause. Often an Act will disrupt current proceedings or transactions. A saving clause may then be used to limit the effect of this Act, to "save" rights. A saving clause may exempt pending legislation from its effect it may exclude a specific class of persons from its effect. Suggested wording might be:"This Act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before its effective date." [14/]

5. Limited duration clause. If an Act is established with a date by which it will automatically expire, the bill drafter should ensure that any right, penalty or obligation accrued during the time the Act was in existence will not be affected. The drafter should further provide that any investigation, legal proceedings or legal remedies may be instituted, continued, completed or enforced, as if the Act had not expired.[15/]

6. Liberal interpretation clause. A liberal interpretation clause is of limited value. If another rule of construction controls (see Chapter 13), the court, in interpreting the act, will

generally ignore a clause that commands the provisions of the act be loosely construed. However, such a clause may be of some value to the administrators of the act's powers. Conversely, the drafter may wish an administrator to be a "strict constructionist" when it comes to deciding how great or small the administrator's prerogatives are. The drafter might use a strict interpretation clause. Such clauses, liberal or strict, are rarely seen.

7. Non-application clause. Occasionally, the drafter may wish to limit the effect of certain sections of a bill. For example, "Sections 1, 3 and 5 of this Act shall not be construed to exempt from taxation or change the present method of taxation of the property of farms now in operation."

Sec. 131. 32 MRSA § 3804-A, as enacted by PL 1971, c. 582, § 1, is amended to read:

§ 3804-A. Construction

Nothing in this chapter shall be construed to confer on any person licensed under this chapter any of the power and authority of sheriffs or police officers, except in cases of felony and offenses under ~~Title 17, chapters 61, 73, 113 and 115 and Title 17, section 3301~~ Title 17-A, chapters 15, 25 and 39.

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8. Transitional or temporary provisions. It is often necessary to provide for special situations in the transition period between existing law and the new law. For example: "All rules and orders in effect prior to the effective date of 5 MRSA c. _____ shall remain in force under 5 MRSA c. _____ until modified or rescinded."[16/] Kennedy provides a listing of possible problem areas:

If a board is created, the terms of office of the members of the first board may have to be specified in order to provide for overlapping terms. If a new adminsitrative agency is established,it may be necessary to provide for a period of administrative organization before the agency assumes its functions. If the agency is to be financed through fees collected by it, an appropriation may be necessary to allow it to begin its operations. Consideration should be given to problems resulting from the abolishment of an agency or transferring the functions of an agency. The disposal of funds should be specified in the bill. The necessary transition provisions can be formulated by a consideration of what will happen when the act goes into effect.17/

9. Appropriation clause. If a bill needs funding in order to carry out its purposes, a separate appropriation section is required. Kennedy points out the following information that should be reflected.

A. Care must be taken that the section specify the officer or agency to which the appropriation is made, the amount of the appropriation, its source, the period for which appropriated and its purpose.

B. If a bill intends that unexpended funds be carried over, without lapse, into the next fiscal year, that fact must be specified.

C. The bill may require that some officer approve payments from the appropriation with respect to some boards or commissions.

D. When an agency is abolished or its functions transferred to another agency, provision should be made for disposal of the unencumbered appropriation.18/

Transitional provision

Sec. 4. Transitional provisions.

1. Personnel. No later than the effective date of this Act, the director of the Fraud Investigation Division, Department of Audit, shall be transferred to the new Fraud Investigation Unit, Department of Human Services, and the 2 investigators and the secretary of the Fraud Investigation Division, Department of Audit, shall be transferred to the new State Fraud Division, Department of the Attorney General. The employment of these persons shall not be terminated solely as a result of their transfers.

2. Equipment, property and records. All equipment, property and records of the Fraud Investigation Division, Department of Audit, shall be relocated under this Act to the State Fraud Division, Department of the Attorney General and to the Fraud Investigation Unit, Department of Human Services no later than the effective date of this Act.

Appropriations clause

Sec. 5. Appropriation. There is transferred from the Department of Audit for fiscal years 1975-76 and 1976-77 the sum of $80,655; $52,140 to the Department of the Attorney General and $28,500 to the Department of Human Services. The breakdown shall be as follows:

number of people and cost (parentheses around cost figures mean that the funds are being transferred from that agency)

	1975-76		1976-77	
AUDIT, DEPARTMENT OF				
Personal Services	(4)	($12,656)	(4)	($51,113)
All Other		($ 3,161)		($18,725)
ATTORNEY GENERAL, DEPARTMENT OF				
Personal Services	(3)	$ 7,854	(3)	$32,237
All Other		2,258		9,800
HUMAN SERVICES, DEPARTMENT OF				
Personal Services	(1)	$ 4,802	(1)	$18,876
All Other		903		3,925

The transfer of funds involves removing the Fraud Investigation Division from the Department of Audit and redeploying the 4 positions to the Division to the Attorney General's Office and to the Department of Human Services.

10. Effective date clause. The effective date of an Act passed is either 90 days after the recess of the Legislature or, if an emergency bill, anytime between the Governor's signiture and 90 day mark.[19/] The bill drafter may wish to specify a specific date; if so, following are suggested forms:

A. § 10, Effective date. This act shall become effective on January 1, 1976.

B. § 10, Effective date. This act shall be retroactive to January 1, 1976.

C. § 10, Effective date. The provisions of this act shall become effective for the year 19__ and for the subsequent years.

D. § 10, Effective date. The provisions of this act shall

become effective for the registration of ___ for the calendar year 19___ and for the subsequent years until changed by legislative enactment.

E. § 10, Effective date. The provisions of this Act shall remain effective only until January 1, 1976.

If the bill is an emergency (with an emergency preamble, see above § 3, sub-§ 3), then the bill is concluded with the following language (not as a separate section, but simply following the last section):

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

§ 5. Fiscal Note

If the bill has an appropriation or will cause a monetary loss to the state, then there must be a Fiscal Note which describes how much money is at stake. Often the drafter will use a Fiscal Note to show new revenues that the bill will cause to accrue to the state.

§ 6. Statement of Fact

At the end of every bill should be a Statement of Fact. This is an objective narrative of the purposes and effects of the bill. If the subject of the bill is likely to puzzle the reader, the drafter should take pains to see that it is clearly explained in the Statement of Fact. A statement might begin with "It is the

purpose of this bill..." or "The sections of this bill accomplish the following:

Sec. 1...;

Sec. 2...;

Sec. 3...;

A common question is: should the Statement of Fact contain background material that supports the goal of the bill? If the drafter decides to include such material, he should be scrupulous as to correctness and objectivity.

An example of two contrasting Statements of Fact can be found in Appendix B.

§ 7. What bill parts are necessary

While this chapter of the manual has described the parts of a typical but complex bill, it should be evident that all these parts will not be necessary every time. Further, by using this hypothetical bill, crucial decisions were made as to how wide an application several of the bill parts should have. For example, by placing the penalty, non-severability and saving clauses as statutory sections of the newly enacted chapter you limit their effect to only that chapter. Whereas, if you had made them separate bill sections (like the limited duration clause) they would have applied to all the other bill sections (e.g., the amendment and repeal). As separate bill sections, these clauses would not be printed in M.R.S.A. but rather could be found only in the Laws of Maine (see Chapter 3, § 3).

FOOTNOTES

1/ Montana Legislative Government, Bill Drafting Manual 26 (1974). Montana, as well as 41 other states, provides by law that a bill may contain only one subject which must be expressed in the bill's title. This is the result of widespread abuses from the use in early American legislatures of deceptive titles. Id. at 45. Maine has no such restriction but the danger is always present.

2/ See Constitution of the State of Maine, Article IV, Part third, section 16.

3/ See Constitution of the State of Maine, Article IV, Part 1, § 1.

4/ Maine Director of Legislative Research, Style Rules Governing Revised Statutes and Laws of Maine 38-39 (1962) [hereinafter cited as Style Rules].

5/ Prepared by the Maine Office of Legislative Research, 1975.

6/ Oregon Legislative Counsel, Bill Drafting Manuel, 157-58 (1958).

7/ Kennedy, Bill Drafting, 25 (1958).

8/ Montana Legislative Council, Bill Drafting Manual, 27 (1974).

9/ Kennedy, Bill Drafting, 28 (1958).

10/ Montana Legislative Council, Bill Drafting Manual, 28 (1974).

11/ Kennedy, Bill Drafting, 28 (1958)

12/ Wisconsin Legislative Reference Bureau, Drafting Manual, 34 (1964).

13/ Oregon Legislative Counsel Committee, Bill Drafting Manual, 164 (1958).

14/ Kennedy, Bill Drafting Manual, 31 (1958).

15/ Id. at 32.

16/ Wisconsin Legislative Reference Bureau, Drafting Manual, 34 (1964).

17/ Kennedy, Bill Drafting Manual, 31 (1958).

18/ Id. at 31.

19/ Constitution of the State of Maine, Article 4, Part third, section 16.

CHAPTER 9
LEGISLATION STYLE AND GRAMMAR

> For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in Section 501 (c) (4),(5) or (6) which would be described in paragraph (2) if, it were an organization described in Section 501 (c)(3).
>
> -Section 509 (a), Internal Revenue Code

> It would be presumptuous to condemn legal jargon. It presumably serves a real need between lawyers. They understand each other. Deep calls to deep.
>
> -Calvin B. Linton, Effective Revenue Writing 1/

§ 1. Needless confusion

Deep may call to deep; but most people are out of earshot and, in the law, which is meant as a guide for everyone, this is a serious failing. This Chapter is devoted to style and grammar. Our laws by necessity are often complex; but this does not mean they should be so clumsily written that they defeat all but the exceptionally persevering.

§ 2. The statutory sentence

In general a short sentence is clearer than a lengthy one. However, using language that is too complicated will only confuse the reader. Some thoughts are more adequately expressed in a long sentence. Another consideration is that sentences (and sections) are more easily amended if they are short and, of course, bills and laws are forever being amended. Finally, it is always important to keep in mind Kennedy's warning: "Each extra word may raise a debate in the Legislature and a discussion in court."[2/]

Often discussions of the drafting art attempt to define all the elements of the statutory sentence.[3/] While such a form, if strictly adhered to, would make for wooden, colorless writing, it is an instructive exercise.

1. Parts of legislative sentence. The Legislative sentence contains the following:[4/]

A. The legal subject. The "legal subject" is"the person who is required or permitted to do something or prohibited from doing something .... Remember that legal duties, liabilities, rights, privileges and powers can rest only on persons" not things.[5/]

B. The legal action. The "legal action" is "...the particular act that a person is required or permitted to do or prohibited from doing. Keep the legal action close to its subject."[6/] If the action is permissive use "may";if the action

is required, use "shall" but never use these words other than as part of the legal action. The future tense is rarely used in bill drafting.

C. The case. The "case" is the situations in which the legal action can take place. When thus limiting the legal action, always use the present or past tense, never the future, and begin with "where" or "when" (e.g., "When a person is arrested...").

D. The condition. The "condition" is the stipulated facts which must occur before the law applies. Use "if", "until", "unless" (e.g., "When a person is arrested, if he appears intoxicated ...."). Take great care with the word "unless" for the condition can then be interpreted as a mandatory one. Do not use the future tense or imperative mood;avoid placing the condition in the form of a proviso ("provided, however...").

E. The exception. The "exception" removes from the application of the law some matter which normally would have been within the scope of the law. Exceptions are often confusing (e.g., "Except as provided in subsections (1), (2)...") and can often be avoided by limiting the legal subject, action, condition or case.

2. The order of the parts of a legislative sentence. The likely order of these parts of the legislative sentence would be:

A. The exception;

B. The case;

C. The condition; and

D. The statutory rule, made up of:

(1) The legal subject; and

(3) The legal action.

Thus, a general guide would be that the circumstances in which a statutory rule (legal subject and action) applies are placed before the rule itself. This guideline does not hold up if the exceptions, cases or conditions are quite complicated; then it may be clearer to tabulate the circumstances after the legal subject and action. The Oregon Bill Drafting Manual provides several good examples:[7/]

Exception: Except as provided in section 6 of this Act,

Cases: when the seller of goods has a voidable title but his title has not been voided at the time of the sale,

Conditions: if the buyer buys in good faith, for value and without notice of the seller's defect in title,

Subject: the buyer

Action: acquires good title to the goods.

However, if the rule is to apply to several cases or conditions or is subject to several cases or conditions, you may want to state the rule first and then list the cases or conditions. For example:

Exception: Except as provided in section 6 of this Act,

Subject: a county

Action: may issue refunding bonds for the purpose of retiring any outstanding bonds of the county

Cases: when the outstanding bonds:

(1) Have matured but have not been paid or canceled; or
(2) Are about to mature and become payable; or
(3) Are redeemable at the option of the county.

Another example:

Subject: The state

Action: may give preference to bidders under section 5 of this Act only

Conditions: if:

(1) The bids do not exceed by more than five percent the lowest bid; and

(2) In the opinion of the director the public good will in any way be served thereby.

§ 3. Tense

A legislative drafter normally uses the present tense; the future tense is usually avoided and the word "shall" should be strictly limited to statutory directions and prohibitions. For example, "A convicted felon shall be liable ...." is incorrect; rather, it should read, "A convicted felon is liable ...."

If a law must describe both a past and future event, then consider using the present tense but inserting before the appropriate verb the phrase: "after (or before) this ['title,' 'past,' 'section,' etc] takes effect."

§ 4. Voice

The active voice is preferable to the passive voice; it forces the drafter to make the person who is being permitted or requir-

ed or prohibited the legal subject, thus avoiding ambiguity. For example, instead of saying: "Members of the committee shall be appointed by the Governor"; say instead, "The Governor shall appoint members of the committee."

§ 5. Number

When possible, use the singular rather than the plural. The Maine statutory rules of construction state, "Words of a singular number may include the plural, and words of the plural number may include the singular."[8/]

§ 6. Gender

It is preferable to use the masculine rather than the feminine (or both) when gender is not a condition or case of the law. The Maine rules of statutory construction state: "Words of the masculine gender may include the feminine."[9/]

§ 7. Positive or negative

If an idea can be expressed positively rather than negatively,

it should be. A negative expression might be appropriate if the sentence is a mandatory direction (e.g., "Unless... no person shall....")

§ 8. Exceptions

As was mentioned earlier, an exception should be used only when necessary. The confusion it causes can often be avoided by expanding the condition, case or legal subject of the sentence:

> In the phrase "all persons except those who are 60 years or older," the exception is unnecessary because the client intends to deal with a category that is narrower than all persons and can be described directly, i.e., "persons who are less than 60 years old."[10]

§ 9. Live words

This stylistic suggestion is taken from Dickerson:[11]

> Whenever possible, the draftsman should arrange his sentences so as to make the fullest use of finite verbs instead of their corresponding participles, infinitives, gerunds, and other noun or adjective forms denoting action.

Don't say	Say
give consideration to	consider
give recognition to	recognize
have knowledge of	know
have need of	need
in the determination of	in determining
is applicable	applies
is dependent on	depends on
is in attendance at	attends
make an appointment of	appoint
make application	apply
make payment	pay
make provision for	provide for

§ 10. Tables

Tables, which are relatively new in legal documents, are a long overdue improvement. Technical material can often be more clearly communicated in tabular form.

§ 11. Computations

Dickerson recommends that, rather than expressing a calculation in terms of a mathetical formula, you verbalize it, much like a cook book recipe.[12/]

§ 12. Cross reference

Cross references to other parts of the same instrument or to current laws help tie the bill together and prevent a lot of deadening repetition. However, they should be used sparingly for they easily confuse the reader and cause him to ignore an integral part of the bill. In New York and New Jersey incorporation by reference is forbidden by the state constitution.[13] If you do cross reference, refer specifically to the outside material by section number, subsection, etc..[14]

Cross referencing is an area for great caution! Often the referenced language will be inconsistent with your own, creating serious ambiguities. Cross referencing, along with copying the language of other statutes, is one of the most likely sources of errors.

§ 13. Shall and may

As stated above, "shall" is used only in an imperative or mandatory sense; "may" in a permissive sense. The Montana Bill Drafting Manual notes:

> Where a right, privilege or power is conferred, 'may' should be used. Where the power conferred on a public official might be construed by the courts as a duty, the word 'may' should be followed by words such as 'in his discretion'.... Do not use the word 'shall' to confer a right because that implies a duty to enjoy the right.[15]

§ 14. Style reference books

Two very valuable reference books on writing style in general are:

A. Strunk and White, The Elements of Style (1959).

B. Nicholson, A Dictionary of American English Usage (1957).

§ 15. Rhythm: a tool of proper emphasis

In a chapter on style, certainly we must again evoke our three main bill drafting goals: unity, coherence and proper emphasis. Perhaps of these three goals, the one most often associated with writing style is also the most elusive: "proper emphasis". While proper emphasis is achieved structurally through the selection, division and ordering of the parts of the statute, it is also achieved by the actual rhythm of your sentences:

> Rhythm is loud and soft, rise and fall. It is wave motion. Subjects are almost always rises, as are active verbs. (Linking verbs are usually unstressed, as in three sentences back-"rhythm is loud and soft.") Punctuation serves to insist on pauses, long or short. The combination of all the elements which mechanically determine the wave motion should communicate a sense of com-

pletion. Note, for example, the sentence above beginning "subjects are almost always rises." Read it aloud. The beauty of the rhythm will perhaps not bring tears to your eyes, but note that it is a rise and a fall, complete, and that it would be less rhythmical if it read: Subjects are almost always rises; active verbs rise." This cannot be read aloud without sounding awkward, although it says exactly the same thing as the original.

The fitting of rhythm to logic must, at the time of first writing, be largely instinctive. One who writes or reads much will not need to be told to build up a succession of rises in order to gain the power of a grand fall at the end (like the booming of surf). He will instinctively use suspended, parallel units to build the wave higher and higher, perhaps like this: "If the need for the program is not made clear to supervisors, if purposes and objectives are not clearly related to our everyday work, and, above all, if the strong support of those in top authority is not solicited, then ...." And we wait for the curling wave to fall, to collapse with a roar. Or the buildup may be much simpler: "He who writes much or reads much or even thinks much will not long doubt the importance of style." (It is apparent that parallelism is the device best adapted to the construction of comulative rises.)[16]

§ 16. The importance of style to context

As in other chapters, we cannot pass by a chance to repeat this manual's basic theme: attention to form will improve the bill's content. As Dickerson says:

> In the final stages of writing the draftsman thus shifts his emphasis mainly to style and form, keeping always in mind that, properly followed, these principles will inevitably reveal more fundamental inadequacies. [17]

FOOTNOTES

1/ Linton, U.S. Treasury Department: Effective Revenue Writing 165 (1962).

2/ Kennedy, Bill Drafting 9 (1958).

3/ See generally the Fundamentals of Legislative Drafting 113 (1965); Kennedy, Bill Drafting 15 (1958); Oregon Legislative Council Committee, Bill Drafting Manual 28-33 (1958).

4/ See Oregon Legislative Council Committee, Bill Drafting Manual 28-33 (1958).

5/ Id. at 28-29.

6/ Id. at 29.

7/ Id. at 32-33.

8/ 1 M.R.S.A. § 71, sub-§ 9.

9/ 1 M.R.S.A. § 71, sub-§ 7.

10/ Fundamentals of Legal Drafting 115 (1965).

11/ Id. at 117.

12/ Id. at 121.

13/ Nutting, Elliott, Dickerson, Legislation, Cases and Materials 590 (1968).

14/ Dickerson, Fundamentals of Legal Drafting 121 (1965). "[I]t may also be desirable to indicate parenthelically what [the cross reference] is about (e.g., 'This computation is subject to section 38, dealing with fractions of a cent'") at 121.

15/ Montana Legislative Council, Bill Drafting Manual 8 (1974).

16/ Linton, U.S. Treasury Department: Effective Revenue Writing (U.S. Treasury Dept.) 170 (1962).

17/ Dickerson, Fundamentals of Legal Drafting 112 (1965).

CHAPTER 10
LANGUAGE AND CLARITY

In the heels of the higgling lawyers, Bob
Too many slippery ifs and buts and howevers,
Too many hereinbefore provided whereas,
Too many doors to go in and out of.

- Carl Sandburg, "The Lawyers Know Too Much"

§ 1. Normal usage

The Maine Revised Statutes, Title 1, section 72 provides a guide to the use of common words and phrases. It's general rule is as follows:

> Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases and such as have a peculiar meaning convey such technical or peculiar meaning.

Why is such a rule necessary? Because the individual words of legal documents are so often haggled over, each attorney so desperately seeking to have a document speak in the voice most favorable to his client. The result is that legal drafters have traditionally tried to make each sentence ,

every word - no matter what the cost in readibility or comprehensiveness - mean only one thing. Thus the tortured legalese. And thus such acknowledgements as Carl Sandburg's:

> When the lawyers are through
> What is there left, Bob?
> Can a mouse nibble at it
> And find enough to fasten a tooth in?[2]

However, drafters are more secure these days. As Dickerson has commented:

> A draftsman no longer must go to abnormal lengths to reduce the risk that his instrument will be misread. He may rely on the normal ways of reading language, even in the face of minority, competing usages. The law now accepts, for the most part, the normal presumption of communication that language has been used in the usual sense.[3]

Still, for certain specialized or commonly misused words, 1 MRSA, Chapter 3, offers specific rules of construction and definitions.

§ 2. Definitions

As discussed in Chapter 8, formally defining words in a bill should be done sparingly and be limited to those for which the accepted usage is inadequate to convey the necessary message. Thus, the best definitions in a bill should conform as closely as possible to the word's normal usage. Dickerson calls this "one of the most important [principles] in the whole field of drafting."[4] He goes on to define the kinds of definitions to avoid:[5]

A. Definitions that recite the obvious;

B. "Humpty-Dumpty" definitions ("the term wheat includes rye");

C. "Degenerative definitions" which rob certain words of their special meaning (e.g., using "vague" for "ambiguous");

D. Definitions for words that are only used once;

E. "Stuffed" definitions, ones that stuff a definition with substantive rules.

§ 3. Ambiguous modifiers

One of the most common errors in bill drafting is the failure to clarify which word is being modified or what reference is being cited. Thus, go ahead and split an infinitive if the sentence meaning is enhanced ("He called quickly to pass the word", has a different meaning than, "He called to quickly pass the word.") and be sure that modifiers are not confused in a series of nouns ("In normal and remedial institutions", has a different meaning than, "in normal institutions and in remedial institutions").

§ 4. Listing of particulars

As is discussed in Chapter 12, when in doubt, courts make the following interpretations of listings of particular objects or persons:

A. The expression of one person or thing implies the exclusion of all other persons or things;

B. General words that follow a listing of particular persons or things are applicable only to person or things of the same general nature.

Thus, the drafter of legislation must often face the following issue: is it necessary to list completely each particular person or thing? The Oregon Bill Drafting Manual offers the following advice:

> If a provision is to apply to a class as a whole, it is generally safest if you name the class in general terms rather than to mention particulars, even where the particulars would be preceded or followed by general lanugage. It is almost impossible to make an enumeration exclusive; and accidental omission may be construed as implying deliberate exclusion.
>
> However, sometimes, you will have trouble finding a factor common to all the particulars, and you can't name them as a class and thus avoid listing each of the particulars. If it is necessary to list the particulars, you should consider whether or not, to avoid doubt, you want to state expressly that the enumeration of particulars is or is not exclusive, or that it is merely illustrative. For example, use "this includes, but is not limited to, such items as _____, _____, _____ and _____" or "this includes, by way of illustration, such items as _____, _____, _____ and _____."Sometimes, you should enumerate only the particulars that are being excepted from a class which is expressed in general terms. Other times you will want to name the class in general terms and list those additional particulars that are in doubt as being included in the class, making it clear that the particulars listed are not exclusive of others that are included within the general class.[6/]

§ 5. And/or

The use of "and" and the use of "or" provides a constant

danger of ambiguity. Does the drafter intend to be inclusive (A or B or both) or does he intend to be exclusive (A or B, but not both)? Does the drafter use "and" in the several sense (A and B, jointly and severally) or does he use it in the joint sense (A and B, jointly but not severally)? The phrase "And/Or" attempts to clear up some of this ambiguity but is is not accepted usage (a "verbal monstrosity which courts have quite generally condemned" Ollolo v. Clatskanie l. 32 P.2d 416,419 (1942)). The following rules should be a sufficient guide:

A. "And" suggests togetherness; "or" means: take one of these".

B. Accepted usage is when "or" is used in the inclusive sense and "and" is used in the several sense. Normally, a drafter can rely on these interpretations and not worry about being misunderstood. 7/

C. However, when drafting a bill or section that is likely to be strictly construed and it is more important to be safe rather than rely on accepted usage, use the following phrases:

(1) A or B, or both;
(2) A or B, but not both;
(3) A and B, jointly but not severally;
(4) A and B, jointly and severally.

§ 7. Pronouns

"Use nouns in preference to pronouns even if you must repeat the noun, especially when a lack of clearness might otherwise result." 9/ This advice can be tempered. If the pronoun's antecedent is clearly indicated, then the use of a pronoun is acceptable and often can improve the sentence's style.

The pronouns "he" or "him" are usually understood to include "she" and "her"(see 1 MRSA § 71, sub-§ 7).

Remember, use "that" and not "which" when the intention is to limit or restrict the antecedent.

§ 8. "Respectively" and "as the case may be"

Dickerson offers sound advice on a frequently troublesome problem:[10]

> If the draftsman wants to apply A to X, B to Y, and C to Z, but it is awkward to state it that way, he should say, "A, B, and C apply to X, Y, and Z, respectively." The three relationships are concurrent, not alternative. The verb in such a sentence is plural. If he wants to apply A if X occurs, and C if Z occurs, and it is awkward to state it that way, he should say "If X, Y, or Z occurs, A, B, or C applies, as the case may be." The three relationships are alternative, not concurrent. The verb in such a sentence is singular.

§ 9. Objectionable words

Long, pretentious, obscure words or groupings of words should be avoided. Kennedy makes a valuable observation:

> If the draftsman finds he can express his meaning in simple words, all is going well with his draft. If he finds himself driven to complicated expressions composed of long words, it is a sign he is getting lost. He should revamp the form of the section.[11]

Some frequently used but less than desirable words are:[12/]

A. above, below, preceding, following, before mentioned, etc., any word or phrase used to make reference to the position of a section or other statutoty provision (when reference is necessary, cite the specific section, paragraph, etc.);

B. herein, hereinafter, hereinbefore, etc.;

C. said (as a substitute for "that","those" or "the"); same (as substitute for "it", "him", etc.);

D. such (as a substitute for "the", "that", "it", "those", etc.);

E. whatsoever, whensoever, wheresoever, etc.;

F. provided, further; provided, however; provided that.(In general, avoid "provisors" and begin your sentence with an exception or condition or list numerous exceptions at the end of the sentence in tabulated form.)

In general, adhere to your everyday, non-slang vocabulary; it usually communicates quite well without the solemn pretentiousness of much statutory language. David Mellinkoff, in The Language of the Law, wrote: "Condemned and praised, but most of all used, whereas is one of the most persistently typical and most consistently vague words in the language of the law. It has as many meanings as you have patience, some of them poles apart .... Whereas has caused litigation for two centuries, and that is long enough."[13/]

§ 10. Redundancies

Lawyers are a professionally nervous group and this has led them to adopt a staggering number of redundancies-phrases containing words that mean the same thing. Originally they began as attempts to cover all bases but they became enshrined

and subsequent lawyers were too cautious to discard them. Still, discard them we must. A few examples:

1. alter or change;
2. any and all;
3. bind and obligate;
4. convey, transfer, and set over;
5. deemed and considered;
6. ordered, adjudged and decreed;
7. sole and exclusive

They are easily spotted. Use your courage and write only what is necessary. As Justice Holmes said in Hyde v. U.S., 252 U.S. 347, 391 (1921): "It is one of the misfortunes of law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis."

§ 11. Preferred expressions

Drafting manuals traditionally provide several pages of preferred expressions. Invariably, the preferred way is the simpler, more commonly used expression. For a drafter, the lesson is clear: pick over each word, be direct, explicit and simplify, simplify, simplify. Some common examples:

	AVOID	USE
A.	accorded	given
B.	cause it to be done	have it done
C.	deem	consider
D.	during the course	during
E.	enter into a contract with	contract with
F.	for the reason that	because

	AVOID	USE
G.	in cases which----------	when, where, whenever (if you wish to emphasize the rule is exhaustive or recurring)
H.	in the event of ----------	if
I.	inform ----------	tell
J.	is authorize or is empowered or is entitled ----------	may
K.	inquire ----------	ask
L.	it is directed or----------	shall
	it is the duty or----------	shall
	is required to----------	shall
M.	is able to ----------	can
N.	is applicable----------	applies
O.	necessitate ----------	require
P.	not later than ----------	before
Q.	obtain ----------	get
R.	per day ----------	a day
S.	possess ----------	have
T.	pursuant to----------	under
U.	subsequent to ----------	after
V.	State of Maine ----------	"Maine" or "the state"
W.	under the provisions of --	under
X.	until such time as -------	until
Y.	whenever----------	if

§ 12. Accuracy versus simplification

It is one thing to counsel broadly: "simplify, simplify, simplify;" and another thing to draft a bill whose paucity of detail makes it worthless. Still the tension produced by a bill drafter struggling between accuracy and simplification will often hone a bill's wording to an effective edge. Justice Benjamin Cardozo wrote in Law and Literature:

> There is an accuracy that deafeats itself by the overemphasis of details. I often say that one must permit oneself .... a certain margin of misstatement ... [T]he sentence may be so overloaded with all possible qualifications that it will tumble down of its weight.[14]/

FOOTNOTES

1/ 1 MRSA § 72, sub-§ 3.

2/ Sandburg, The Lawyers Know Too Much" in Llewellyn, The Bramble Bush (1951).

3/ Dickerson, Fundamentals of Legal Drafting 32 (1965).

4/ Id. at 106.

5/ Id. at 108-109.

6/ Oregon Legislative Council Committee, Bill Drafting Manual 61 (1958).

7/ Dickerson, Fundamentals of Legal Drafting 78 (1965).

8/ Montana Legislative Council, Bill Drafting Manual 22 (1974).

9/ Oregon Legislative Council Committee, Bill Drafting Manual 60 (1958).

10/ Dickerson, Fundamentals of Legal Drafting 137 (1965).

11/ Kennedy, Bill Drafting 13 (1958).

12/ See generally Dickerson, Fundamentals of Legal Drafting 125 (1965); Oregon Legislative Council Committee, Bill Drafting Manual 53 (1958).

13/ Mellinkoff, The Language of the Law 321, 325 (1963).

14/ Cardozo, Law and Literature, in Selected Writings of Benjamin Nathan Cardozo 341 (1947).

CHAPTER 11
THE MECHANICS OF BILL DRAFTING

> When I wrote my little book I read, re-read and and re-examined the five or six thousand pages of testimony over and over again. I went over and over my little book again and again testing it against the record and so on. My wife and my secretary dropped out. They wouldn't read proof any more with me. My wife said, "Why do you go over this? You've done it twenty times."
>
> I said, "It's humanly impossible to avoid some errors, but if I have a comma instead of a semi-colon, or a semi-colon instead of a comma, that will be blown up to some heinous, venal offense in an effort to discredit the whole, and so far as it lies within my power I don't want to have a mistake in punctuation."
>
> -Phillips, Felix Frankfurter Reminisces [1]

§ 1. Punctuation

While punctuation is not considered to be part of a law, courts have, as a last resort, based their interpretation upon punctuation, or the lack of it (see Chapter 13). Because a bill's punctuation is not part of the enacted law, but editorial only, the drafter should revise any sentence that relies on punctuation for its meaning.[2] In general, the drafter should adhere strictly to the general rules of punctuation. Bill drafting, however, has a few specific requirements:

A. Commas should be used to set off clauses that describe a subject (e.g., "the commissioner, who is appointed by the governor, shall"); also, a comma should be placed after the next to the last item in a series (e.g., "ball, bats, and gloves").

B. Parentheses, while rarely used, are at times clearer than commas (e.g., "When it is necessary to order individuals to active duty (other than training) without their consent"). 3/

C. Quotation marks are rarely used in bill drafting, but because clarity is so important, a period or comma should be placed inside the quotation mark only when it is part of the quoted material.

D. The punctuation of a tabulated series depends on whether the series is part of the sentence or whether it is a simple list following a completed sentence.

If the series is part of the sentence, each item begins with a small letter and ends with a semicolon, except that the second to the last item should end with a semicolon followed by an "and" or an "or") and if the last item ends the sentence, it should end with a period. 4/ For example:

Any person who is:
(1) convicted;
(2) sentenced; and
(3) serves a prison term;
shall....

If the series is a list following a completed sentence, then the only change is that the first letter is capitalized and a period follows each item. 5/

§ 2. Capitalization

The following rules are taken from the Maine Director of Legislative Research's 1962 style guide: Style Rules Governing Revised Statutes and Laws of Maine:

A. Capitalize the first word:

(1) in a sentence;
(2) following a colon; and
(3) of each entry in an enumeration or schedule paragraphed after a colon.

B. Capitalize citations to articles, parts and sections of the federal and state constitutions.

C. Capitalize references to a particular act by its popular name, such as "Negotiable Instrument Act," "Unemployment Compensation Act" or "Personnel Law".

D. Do not capitalize a general reference to the law on a particular subject, such as "motor carrier law' or "insurance law".

E. Capitalize the words "Revised Statutes".

F. Do not capitalize the words "chapter" or "section" when used in citing a particular "chapter" or "section" of the "Revised Statutes".

G. Capitalize proper names and derivatives of proper names, used with a proper meaning.

H. Capitalize nouns forming an essential part of a proper name, such as "Penobscot County", "County of Penobscot", "Penobscot River", "Penobscot Bay", "Allagash Stream", "Town of Bluehill", "City of Bangor".

I. Capitalize the proper name of a state fund, such as "General Fund", "Unappropriated Surplus of the General Fund", "General Highway Fund".

J. Capitalize the names of the months and days of the week.

K. Capitalize the names of historic or commemorative events, such as "World War II", "Veterans Day".

L. Capitalize the word "federal" only when it is part of a proper name, such as "Federal Land Bank" or "Federal Government".

M. Capitalize the word "state" when it is part of a proper name, such "State of Maine", "Maine State Library", "State Highway Commission", or when referring to the State of Maine as "this State" or "the State", but not otherwise.

N. Do not capitalize the word "state" in such uses as "state highway", "state park" or "state-aid".

O. Capitalize the full, official title of an agency at the state level, such as "Department of Health and Welfare", "Bureau of Taxation", "Division of Animal Husbandry", "Aeronautics Commission", "Board of Equialization", "Maine School Building Authority", "Legislative Research Committee".

P. Do not capitalize where a substitute or abbreviation is used, such as "the department", "the division", "the bureau", "the commission", "the board", "the authority", "the committee".

Q. Capitalize the full, official title of the head of any agency at the state level, such as "Governor", "Secretary of State", "Director of the Division of Markets", "Chairman of the Aeronautics Commission", "Director of the Division of Motor Vehicles", "Director of Legislative Research", "Chief of the State Police".

R. Do not capitalize where a substitute or abbreviation is used, such as "the chief executive", "the secretary", "the director", "the commissioner", "the chief".

S. Capitalize "Supreme Judical Court" and "Superior Court".

T. Do not capitalize where substitutions or abbreviations are used, such as "a court", "the court", "the law court", "the equity court", "state court".

U. Capitalize the full, official title of the members of the Supreme Judicial Court and Superior Court.

V. Do not capitalize where a substitute or abbreviation is used, such as "a justice", "the justice", "justice", "a judge", "the judge", "judge", "the court". 6/

§ 3. Numbers and figures

A. Dates and numbers, except when beginning a sentence, should be expressed in Arabic figures instead of being written at length in proposed legislation.

B. Number "one" should be used in preference to the Arabic symbol (1) except in dating, enumeration and numbering.

C. Except for "first", the names of the ordinal numbers, such as "second", "third", "fourth", etc., should be avoided, instead substituting the appropriate abbreviation (2nd, 3rd, 4th). "First" should always be used in preference to the abbreviation (1st). 7/

§ 4. Time

Time should be expressed as follows:

A. 12 noon;

B. 12 midnight;

C. 8 A.M.;

D. 2 P.M.;

E. 2:30 P.M.. 8/

§ 5. Age

Age should be expressed as follows:

A. "A person who is 18 years of age or older" (avoid "over 18 years of age");

B. "A person who is under 18 years of age" or "who has not yet reached his 18th birthday";

C. "A person who is 18 years of age or older and under 66 years of age" (avoid "between the ages of 18 and 65"). 9/

§ 6. Dates

Dates should be expressed as follows:

A. June 30 (not June 30th or 30th day of June);

B. To avoid confusion as to the exact beginning or ending of a time period, use the following variations:

(1) "For a period beginning June 1, 1976, and ending June 30, 1976"; or

(2) "After June 30, 1976, and before July 1, 1978; there is no doubt that this means July 1 is the first day of the time period and June 30 is the expiration date.

C. It is clearer to refer to a day rather than to the time an event will occur (e.g., "90 days after the day on which ..." rather than "90 days after the time..."). 10/

§ 7. Monetary sums

Monetary sums should be expressed as follows:

A. one cent;

B. 10 cents;

C. $2;

D. $3.75;

E. $2,000;

F. $3 million;

G. $3,500,000. [11]

§ 8. Compounding words

The 1962 Style Rules Governing Revised Statutes And Laws of Maine provide a thorough list of words and the preferred form of hyphenation of each. [12] Further, several sound rules are suggested by Oregon's Drafting Manual:

> A. A common error in compounding is the use of a hyphen after the prefixes co, de, pre, pro, re, un, non or sub. Do not use a hyphen after such prefixes except to join the prefix to a capitalized word, or to prevent misinterpretation, such as to distinguish co-op from coop, re-mark (to mark again) from remark (a comment), or re-lease (to lease again) from release (free).
>
> B. A hypen should be used after the prefix "self" as "self-propelled".
>
> C. A hypen should be used with "quasi" when used with an adjective, adverb or verb; but "quasi" is a separate word when used with a noun. [13]

§ 9. Titles of state officers and agencies

The 1962 Style Rules Governing Revised Statutes and Laws of Maine, pages 15-29, provides a thorough listing of the preferred capitalization of titles of state officers and agencies.[14/]

§ 10. Incorporation by reference

To save space or to save time, a bill drafter will often incorporate material from another law by simply referring to it in his bill (e.g., "as specified in Public Law 1973, Chapter 543, section 5 ...."). [15/] This, however, while often necessary, is a maneuver fraught with danger. The bill drafter must be certain the incorporated language not only accurately fits the bill's situation but also that the incorporated language is reasonably parallel with the new language. Otherwise, the reader may be left with ambiguities. The possibility of mistakes is enhanced because legislators often do not read material incorporated by reference. Correct reference to state and federal laws are as follows:

A. State laws are cited, for example: Revised Statutes, Annotated, Title 5, chapter 10, section 1, subsection 1;

B. The State Constitution is cited, for example: Section 2 of Part Third of Article IV of the Constitution of the State of Maine;

C. The United States Code is cited, for example: section 306 of Title 12, United States Code;

D. The Federal Constitution is cited, for example: section 3, Article I of the Constitution of the United States.

§ 11. Bill groups and tabulations

When should the subject matter of a bill be divided? When is tabulation necessary? Kennedy offers the following advice:

> Short sections are more easily amended. Each proposition that is separable from other propositions should be placed in a separate section. If a section covers a number of contingencies, alternatives, requirements or conditions, it should be broken up into detached lines or paragraphs, each distinguished by a figure or a letter. 16/

But remember, when tabulating, the following general rules should apply.

A. Each tabulated item must belong to the same class.

B. When introducing the tabulated items, the introductory language must apply to each item.

C. If the tabulated items are part of a sentence, begin each item with a small letter and end each item with a semicolon; if the items are simply a list following a completed sentence, begin each with a capital letter and end it with a period. 17/

§ 12. Typing specifications for bills

While the Office of Legislative Research is expert in ensuring that a bill's final form is correct, the drafter is well advised to take care with the formal correctness of his work. Again: wholesome attention to form results in clarification and improvement of substantive policy itself. One easy method of checking the proper form of a bill, resolution or an amendment to a bill is simply to refer to the examples in Appendix B.

FOOTNOTES

1/ Phillips, Felix Franfurter Remininces 216 (1960).

2/ Wisconsin Legislative Reference Bureau, Drafting Manual 20 (1964).

3/ Dickerson, Fundamentals of Legal Drafting 118 (1965).

4/ Id. at 86.

5/ Dickerson, Fundamentals of Legal Drafting 86 (1965).

6/ Maine Director of Legislative Research, Style Rules Governing Revised Statutes And Laws of Maine 14-15 (1962) [hereinafter cited as Style Rules].

7/ Id. at 36.

8/ Montana Legislative Council, Bill Drafting Manual 12 (1974).

9/ Id. at 13.

10/ Id. at 12.

11/ Oregon Legislative Council Committee, Bill Drafting Manual 42-43 (1958).

12/ Style Rules at 29-35.

13/ Oregon Legislative Council Committee, Bill Drafting Manual 46 (1958).

14/ Style Rules at 15-29.

15/ When simply referring to material in the same statutory chapter, you do not need to cite its specific place in the statute. Simply say, for example: "As determined in section 33 ...." It is unnecessary to say, "As determined in section 33 of this chapter..."

16/ Kennedy, Bill Drafting 10 (1958).

17/ Dickerson, Fundamentals of Legal Drafting 85 (1965).

CHAPTER 12
CONSTITUTIONAL RESTRICTIONS

> Let the end be legitimate, let it be within the scope of the constitution; and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and the spirt of the constitution, are constitutional.
>
> -Justice John Marshall, McCulloch v. Maryland, 4 Wheaton 316,421 (1819)

§ 1. Constitutional questions to be answered for each bill

1. Federal preemption. If your bill is enacted, would it be pre-empted by an already existing federal law?

2. Separation of powers. Does your bill empower one branch of government - the legislative, the executive or the judicial branch - to violate the constitutional powers of responsibilities of one of the other branches?

3. Delegation of authority. Does your bill delegate excessive authority without adequate guidance? In the words of Cardozo in Schecter Corp. v. U.S., 295 U.S. 495, 553 (1935): "This [National Recovery Act] is delegation running riot."

4. Individual rights. Does your bill violate the constitutional rights of due process or equal protection or any other of the individual rights guaranteed by the state or federal constitution?

5. Bills of attainder or ex post facto laws. Is your bill either a bill of attainder, which would be a bill that inflicts punishment on an individual or a group without trial, or is it an ex post facto law, which retroactively makes a crime an action that was committed before the law was passed?

6. Void for vagueness. Does your bill forbid or require the performance of an act in terms so vague that persons of common intelligence must guess at its meaning and wonder whether it applies to them?

§ 2. Discussion of the constitutional restrictions

1. Federal preemption. While each state possesses the powers of a sovereign (e.g., eminent domain, police powers to ensure the health, safety or morality of its people), entire subject areas can be preempted by the federal constitution or federal legislation. An excellent example of a preempted area is the regulation of interstate commerce. When a state passes legislation which affects the interstate movement of commerce, then the federal courts might be asked to examine the validity of the act. The issues would be the following:

A. Does the bill conflict with the "commerce clause" of the United States Constitution (Article 1, section 8)[1]? If so, does the national interest in the free flow of interstate commerce outweight the specific state interest involved (i.e., the public health)? or

B. Does the local regulation conflict with a federal law or rule?

2. Separation of powers. As on the federal level, the Constitution of the State of Maine safeguards the independence of each of its branches of government:

> Section 1. The powers of this government shall be be divided into three distinct departments, the legislative, the executive and judicial.
> Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in cases herein expressly directed or permitted.[2]

While this independence of branches is not complete, a bill drafter must keep in mind that, generally stated, the separation of powers doctrine means that:

A. judicial functions shall be performed only by the judiciary and that non-judicial tasks shall not be imposed upon the judiciary;

B. only the Legislature shall make the laws that establish policy for the state; and

C. the executive shall enforce the laws and shall not be unnecessarily interfered with in that duty by either the judiciary or the Legislature.[3]

This separation of powers doctrine was invoked by the Maine Supreme Judicial Court in 1949 when it found that a liberal interpretation clause (see Chapter 8 , § 4 in this manual) in the Workmen's Compensation Act didi not give the administrators of the Act authority for the judicial or administrative creation of rights or liabilities under the guise of giving the Act a liberal construction. The measure of liability, the court said, is for legislative determination.[4/]

3. Delegation of authority. It has long been recognized that federal and state legislatures may to some degree delegate their legislative authority. As a guide, the bill drafter should take note of the following standards[5/] developed over the years by the U.S. Supreme Court:

A. The courts would not allow a delegation for which there was a complete absence of standards for the guidance of the administrator's action, because it would be impossible to know whether the legislative purpose had been obeyed.

B. The courts would not allow the delegation of legislative powers to any private individual.

C. The courts would allow a broad delegation of powers to the Executive branch in times of a national crisis.

D. The courts would be inclined to support a broad delegation of powers in those areas of economic regulation where flexibility and constant supervision are necessary.

E. The courts would be more willing to accept a broad delegation of powers if they were convinced that both meaningful supervision of the agency by Congress and an expeditious, inexpensive judicial appeal process existed.

In Maine, the Supreme Judicial Court recently decided that when it is impossible for the Legislature to enact detailed, specific guidelines for the agency, then the court, in deciding whether the delegation of power was constitutional, will consider whether adequate procedural safeguards exist to protect against abuse of discretion.[6/]

4. Individual constitutional rights. The rights of individuals, as secured by both the state and federal constitution are many and varied. A simple listing of these rights is useful for the bill drafter if only to remind him of the rights his bill cannot transgress without sufficient reason. Moreover, there are two areas especially dangerous to the bill drafter: the 14th Amendment rights of due process and equal protection

A. Right to due process of law. The right of due process is guaranteed by both the federal and state constitutions.[7/] Its most fundamental meaning is that, before the state can deprive a person of any of his rights, personal or property, that person first must be fairly notified and be given a right to a hearing. A good guide for a drafter in setting an individual's rights before an agency or court is: "Will this law be fair under the circumstances the person will likely find himself in?" This standard is commonly referred to as: "Fairness under the circumstances." For exam-

ple, in the Maine case of Desmond v. Hackey, a federal court said that since a fundamental requirement of due process of law is an opportunity to be heard, then the hearing must be at a meaningful time and in a meaningful manner.[8/]

Remember, unless a state has a detailed Administrative Code there are no set standards for due process. Maine's code is not detailed but the Legislature is working on replacing the current one, 5 MRSA Part 6. Because of the many possible circumstances, the drafter must often allow any state agency that is being established enough flexibility in determining exactly how people will be notified and how complete a hearing they will have (e.g., right to cross examine, right to a record of the proceedings).

Thus, a bill's violation of the right to due process could be either substantive or procedural:

(1) A substantive due process violation would be to unfairly restrict a person's personal or property rights;

(2) A procedural due process violation would be to lawfully restrict a person's rights but then provide the person with an unfair notice and hearing procedure.

B. Right of equal protection. Under both Maine and federal constitutions, persons and classes of persons must be

protected equally under the law. A class cannot be unfairly discriminated against. This does not mean that all State discrimination based on classification is a denial of equal protection, but rather that discrimination that is invidious, arbitrary or unreasonable is.[10/] In the Maine case of State v. Donovan, the court said that a statutory classification was unconstitutional if its rationale rested on grounds fully irrelevant to the State's police powers (the protection of public health, safety, morals or welfare).[11/]

Over the years there has developed a two-tiered test as to whether a State's discrimination should be examined by the courts to see if it is so invidious as to have violated the state or federal equal protection clauses.

(1) First, if the questioned discrimination deals with either a fundamental right (e.g., freedom of religion, privacy, freedom to contract, right to travel, to vote) or with a suspect classification (e.g., classification by race, by national citizenship),[12/] then the court will certainly examine it.

(2) If, however, the statute does not deal with either a fundamental right or a suspect classification, then the courts will not examine it unless it violated the second tier of the test: the law must have a rationale basis; and it must directly promote a compelling state interest.

C. Other individual constitutional rights. As a reminder to a bill drafter of other rights his bill must not infringe, the following list is provided:

(1) Freedom of religion.[13/] There are two aspects of a person's right to religious freedom.

(a) There is a "wall of separation between church and state". Government activity which leads to "excessive entanglement" with a church or its related institutions has been ruled unconstitutional.

(b) One's freedom to worship has been interpreted so that the right to worship must not conflict with otherwise valid and important government enactments.

(2) Freedom of speech.[14] The U.S. Supreme Court has ruled that this right is not absolute. It does not extend to all forms of communication, verbal or symbolic (e.g., inflamatory remarks which pose a "clear and present danger" to the existence of the government).

(3) Freedom of assembly.[15]

(4) The right to be secure from unreasonable searches.[16]

(5) The general right to privacy.[17]

(6) The general right to travel anywhere in the United States.[18]

(7) The right not to have an excessive fine imposed or cruel and unusual punishment inflicted.[19]

5. Bills of attainder or ex post facto laws. The U.S. Committee on the Judiciary has published a lucid explanation[20] of these two often confused U.S. constitutional prohibitions.

> A. Bill of Attainder. A bill of attainder historically is a special act of a legislature which declares that a person or group of persons has committed a crime and which imposes punishment without a trial by court. Under our system of separation of powers, only courts may try a person for a crime or impose punishment for violation of the law.
>
> Section 9 restrains Congress from passing bills of attainder, and section 10 restrains the States.

B. Ex post facto laws. These two clauses prohibit the States and Federal Government from enacting any criminal or penal law which makes unlawful any act which was not a crime when it was committed. They also prevent the imposition of a greater penalty for a crime than that in effect when the crime was committed. However, laws which retroactively determine how a person is to be tried for a crime may be changed so long as no important rights are lost. Laws are not ex post facto if they make the punishment less severe than it was when the crime was committed.

6. Void for vagueness. A frequently heard parting shot from critics of a bill at public hearings is: "Furthermore, it's void for vaguness." This sobering, conclusive sounding rubric charges simply that a court would find this law to be so vague, or so indefinite, or so ambiguous, or so overreaching that a person affected by the law would be at a loss to know either how to follow it or even whether it applied to him.[21/] Any law so confusing would violate the due process standard of the U.S. Constitution's 14th amendment (see sub-section 4, paragraph A of this chapter). Simply stated, it is not "fair under the circumstances." Perhaps the most informative way to alert the bill drafter to the dangers of indefiniteness in bill drafting is to state the Maine Key Number Digest description (see Chapter 4, § 1, sub-§ 4) of several Maine cases on this subject:[22/]

A. Language of the Sunday Law is sufficiently definite to enable a reasonable person in the business world to know whether his store or enterprise falls within one or more of the exempt categories of restaurant, drug store, book store, and stores selling gifts and souvenirs. R. S.1954, c. 134, §§ 38,38-A.
-State v. Karmil Merchandising Corp.,186 A.2d.352 (1962).

B. Where offending merchant under statute prohibiting sales below cost, may find himself faced with either a criminal prosecution, threat of injunction, or an action at law for damages, he is entitled to be informed by the statute in explicit and unambiguous language what acts and conduct are prohibited. R.S.1954,c. 184,§ 1 et seq.
-Farmington Dowel Products Co. v. Foster Mfg. Co., 136 A. 2d 542 (1958).

C. Though concerned primarily with criminal sanctions, the void-for-vagueness doctrine may be applied in instances where one must conform his conduct to a civil regulation.
-Shapiro Bros.Shoe Co., Inc. v. Lewiston-Auburn Shopworkers Protective Ass'n.,320 A.2d 247 (1974).

D. A statute is void for vagueness when it sets guidelines which would force men of general intelligence to guess at its meaning, leaving them without assurance that their behavior complies with legal requirements and forcing courts to be uncertain in their interpretation of the law. -Id.

E. Statute requiring an employer of 100 or more persons to give one month's notice before voluntarily going out of business or should such notice not be given, to pay prescribed severance pay is not unconstitutionally vague. 26 MR.R.S.A. § 625.
-Shapiro Bros. Shoe Co.,Inc. v. Lewiston-Auburn Shopworkers Protective Ass'n.,320 A.2d 247 (1974).

E. The standards which a statute sets out to guide the determinations of administrative bodies must be sufficiently distinct so that the public may know what conduct is barred and so that the law will be administered according to the legislative will.
-In re Spring Valley Development, 300 A.2d 736 (1973).

§ 3. A final word: balancing of interests

Constitutional rights are rarely seen as absolute. Normally, a court will balance the needs of the state against the needs of the individual. And, of course, in such a balancing some individual rights are seen as having more importance than others. In the area of freedom of speech, for instance, a political comment is given more protection than, say, a strongly held opinion on a certain baseball team's manager. Can the bill drafter perform such balancing himself? Of course. Often he will be dealing in areas where rational, non-arbitrary state regulations are in

conflict with the rights of an individual. If the case is a close call, then more research is needed. An excellent, annually updated and clearly written analysis of constitutional rights is Chester J. Antieau's, Modern Constitutional Law, Volumne 1 and 2. Every bill drafter should have access to it or a similar study. And if the balance is still not clear, then consultation with a lawyer is called for, or perhaps an opinion from the Maine Attorney General's office.

FOOTNOTES

1/ U.S. Const. art I,§ 9. "The Congress shall have power ... to regulate commerce among the several States ... ."

2/ Me. Const. art 3, §§ 1-2.

3/ Antieau, 2 Modern Constitutional Law 202 (1969) [hereinafter cited as Antieau, Volumn 2].

4/ Simpson's Case, 66 A. 2d 417 (1949).

5/ Antieau, Volume 2 at 225-230.

6/ Finks v. Maine State Highway Commission, 328 A,2d 791 (1974).

7/ The right to due process is explicity guaranteed to Maine citizens by the 14th amendment to the Constitution of the United States and implicitly in the Constitution of the State of Maine by Article 1, section 6 .

8/ Desmond v. Hackey, 315 F. Supp. 328(1970).

9/ U.S. Const. amend. XIV, § 1; Me. Const. art.1,§ 6-A.

10/ Shapiro Bros. Shoe Co. v. Lewiston-Auburn Shopworkers Protection Assn., 320 A,2d 246 (1974).

11/ State v. Donovan, 344 A. 2d 401 (1975).

12/ Classificaiton by sex has not to date been deemed a "suspect classification".

13/ U.S. Const. amend. I.

14/ Id.

15/ Id.

16/ U.S. Const. amend IV.

17/ The U.S. Supreme Court has stated that the First Amendment, when read together with the other amendments, ensures a right to privacy. See Griswold v. Conn. 381 U.S. 479 (1965).

18/ The right to travel is a basic right of national citizenship and therefore is protected against state action by the Privileges and Immunities Clause of the Fourteenth Amendment.

19/ U.S. Const. amend VIII.

20/ U.S. Commitee on the Judiciary, Layman's Guide to Individual Rights Under the United States Constitution, 4 (1973).

21/ See "The Void-For-Vagueness Doctrine In The Supreme Court" 109 U. Penn L.R. 67 (1960).

22/ See "Statutes, Certainty and Definiteness" Maine Key Number Digest § 47 (1967).

CHAPTER 13
STATUTORY INTERPRETATION

> [T]here is nothing ... to prevent an agreement (on paper!) that henceforth "water" means beer and "child" means mature person. But can language habits be changed in that summary way? And if they could, what would be accomplished since it would still be necessary for some purposes to distinguish "water" from ale and "child" from persons past fifty years of age.
>
> Hall, Reason and Reality in Jurisprudence [1]

§ 1. Introduction

While this chapter is not an exhaustive guide to the canons of interpretation of statutes [2] used by the courts, it is meant to provide the bill drafter with a listing of the basic rules of statutory interpretation so that:

A. He is aware of the ways in which ambiguities most often appear;

B. He is more able to trace the intent of statutes he is called upon to amend or replace.

And perhaps an even more important reason arises from the well known words of a sermon by Bishop Hoadly: "Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truely the law giver... not the person who first wrote or spoke them."[3/] Thus, one of the goals of this manual is bills of such clarity there is no need for interpretation.

§ 2. General Rules

The courts have only one goal in statutory interpretation: what was the intent and purpose of the Legislature in enacting such a law? When faced with an ambiguity the courts have resorted at different times to three major doctrines[4/] of statutory interpretation:

1. The rule of "literalness". The court will rigidly adhere to the words of the statute, no matter what the consequence.

2. The "golden rule". The words of a statute are given their plain natural meaning, unless a clear injustice or absurdity would be the result.

3. The "mischief rule". The courts ask what was the mischief the Legislature was trying to correct in changing the common law, what was the remedy the Legislature had decided upon? Or,in the words of Sir Edward Coke: "Suppress the mischief, and advance the remedy".

§ 3. Intrinsic guides: canons of gramatical construction.

1. Initial steps. If the court can help it, it will not leave the "four corners" of the document in question in its interpretation. Invariably, a court uses the following procedure:[5/]

A. What is the dictionary meaning of the words when read alone?

B. If an ambiguity still exists, then what is the meaning of the words in the Act?

C. And, if there is still doubt, what is the meaning of these words when read against the background of that part of human conduct with which the Act deals?

2. Intrinsic aids. Unless the context clearly indicates otherwise, the specific "intrinsic" or grammatical canons the courts use is to help them work through the above 3 step procedure are:

A. Expressio unius est exclusio alterius. The express mention of a specific thing or things is an implied exclusion of other things not mentioned.[6/]

B. Ejusdem generis. Where specific things are enumerated, followed by a general phrase such as "and other things", the general words should be construed as limited to things of the same kind as those enumerated.[7/]

C. Nositur a sociis. In a group of associated words, each assumes the general "color" or associated meanings of its fellow words in the listing.

D. Last antecedent rule. A qualifying phrase or clause applies only to the last of several preceding subjects unless the context indicates otherwise.[8/]

E. Technical words. The words and phrases of technical legislation are interpreted by their technical meanings, if they possess them, and otherwise, in their common meaning.[9/]

F. Punctuation, chapter and section heading. Because, as has often been stated, a statute should be construed as "one harmonious whole",[10/] then punctuation, chapter and section headings of an enacted statute might be used in construing legislative intent. While not legally a "part" of the law, they might, as a last resort, be useful in interpreting the law's body if an ambiguity cannot be resolved.

G. Repeated words. When a specific word is repeated throughout the rest of a statute, it will have the same meaning each time it is used.

H. Maine rules of construction. 1 MRSA §§ 71,-72 detail statutorily adopted rules of construction. Perhaps the four most commonly encountered are:

(1) Authority to three or more. Words giving authority to 3 or more persons authorize a majority to act, when the enactment does not otherwise determine.

(2) Gender. Words of the masculine gender may include the feminine.

(3) Singular and plural. Words of the singular number may include the plural; and words of the plural number may include the singular.

(4) Dates. Wherever in the Revised Statutes or any legislative act a reference is made to several dates and the dates given in the reference are connected by the word "to", the reference includes both the dates which are given and all intervening dates.

§ 4. Extrinsic guides: the legislative history

If the answer to the ambiguity cannot be found within the four corners of the document, then courts often feel justified in examining the legislative history in order to determine legislative intent. In such cases their sources[11/] are:

1. Historical background. If the courts are going to "suppress the mischief and advance the remedy", then they must be aware of any common law problem the legislation was intended to correct.

2. Legislative proceedings, committee reports, debates.

3. Draftsman's views.

4. Other statutes. Statutes in pari materia, that is, statutes which deal with the same subject area, often are a good indication of a disputed statute's intent.

5. Statutes from other states. An increasingly accepted practice for the interpretation of statutes which were adopted from other states or jurisdictions is to look to prior decisions on the original statute by the highest court of the place of origin.

6. Prior judicial or administrative construction. If the Legislature re-enacts a statute previously construed by the courts, then it is assumed the Legislature has acquiesced in the construction given. Similarly, if a statute, for a considerable time and with the knowledge of the Legislature, has been administered by an agency, the court will often look to that agency's construction.

7. Former version of a statute.

8. The Title or preamble of the bill or its Statement of Fact.

§ 5. Prospective or retrospective operation

In general, statutory construction requires a prospective interpretation of statutes which change substantive rights, but permits a statute which concerns itself with the areas of procedures or remedies to apply not only to future rights but also current rights.[12/]

However, here in Maine, the rule of thumb is that:

> In the absence of any contrary provisions all laws are to commence in futura and act prospectively, and presumption is that all laws are prospective and not retrospective. 13/

§ 6. Liberal or strict construction

Absent a liberal interpretation clause (see Chapter 8 , § 4), Maine Courts have evoked the following standards:[14/]

1. Statutes that change the common law or impose a criminal penalty or set up a summary proceeding are strictly construed:

2. Statutes dealing with legal remedies are construed liberally, so as to carry out the purpose of the statute;

3. A statute authorizing a legislative grant of power shall be interpreted liberally so as to include all powers necessary to carry out the legislative intent and to give effect to the powers expressly granted;

4. Laws to raise public revenues are interpreted, strictly or liberally, so as to favor the property rights of citizens.

§ 7. Save not destroy

Finally, a legislative drafter should not become too sensitive to possible but remote ambiguities. They will always be present. Too precise language eventually evolves into the tortured and redundant prose so often associated with legal writings. Trust in simplicity. Often it will be the best vehicle for conveying intent. The courts are not interested in creating problems where none really exist. Indeed, as the Maine Supreme Judicial Court said in 1974 in State v. Davenport: "The cardinal principal of statutory construction is to save, not to destroy."[15/]

FOOTNOTES

1/ 7 Buffalo L. Rev. 351, 386 (1958), as cited in Nutting, Elliott, Dickerson, Legislation, Cases and Materials, 379 (1968) [hereinafter cited as Legislation].

2/ e.g., Uniform Statutory Construction Act.

3/ Id. at 388.

4/ Id. at 408-409.

5/ Read, MacDonald, Fordham, Legislation, 1091 (1959) [hereinafter cited as Read].

6/ Legislation at 410.

7/ Id. at 410.

8/ Id. at 411.

9/ Id. at 411.

10/ Id. at 412.

11/ Id. at 412-416; Legislative Counsel Committee, Bill Drafting Manual, 263-267 (1958).

12/ Legislative Counsel Committee, Bill Drafting Manual,266 (1958).

13/ Atty. Gen. Rep., 68 (1959-60).

14/ 13 Maine Key Number Digest, Statutes, Key section 235 (1967).

15/ "Statutes, Key Section 235", 13 Maine Key Number Digest (1967-76).

16/ 376 A.2d 1 (1974).

CHAPTER 14
CHECKLIST OF
BILL DRAFTING PRINCIPLES

§ 1. A checklist for form as well as ideas

Has this manual spent too many words on the importance of form to a bill's ideas? Is it too presumptuous to try and fit, however raggedly, the poet's cloak to the bill drafter's shoulders? Perhaps. But surely Ezra Pound's definition of a poet's job also applies to a bill drafters job. "We are governed by words, the laws are graven in words, and literature is the sole means of keeping words living and accurate."

BILL DRAFTING CHECKLIST

1. Does your bill possess not only clear ideas but also an ef-

fective form? (See Chapter 1, § 2 .)

2. Is your bill constructed so that it can easily be amended if necessary? (See Chapter 2, § 2.)

3. Have you adequately explored the legal environment of your bill, so as to avoid potential conflicts? (See Chapter 4 , § 1 .)

4. Have you made a detailed outline of the entire bill and each of the bill's sections? (See Chapter 5 ,§ 1 .)

5. Does your bill adhere to the two Golden Rules of composition:

A. Consistency;

B. Normal usage? (See Chapter 6, §§ 2,3.)

6. Does your bill provide for all probable contingencies? A quick review of the following parts of a hypothetical bill might call to mind a still unresolved problem: (See Chapter 8,§§ 1-10.)

Title

Emergency preamble

Enacting clause

Sec. 1. Amendment

Sec. 2. Repeal

Sec. 3. Enactment of a new chapter

§ 1. Short title

§ 2. Statement of legislative purpose, findings or intent

§ 3. Definitions

§ 4. Basic provisions

§ 5. Penalties clause

§ 6. Severability or non-severability clause

§ 7. Savings clause

Sec. 4. Limited duration clause

Sec. 5. Liberal interpretation clause

Sec. 6. Temporary or transitional clause

Sec. 7. Non-application clause

Sec. 8. Appropriation clause

Sec. 9. Effective date or emergency clause

Fiscal Note

Statement of Fact

7. Is it possible your bill breaches a state or federal constitutional restriction? (See Chapter 12.)

8. Have you conducted a final horizontal review of your bill? (See Chapter 7, § 2):

A. Is your bill's language consistent?

B. Does your bill's language follow normal usage?

C. Does your bill avoid ambiquity (semantic, syntactic or contexual)?

D. Does your bill avoid vagueness or over-precision?

E. Are the classes established by your bill too narrow or too general?

F. Is your bill's language "overstuffed"?

G. Is your bill grammatically correct?

H. Is your bill's mechanical form correct?

9. Have you made a final vertical review of your bill? (See Chapter 7, § 3):

A. Are you using the appropriate legislative measure?

B. Does your bill accomplish only what was intended and no more?

C. Are any constitutional limits on legislation violated?

D. Is your bill properly integrated with the existing law?

E. Have all conflicting or related statutory sections been appropriately amended or repealed?

F. Does your bill affect pending matters. If so does it indicate their disposition?

G. Does your bill require an appropriation. If so, have you included an appropriations section and fiscal note?

H. Is the date your bill, if enacted, becomes effective the correct date?

I. Have you used definitions where desirable?

J. If necessary, does your bill provide administrators with the power to make rules or regulations that are reasonable and adopted with proper notice and hearing?

K. Are the titles of public officers, agencies and institutions correct?

L. Does the title of the bill adequately express the nature of the bill; and is the Statement of Fact a comprehensive review of the bill's workings and effects?

10. Finally, does your bill possess unity, coherence and proper emphasis? (See Chapter 1, Chapter 5, §3, and Chapter 6, §5.)

APPENDIX A

Evolution of a Maine Bill Into Law

This description of a Maine bill's evolution into law is taken from Downeast Politics, the Government of the State in Maine by Horan, Quinn, Pease, Palmer, Mawhinney (1975). Specifically, it is exerpted from Kenneth T. Palmer's chapter "The Legislature", pages 88-95.

LEGISLATIVE DECISION-MAKING

The actual mechanics of translating a policy idea into a statute in Maine are both complex and predictable. The procedures are complicated mainly because of the need to keep the process of legislating as open as possible, and to permit the widest possible access to the final product on the part of groups both inside and outside of the Legislature. The process is a predictable one in the sense that all bills, regardless of their scope and importance, must clear essentially the same hurdles in order to become law. This is not, of course, to say that the outcome of a given piece of legislation can be forecast. Every law enacted is a result of a distinctive interplay of people, events, and institutions. But the ground rules for the political process as it is waged in the legislative halls are known in advance.

The following discussion examines the main stages in the life of a bill in the Maine Legislature. In the order in which they occur, the stages are, first, the introduction of a bill and its reference to a joint standing committee; second, committee hearings and decisions on the bill; third, action on the floor of the House and Senate, including debates, amendments, and voting; and finally, the Governor's decision to approve or to veto the measure. These steps are described in the same sequence here.

Introduction of Legislation

Most bills presented to the Maine Legislature have two characteristics. First, they are amendments to existing laws, not entirely new ideas that have no precedents in the existing statutes. Partly for that reason, the drafting of legislation is a process which requires a good deal of technical expertise. In Maine, this work is accomplished by a staff arm of the Legislature, the Office of Legislative Research. The Office types all bills on an official form before their introduction. The second characteristic of most legislation is that the ideas for most bills originate outside of the Legislature, not with the senators and representatives themselves, even though they as legislators officially act as sponsors. Bills are suggested by citizens, by party leaders, and by local government officials. Probably the main sources of legislation, however, are state departments and agencies and statewide interest groups. These organizations are involved continually in specific areas of public policy and negotiate regularly with members of the Legislature over additions and adjustments they wish the Legislature to make in these areas.

Once a bill is drafted, the legislator who introduces it simply signs it if he or she supports the measure. If the legislator is introducing the bill as a courtesy to a constituent, or to some other person or group, he will add the words "by request" after his signature. This phrase absolves the legislator of a personal commitment to the bill, and its inclusion may mean that the bill will die in committee for lack of support. The practice of intro-

ducing legislation "by request" is not used widely in Maine, but it does guarantee every citizen in the state access to the legislative process. The official launching of the bill takes place when a senator places a bill in the Senate hopper or a representative deposits a bill in the House hopper. Hoppers are boxes located near the rostrum in each chamber.

Printing and Reference of Bills

Once a bill is printed and provided with a Legislative Document number (it is this number by which the bill will be identified until it completes the legislative process and becomes part of the Maine Statutes), the bill is referred to the appropriate joint standing committee. The job of reference is accomplished by the Joint Committee on Reference of Bills which is composed of the legislative leaders in the two branches. When the bill first appears on the calendars of the House and Senate, the Reference of Bills Committee will note its recommendation of the correct committee to consider the bill. Most bills are routinely assigned to committee, but in some cases politics intrudes and a debate on the recommendation may develop. While most bills clearly relate to a particular subject area handled by a committee (such as the Committee on Business Legislation, the Committee on Education, or the Committee on Fisheries and Wildlife), some committees have jurisdictions so broad that nearly any bill can be defensibly assigned to them (i.e. the Committee on State Government, the Committee on Legal Affairs).

The question of whether a bill's recommendation by the Reference of Bills Committee is accepted is generally up to the sponsor. If he or she suspects that the designated committee is likely to put forward an unfavorable report, the legislator will try to alter the committee obtaining possession of the bill. He may do this either through consultation with the Reference Committee or by challenging the recommendation on the floor of his chamber. The membership of each house has the power to confirm or reject the recommendation of the Reference Committee. Only after both houses have concurred in the recommendation is the original bill turned over to the designated joint standing committee.

Committee Hearings

Once a bill has been assigned to a committee, the next step is the committee hearing. With only minor exceptions, all bills in the Maine Legislature receive public hearings. This procedure is in marked contrast to that followed in many other states, where only legislation that is called up by the chairman is given a hearing. Maine's procedures reflect a greater openness, at least at this point in the legislative process. The procedure perhaps derives from the ingrained tradition of the town meeting in conducting local and municipal affairs in the state.

The chairmen of the joint standing committees are responsible for the scheduling of hearings. A chairman will try to plan a schedule several weeks in advance with the various sponsors of the bills in his committee. On Tuesdays during the weekly sessions, the bills to be heard the following week are normally identified. The committee clerk will prepare appropriate notices for the sponsor, or sponsors, and the press, noting the date and time when a particular bill is to be discussed.

At the public hearing, the sponsor of a measure is always heard first, followed by other proponents of the measure, and finally, by opponents of the bill. Persons testifying on a bill will in some cases have been invited by the sponsor or by the committee to appear. In other instances, they will have asked for an opportunity to discuss the legislation. Among the most important witnesses are state lobbyists who appear at hearings concerning bills which affect their organizations and companies around the state. For many hearings, the only persons testifying are legislators (including always the sponsoring legislator) and a few lobbyists. In these sessions, special and private mea-

sures and highly technical legislation are discussed. In other hearings, large numbers of citizens may compete for attention. In the 106th session, the Equal Rights Amendment for women and the Public Lots legislation attracted several hundred persons to legislative hearings held before the State Government and Special Public Lands Committees, respectively.

Hearings serve several functions in the Maine Legislature. One function is to provide information that members of the committee need to come to a decision. Legislators habitually refer to this process as "getting at all the facts" and "hearing all sides of the issue." A somewhat different purpose served by hearings before the committees is to permit various interested groups to mobilize support around the state for their respective positions on a piece of legislation under consideration. As one observer has put it: "Hearings serve as a propaganda channel through which a public may be extended and its segments partially consolidated or reinforced."[3] The publicity that public hearings often receive in the press helps to serve this end. Thirdly, hearings perform what may be called a safety valve function, in the sense that persons may be heard in regard to legislation that has little chance of passage. As one wag has noted: "If the wild reformer, the crank, can but be heard, he is often content and thereafter for a while will do little mischief. Bottle him up and he will explode."[4] Thus, although hearings may not always change votes on a measure among the members of a committee, they generally do serve some important political functions.

Committee Decisions

In a working (private) session, the committee meets and decides on its report for each bill with a formal vote. Major bills generally require considerable discussion, and the committee may consult with various persons before deciding on its course of action. Further information may be needed from witnesses. Strategy matters may be taken up with members of the legislative leadership, and if the committee has a staff person assigned to it, that person's investigations of the issues surrounding a bill will become important at this juncture. Officially, then, while the actual vote of the committee is taken in a working session, some consultation with persons outside the committee frequently continues even after the formal hearings have ended.

In the Maine Legislature, the committees traditionally report all bills before the end of the session. Partly for this reason, committee reports assume several forms. One possibility is a unanimous "ought not to pass" report. Although the bill is reported to the Legislature, this report is tantamount to killing it. Bills carrying these reports are simply noted as such on the appropriate legislative calendar and no further action may be taken on the matter unless reconsideration is voted by two-thirds of both houses. The bill goes immediately to the files without the necessity for debate or other maneuvers. In the 1971 session, for instance, about one-sixth of all bills introduced received unanimous "ought not to pass" reports.

Affirmative reports may be "ought to pass," "ought to pass as amended," or "ought to pass in a new draft." One member of the house of origin signs the report on behalf of the committee. When feelings on the committee are divided, each member signs the report to which he subscribes —the majority or minority report, or, if the members are evenly divided, Report A and Report B. All reports go first to the house in which the bill was introduced.

It is worth noting that these phrases are the entire committee report. The Maine Legislature does not use the written, detailed reports of the U.S. congressional committees. Therefore, debate and discussion on the floor become especially important as members of the committee defend their action before the entire Legislature.

Floor Action

There are three principal points in the Maine legislative chambers where debate and decision-making can take place on a bill. These stages are the acceptance of the committee report, the second reading of the bill, and the enactment stage. The following discussion looks at the procedures followed in each of these stages of a bill's progress.

Reports of committees are placed on the legislative calendars as soon as they are received. Action is taken first on the *committee report* itself. If the report is "ought to pass" on a particular measure, the Speaker will ask: "Is it the pleasure of the House to accept the 'ought to pass' report of the Committee?" If there is no objection, the Speaker sounds the gavel, declares it a vote, and asks the Clerk to give the bill its first reading. The first reading is always routine. In practice, the Clerk reads only a few words since each legislator has the printed bill in front of him.

In the House, bills emerging from committees carrying unanimous "ought to pass" reports are placed on a special portion of the daily calendar called the "Consent Calendar." Unless a member objects, these bills move along without debate to the point where they are considered as passed to be engrossed. This procedure saves considerable time by eliminating discussion on noncontroversial items, but it is used only in the House. On all other reports of bills, a formal motion of acceptance must be made. Debate is permitted on committee reports. A report may be tabled to permit members to study the drafts or committee amendments. A motion may be made to indefi-

nitely postpone the report and all accompanying papers. If carried, this motion will kill the bill. Divided reports are often tabled when they first come from the committee in order to give the political forces on each side of an issue an opportunity to prepare for the first round of action. A refusal by the House or Senate to accept a favorable committee report, or the chamber's acceptance of an unfavorable report, signifies the death of a bill at this stage of the legislative process.

For most bills, especially those that are highly controversial or complex, the *second reading* is the critical test. Under the rules, debate and amendment on the bill itself must be offered only at the time of the second reading. This reading takes place on the next legislative day after the first reading. Routine bills go through second reading and passage to be engrossed without any visible action on the part of the members. The clerk reads the bill section by section, and the Speaker bangs the gavel at appropriate intervals to place the seal of approval on each part. The observance of this ritual gives any member time to interpose comment, offer amendments, or make a motion to alter the course of the procedure.

A major piece of legislation will generally be subject to amendment on second reading. The caucuses will now have had an opportunity to discuss the bill, and the strategies of the proponents and opponents of the measure will have been worked out. For an amendment to be considered, it must first be reproduced and distributed to the desk of each legislator. The Clerk of the House (or the Secretary of the Senate) has the responsibility of preparing copies. An amendment can affect a bill in one of several ways. Some amendments are offered with the hope that they will make a bill unpalatable enough to ruin its chances of passage. Other amendments may be attempts to meet valid objections brought out in the floor debates which were not previously noted in the committee. Still other proposed changes simply try to accomplish on the floor what could not be done in committee, and to reverse thereby the committee's judgment. The sponsor of the legislation and his fellow supporters are often in a difficult position in dealing with proposed amendments. Every now and then a bill is amended to such an extent that the sponsor is forced to vote against his *own* bill. The opposite of this is the sponsor who is willing to accept virtually any amendment in order to get his bill passed, regardless of how much the substance of the proposal is changed.

A vivid illustration of the problems facing the sponsor of a complex bill on the floor of a legislature may be drawn from Congress. In 1950, Congress passed a measure concerned with basing-point pricing in American industry. Toward the end of the long wrangle over the bill, according to one observer of that process, the sponsor "was less concerned with making and sticking to a single comprehensive position on the legislation which he had favored than he was in getting it passed. He agreed with both advocates of strict adherence to the antitrust laws and with those who would have radically revised them. He carried water upon both shoulders and, if he did not get himself wetted thereby, it was only because the issues were so complicated, the stakes were so obscure to all but a few, and the trouble to understand the disputation was so tedious."[5] So it is with some difficult legislation in the Maine House and Senate as well.

Once debate and amendment are completed, the bill is passed to be engrossed (printed). The Secretary of State's office is charged with the task of seeing to it that all adopted amendments are attached to the printer's copy of the bill and with the proofreading of the bill prior to engrossment.

A bill that has been passed to be engrossed in one house must pass through the same set of steps in the other chamber. When that work is completed, the House and Senate will sometimes find themselves in disagreement on a measure. Amendments may be presented in one chamber which do not have support in the other chamber, or they may be proposed in the second house and must then go back to the first house for consideration. Each move in one house must be approved in the other for the bill to move toward enactment. Should both houses refuse to back down from their positions, the bill will "die between the houses." However, an attempt will usually be made to reconcile existing differences through a committee of conference. The Speaker of the House and the President of the Senate each appoint three members from their chambers who represent the prevailing view of the respective houses in the conference committee. The conferees have ten legislative days to work out a report agreeable to a majority of the committee. If an agreed-to report is accepted, the bill goes forward. If the conferees cannot agree, no other action can be taken unless another committee of conference is voted, which move is very rare.

The power and importance of conference committees derive from the fact that they meet toward the end of a legislative session. In the rush to complete the many bills awaiting final action, legislators are inclined to accept conference committee reports even though they may not wholly agree with every item in them. As a House floor leader in a 1970 special session of the 104th Legislature put it, in commenting on a claim that an important item was omitted from a bill: "I can assure you that when the Conference Committee met that I was entirely willing to see (the matter) included in the bill. On the other hand, the Conference Committee did meet, the Conference Committee made a decision, and I feel that now, in view of the fact that the Conference Committee has reported. . . . , that we should not now try to overthrow the Conference Committee." To a considerable extent, the remarks of the floor leader in 1970 reflect the view that the Legislature takes towards its committees generally. In a part-time Legislature, with members working without staff guidance in many cases, committee reports carry great weight.

Following engrossment, the bill reaches the *enactment stage.* It is customary in Maine to enact all measures in the House first, then in the Senate. Certain types of legislation, for instance, constitutional resolves and emergency bills, require a two-thirds vote in each house. These measures are taken up separately with the vote formally recorded. There is no requirement that a roll call vote take place on legislation requiring

only a majority, and bills in this category may be enacted quickly—especially if they raise no controversy—by a simple banging of the Speaker's gavel. On the other hand, a member can always secure a roll-call vote under the rules provided a fifth of the membership of his chamber is willing to support his request. Contentious legislation in any session is generally enacted by roll call (the House uses an electric board to tabulate votes of the members, while in the Senate members stand at their desks to signify their positions). Increasingly in Maine, party leaders and candidates for the Legislature make use of the voting records of incumbent legislators in election campaigns. This development seems to reflect a heightened citizen interest in public issues in the state. Its consequence is that legislation affecting important groups or interests will now almost always be enacted by a formally recorded vote in the House and Senate.

The Governor's Role

Once a bill has been enacted by the House and Senate and signed by the respective presiding officers, it is sent to the Governor. The Governor has several choices: he may sign and thereby approve the measure, he may veto it, returning it with his reasons for his veto to the chamber in which it originated. Or he may allow the bill to become law without his signature (which occurs if he holds it for more than five days while the Legislature is still in session). To override a Governor's veto, the Legislature needs to muster a two-thirds majority in each house. Before 1975 this happened only very rarely in Maine, principally because the Governor was able to call on his party teammates in the House and Senate to help sustain his veto. Perhaps as evidence of the importance of party support, the 107th Legislature during its first session overrode more than half (14) of Independent Governor James Longley's vetoes.

What happens if the Legislature adjourns before the Governor has had five days to consider a bill? Generally, the bill is regarded as in force, that is, it is law unless the Governor returns it with his objections within the first three days of the next meeting of the Legislature. Under a recent constitutional amendment, however, the "next meeting" would have to be the special ses-

sion of the same Legislature that earlier passed the measure. If there is no next meeting of the same Legislature, and the Governor does not have five days to examine it before legislative adjournment, the bill is considered to be vetoed.

In the years ahead, perhaps the Legislature's greatest challenge will be to maintain a position of co-equality in power and authority with the Governor and with the executive branch generally. This discussion has looked at the Governor's role in the legislative process in terms of his veto, but his influence over the Legislature is far more pervasive than that specific power may suggest. The Governor's authority to prepare and submit to the Legislature Maine's biennial budget greatly shapes the debates and decisions in the House and Senate in all areas of policy-making during each regular session. As the next chapter will point out, Maine's chief executive now has, for the first time in the state's history, the advantage of a cabinet-type administration. Heads of the various state departments report directly to him and serve in office at his pleasure. This important modification emerged during the administration of Governor Kenneth Curtis, with the approval of the Legislature, in 1971–72.

A growing responsibility for the Legislature will thus lie in the area of legislative oversight, that is, of insuring that the laws it makes are carried out by the executive branch in a manner consistent with the felt needs of citizens. The thrust of some recent reforms, especially those pertaining to the addition of professional staff persons and the use of interim committees meeting between the formal legislative sessions, has been to increase the information-gathering capacity of the Legislature. Such independent sources of information are necessary if the Legislature is to maintain continuous watchfulness over the executive. In a complex society, legislative oversight becomes as important as the Legislature's traditional functions of setting public policy and representing the people.

NOTES

1. For a more extensive treatment, see K. Palmer, K. Hayes, E. Hary, J. Horan, and R. Teachout, *The Legislative Process in Maine* (Washington, D.C.: The American Political Science Association, 1973). Sections III and IV in particular of this chapter rely heavily on that volume.
2. Belle Zeller, *American State Legislatures* (New York: Crowell, 1974), p. 16.
3. David Truman, *The Governmental Process* (New York: A. Knopf, 1951), p. 373.
4. Robert Luce, *Legislative Procedure* (Boston: Houghton Mifflin, 1922), p. 146.
5. Earl Latham, *The Group Basis of Politics* (Ithaca: Cornell University Press, 1952), p. 190.

APPENDIX B

Examples of the Forms of Maine Legislative Actions

Table of Contents

For a description of each of these legislative actions, see Chapter 3, § 1.

A Maine Act
(simple)

This Act has become law, notwithstanding the veto of the Governor. (Constitution, Article IV, Part Third)

Received in the office of the Secretary of State JUN 14 1976

STATE OF MAINE

JUN 14 '76

CHAPTER 779

PUBLIC LAW

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-SIX

S. P. 669 — L. D. 2128

AN ACT Relating to Definition of Retail Sale under Sales and Use Tax Laws.

Be it enacted by the People of the State of Maine, **as follows:**

36 MRSA § 1752, sub-§ 11, 5th sentence, as last amended by PL 1975, c. 359 and c. 450, is further amended to read:

"Retail sale" and "sale at retail" do not include the sale of tangible personal property which becomes an ingredient or component part of, or which is consumed or destroyed or loses its identity in the manufacture of, tangible personal property for later sale or lease, other than lease for use in this State, but shall include fuel and electricity but shall not include electricity separately metered and consumed in any electrolytic process for the manufacture of tangible personal property for later sale, nor any fuel oil, the by-products from the burning of which become an ingredient or component part of tangible personal property for later sale.

EFFECTIVE SEP 13 1976

This Act is a fine example of how not to draft a bill. As an artful example of the convoluted, run-on sentence it probably has few peers. What could be done to improve it? At the very least the different clauses should be tabulated ("Retail sale" and "sale at retail" do not include:

A. the sale of...;
B. etc.;
C. etc.;

See Chapter 11, § 11.)

A Maine Act
(complex)

The following Act is an unusually complex one. It has 29 seperate bill sections. It is an emergency bill. Two new chapters are enacted (bill sections 23, 34). There is a transitional section (bill section 28). There is an appropriations section (bill section 29).

CHAPTER 756

AN ACT to Reorganize the Bureau of Corrections.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is essential that the Bureau of Corrections has adequate facilities to provide for the increasing number of adult offenders; and

Whereas, the establishment of a Maine Youth Center in South Portland, serving male and female juvenile offenders, is found appropriate for improved services and cost effectiveness; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the fol-

lowing legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 1507, sub-§ 1, first sentence, as repealed and replaced by PL 1969, c. 455, § 1, is amended to read:

$120,000 to provide relief, when need exists, ~~and on a commodity basis only~~ to those institutions where actual average population in a fiscal year exceeds the basic estimates of population upon which the budget was approved and where such relief cannot be absorbed within regular legislative appropriations.

Sec. 2. 15 MRSA § 2611, sub-§ 4, ¶ B, as last amended by PL 1967, c. 195, § 1, is repealed and the following enacted in place thereof:

B. Commit to the Maine Youth Center, if the juvenile is of the proper age;

Sec. 3. 15 MRSA § 2611, sub-§ 5, as last repealed and replaced by PL 1975, c. 538, § 7, is amended to read:

5. Dispositions after return to a juvenile court. In instances of commitment of a juvenile to the ~~Boys Training Center or to the Stevens School~~ Maine Youth Center, the superintendent thereof following such commitment may for good cause petition the juvenile court having original jurisdiction in the case for a judicial review of disposition. In all cases in which a juvenile is returned to a juvenile court from the ~~Boys Training Center or Stevens School~~ Maine Youth Center, the juvenile court may make any of the dispositions otherwise provided in this section.

Sec. 4. 15 MRSA § 2611, last ¶, as enacted by PL 1973, c. 522, § 1, is amended to read:

The juvenile court shall not commit a juvenile to the ~~Men's Correctional Center, the Women's Correctional Center, the Boys Training Center or the Stevens School~~ Maine Youth Center if the offense or act committed by the juvenile would not be an offense under the criminal statutes of this State, if committed by a person 18 years of age or over.

Sec. 5. 15 MRSA § 2711, sub-§§ 1 and 2, as last amended by PL 1967, c. 195, § 2, are repealed and the following enacted in place thereof:

1. Center. "Center" means the Maine Youth Center.

2. Child or children. "Child" or "children" means a juvenile committed to the Maine Youth Center.

Sec. 6. 15 MRSA § 2712, as last amended by PL 1975, c. 482, is repealed and the following enacted in place thereof:

§ 2712. Establishment; location; personnel

The State shall maintain the institution located at South Portland, heretofore known as the Boys Training Center, and hereby renamed the Maine Youth Center, to rehabilitate children committed thereto as juvenile offenders by the courts of the State. Toward this end, the disciplines of education, casework, group work, psychology, psychiatry, medicine, nursing, vocational training and religion related to human relations and personality development shall be employed. The center shall be coeducational and shall fully separate the housing facilities for boys and girls.

The Commissioner of Mental Health and Corrections may, with the approval of the Governor, authorize the use of any available facilities at the location in Hallowell, formerly known as the Stevens School and Women's Correctional Center, whenever the superintendent reports that overcrowding exists at the center.

The director of the center shall be called the superintendent. The superintendent of the center may appoint 2 assistant superintendents, subject to the Personnel Law. An assistant superintendent designated by the superintendent, or such other employee designated by the superintendent in the event that there are no assistant superintendents, shall have the powers, perform the duties and be subject to all the obligations and liabilities of the superintendent when the superintendent is absent from the center or unable to perform the duties of the office or when the office of superintendent is vacant.

Sec. 7. 15 MRSA § 2714, first sentence, as repealed and replaced by PL 1975, c. 538, § 9, is amended to read:

Only a juvenile as defined in section 2502, subsection 5, who is 11 years of age or older at the time of the court's disposition of the case may be committed to a the center pursuant to chapters 401 to 409.

Sec. 8. 15 MRSA § 2715 is amended to read:

§ 2715. Certification by committing judge

When any child is ordered to be committed to a the center, the court by which such commitment is made shall certify on the mittimus provided the child's birthdate, birthplace, parentage and legal residence.

Sec. 9. 15 MRSA § 2716, and ¶, last sentence, as enacted by PL 1975, c. 106, is repealed and the following enacted in place thereof:

The center shall provide aftercare and entrustment services to juveniles committed thereto.

Sec. 10. 34 MRSA § 1, first ¶, as last amended by PL 1975, c. 495, § 1, is amended to read:

The Department of Mental Health and Corrections, as heretofore established, hereinafter in this Title called the "department," shall have general supervision, management and control of the research and planning, grounds, buildings and property, officers and employees, and patients and inmates of all of the following state institutions: The hospitals for the mentally ill, Pineland Center, the State Prison, the ~~Men's Correctional Center and the Women's Correctional Center~~ Maine Correctional Center, the ~~juvenile institutions~~ Maine Youth Center, ~~the Governor Baxter State School for the Deaf~~ the Military and Naval Children's Home and such other charitable and correctional state institutions as may be created from time to time.

Sec. 11. 34 MRSA § 1, 2nd ¶, as last amended by PL 1973, c. 553, § 3, is amended by adding at the end a new sentence to read:

Notwithstanding any other provisions of law, the commissioner may delegate an employee of the department to serve as the acting head of any bureau or any institution of the department for a period not to exceed 180 days in the event of a vacancy in a bureau or institution. Service as the acting head of a bureau or institution shall be considered as temporary additional duty for the individual so delegated.

Sec. 12. 34 MRSA § 501, as last amended by PL 1967, c. 391, § 7, is further amended to read:

§ 501. Aliens; report to immigration officer

Whenever any person shall be admitted or committed to the State Prison, ~~the Men's Correctional Center, Women's Correctional Center~~ Maine Correctional Center, the county jail, or any other state, county, city or private institution which is supported wholly or in part by public funds, it shall be the duty of the warden, superintendent, sheriff or other officer in charge of such institution to inquire at once into the nationality of such person and, if it shall appear that such person is an alien, to notify immediately the United State immigration officer in charge of the district in which such prison, reformatory, jail or other institution is located, of the date of and the reason for such alien's admission or commitment, the length of time for which admitted or committed, the country of which he is a citizen and the date on which and the port at which he last entered the United States.

Sec. 13. 34 MRSA § 525, as last amended by PL 1969, c. 590, § 66, is further amended to read:

§ 525. Establishment; purposes

The Bureau of Corrections, as heretofore established within the department, shall be responsible for the direction and general administrative supervision of the correctional programs within the Maine State Prison, the ~~Men's Correctional Center, the Women's Correctional Center~~ Maine Correctional Center and the ~~Juvenile Training Centers~~ Maine Youth Center.

Sec. 14. 34 MRSA § 529, first ¶, as enacted by PL 1975, c. 492, § 2, and as amended by PL 1975, c. 623, § 51-H, is further amended to read:

When it appears to the Director of the Bureau of Corrections, for reasons of availability of rehabilitative programs and the most efficient administration of correctional resources, that the requirements of any person sentenced or committed to a penal, correctional or juvenile institution would be better met in a facility, institution or program other than that to which such person was originally sentenced, the Director of the Bureau of Corrections, with the written consent of the person so sentenced, may transfer, after written notice of the transfer to the court which originally had jurisdiction and in the absence of any objection by the court within 14 days following the date of the notice, such person to another correctional institution, residential facility or program administered by or providing services to the Bureau of Corrections; provided that no juvenile shall be transferred to a facility or program for adult offenders ~~and that no male juvenile shall be transferred to the Stevens School at Hallowell~~.

Sec. 15. 34 MRSA § 529, as enacted by PL 1975, c. 193, is repealed.

Sec. 16. 34 MRSA § 529, as enacted by PL 1975, c. 553, § 3, is repealed.

Sec. 17. 34 MRSA §§ 530 and 531 are enacted to read:

§ 530. Reallocation of institutional appropriations

In administering the policy and purposes of this chapter, the Bureau of Corrections is authorized to expend correctional institutional appropriations on persons within that portion of its sentenced or committed population par-

ticipating in halfway house, prerelease, vocational training, educational, drug treatment or other correctional programs being administered physically apart from the institutions to which such persons were originally sentenced or committed, for the purpose of defraying the direct and related costs of such persons' participation in such programs.

§ 531. Disciplinary action; conditions of solitary confinement and segregation

Punishments for violations of the rules of the institutions under the general administrative supervision of the Bureau of Corrections may be imposed in accordance with the procedures set forth in the rules and regulations governing such institutions. As to the Maine Correctional Center and the Maine State Prison, punishment may consist of warnings, loss of privileges, confinement to a cell and segregation or solitary confinement or a combination thereof and at the Maine State Prison may include loss of earned good conduct time. In no event shall corporal punishment be imposed. As to the Maine Youth Center, punishment may consist of warnings and loss of privileges. All punishments involving solitary confinement, segregation or loss of earned good time shall be first approved by the head of the institution.

The bureau shall develop and described in writing a fair and orderly procedure for processing disciplinary complaints against persons in any of the institutions under its general administrative supervision and shall establish rules, regulations and procedures to insure the maintenance of a high standard of fairness and equity. The rules shall describe offenses and the punishments for them that may be imposed. Any punishment that may affect the term of commitment, sentence and parole eligibility and any complaint, the disposition of which may include the imposition of segregation or solitary confinement of a person in such an institution, shall not be imposed without an impartial hearing at which the resident shall have the right to be present, to present evidence on his own behalf, to call one or more witnesses, which right shall not be unreasonably withheld or restricted, to question any witness who testifies at the hearing, which right shall not be unreasonably withheld or restricted and to be represented by counsel substitute as prescribed in the regulations. The person shall be informed in writing of the specific nature of his alleged misconduct and a record shall be maintained of all disciplinary complaints, hearings, proceedings and the disposition thereof. In all cases, the person charged shall have the right to appeal final disposition prior to imposition to the head of the institution and if at any stage of the proceedings the resident is cleared of the charges within a complaint or the complaint is withdrawn, all documentation to the complaint shall be expunged.

The imposition of segregation and solitary confinement shall be subject to the following conditions:

1. Diet. The person shall be provided with a sufficient quantity of wholesome and nutritious food.

2. Sanitary and other conditions. Adequate sanitary and other conditions required for the health of the person shall be maintained.

3. Confinement exceeding 24 hours. When solitary confinement or segregation exceed 24 hours, the head of the institution shall cause the institution physician or a member of the institution's medical staff to visit the person forthwith, and at least once in each succeeding 24-hour period in such confinement thereafter, to examine into the state of health of the person. The head of the institution shall give full consideration to recommendations of the physician or medical staff member as to the person's dietary needs and the conditions of his confinement required to maintain the health of the person. Such confinement shall be discontinued if the physician states that it is harmful to the mental or physical health of the person.

4. Reports. In the event that any person shall be held in such confinement for a period in excess of 5 days, the head of the institution shall forward a report thereof to the Director of the Bureau of Corrections giving the reasons therefor. A written report shall be forwarded by the head of the institution to the Director of the Bureau of Corrections when the recommendations of the physician or medical staff member regarding any person's dietary or other health needs while in such confinement are not carried out.

Sec. 18. 34 MRSA § 708, 3rd sentence is amended to read:

When the warden believes that there are more convicts in the State Prison than can be confined there securely, he shall certify the fact to the ~~Governor and Council~~ commissioner, who may authorize him to transfer them, so far as is necessary, to some jail.

Sec. 19. 34 MRSA c. 65, as amended, is repealed.

Sec. 20. 34 MRSA c. 66 is enacted to read:

CHAPTER 66

MAINE CORRECTIONAL CENTER

§ 811. Establishment

The State shall maintain the institution located at South Windham, heretofore known as the Men's Correctional Center and hereby renamed the Maine Correctional Center, for the confinement and rehabilitation of persons under the age of 18 years with respect to whom probable cause has been found under Title 15, section 2611, subsection 3, who have pleaded guilty to, or have been tried and convicted of, crimes in the Superior Court and persons over the age of 18 years and of not more than 26 years of age who have been convicted of, or who have pleaded guilty to, crimes in the courts of the State, and who have been duly sentenced and committed thereto, and women sentenced to the Maine State Prison and committed to the center.

If after reviewing alternative resources, including county jails, community halfway houses and existing prerelease centers, the commissioner deems it necessary, the facility in Skowhegan heretofore known as the Women's Reformatory may, with the approval of the Governor, be used as a location of the Maine Correctional Center for a period ending no later than January 1, 1978, in order to alleviate overcrowded conditions in any adult correctional institution.

All persons committed to the center shall be detained and confined in accordance with the sentences of the courts and rules and regulations of the center. Provisions for the safekeeping or employment of such inmates shall be made for the purpose of teaching such inmates a useful trade or profession and improving their mental and moral condition.

The head of the center shall be called the superintendent, who shall have supervision and control of the inmates, employees, grounds, buildings and equipment at the center. The superintendent of the center may appoint 2 assistant superintendents for the South Windham location and one assistant superintendent for the Skowhegan location. These appointments shall be made subject to the Personnel Law. An assistant superintendent designated by the superintendent, or such other employee designated by the superintendent in the event that there is no assistant superintendent, shall have the powers, perform the duties, and be subject to all the obligations and liabilities of the superintendent when the superintendent is absent from the center location or unable to perform the duties of the office or when the office of superintendent is vacant.

The superintendent of the center is authorized, subject to the written approval of the commissioner, to contract with the Director of the Federal Bureau of Prisons acting pursuant to Title 18, U.S.C. § 4002, for the imprisonment, subsistence, care and proper employment of persons convicted of crimes against the United States, and may receive and detain any such persons pursuant to such contracts.

§ 812. Placement; separation of sexes

At the time of sentencing to the center, the court shall cause inquiry to be made of the department as to the center location to which the sentenced person shall be delivered by the sheriff or his deputies. Commitment in each case shall be to the Maine Correctional Center and it shall be within the discretion of the department to determine the initial place of delivery of the sentenced person and to transfer from time to time between center locations as the needs of the sentenced person and of the public may require.

At each center location, housing facilities for men and women shall be separated.

§ 813. Transfer of felons for security reasons, overcrowding or effective programming

Any man convicted of a felony and committed to the center may be transferred to the State Prison for reasons of security, or as overcrowding at the center so requires, or in the interest of the inmate and of the public and if the result is the most effective use of available correctional programs with respect to the inmate, upon joint recommendation of the superintendent and of the Warden of the State Prison, approved in writing, by the commissioner or his delegate, the Director of the Bureau of Corrections. Any inmate so transferred shall serve the sentence imposed upon him by the court at the State Prison. When in the case of any transferred inmate the reasons for transfer no longer obtain, he may be returned to the center, upon joint written recommendation of the superintendent and of the Warden of the State Prison, approved in writing, by the commissioner or his delegate, the Director of the Bureau of Corrections, to continue in execution of his sentence.

When the superintendent believes that there are more convicts in the center than can be confined there securely, he shall certify the fact to the commissioner, who may authorize him to transfer them, so far as is necessary, to some jail. The jailer thereof shall receive such compensation from the State Treasury as he and the superintendent agree upon. When the accommodations of the center shall be so increased that the convicts can be safely confined therein, the superintendent shall remove them from such jail to the center. The time during which the convicts were so confined in jail shall be deducted from their sentences.

§ 814. Powers of officers; uniforms

Employees of the center shall have the same power and authority as sheriffs in their respective counties, only insofar as searching for and apprehending escapees from the center are concerned, when so authorized by the superintendent. Employees of the center may be provided, at the expense of the State, with distinctive uniforms for use when requisite to the performance of their official duties, all of which shall remain the property of the State, or may be provided with an equivalent clothing allowance when

the private purchase of special clothing is similarly requisite to the performance of their official duties.

§ 815. Care of children of inmates and prisoners

If any woman is, at the time of her commitment to the center, pregnant with child which will be born after such commitment, the custody of the child at instance of the department shall be determined in accordance with Title 22, chapter 1055.

§ 816. Land grants to the Department of Conservation

The following lands of the former Women's Correctional Center at Skowhegan are granted to the bureaus of the Department of Conservation, as follows.

1. Land grant to Bureau of Public Lands. All of the open land and timberland north of Norridgewock Avenue, excluding the land immediately adjacent to the institutional buildings, shall be transferred to the Bureau of Public Lands, which shall actively manage the timberlands as a working forest.

2. Land grant to Bureau of Parks and Recreation. All the land lying between Norridgewock Avenue and the Kennebec River belonging to the former Women's Correctional Center, with the exception of the sewerage treatment plant and access thereto, shall be transferred to the Bureau of Parks and Recreation to be managed by the bureau.

Sec. 21. 34 MRSA c. 67, as amended, is repealed.

Sec. 22. 34 MRSA § 1552, sub-§ 2, as repealed and replaced by PL 1969, c. 319, § 2, is amended by adding at the end a new sentence to read:

All information obtained under this subsection, and any report furnished to the Governor with respect thereto, is confidential.

Sec. 23. 34 MRSA c. 257 is enacted to read:

CHAPTER 257

SERVICES FOR CHILDREN

§ 3051. Residential facility for children

1. Establishment authorized. The Department of Mental Health and Corrections shall have control over the facility formerly known as the Stevens School located at Hallowell.

The commissioner, after consulting with the Commissioner of Human Services, the Commissioner of Educational and Cultural Services and other public and private agencies, including community mental health centers, is authorized to make any arrangements he may deem necessary for the establishment of a residential facility providing a broad range of educational, psychological and other related services to children with severe emotional, mental and behavioral disturbances. This facility, when established, may be located on the site of the institution formerly known as the Stevens School. The commissioner is, with the approval of the Governor, authorized to provide for the establishment and maintenance of this facility from any funds available to the department.

2. Budget report required. Annually, prior to January 15th after any facility has been established under subsection 1, the commissioner shall make a budget report for the facility to the Legislature which shall include for the current, past and next fiscal year:

A. Revenues. Actual and estimated amount of all revenues available to the facility, by sources;

B. Expenditures. Actual and estimated amounts of expenditures, shown by object of expenditure and by program;

C. Program information. A list of programs and the objectives of each and a description and evaluation of activities to attain such objectives, including the number of clients served;

D. Contractor. The name and address of any contractor and subcontractor, or for contracts not yet entered into, a description of the nature of the contractor's or subcontractor's business and the services to be provided by each may be substituted, if the names and addresses are not known;

E. Description. A description of the terms of any contract, including a description of services to be provided, indicating when they are to be performed, and to whom the final product or services have been or will be provided; and

F. Financing. A listing of the total amount to be paid under any contract, and the times and conditions of payment.

Sec. 24. Transitional provision. Notwithstanding any other provision of law, all accrued expenditures, assets, liabilities, balances of appropriations, transfers, revenues or other available funds in any account, or subdivision of any account, belonging to or intended for the institutions heretofore known as the Men's Correction Center and the Boys Training Center shall be used for the Maine Correctional Center, located in South Windham, and the Maine Youth Center, respectively. Notwithstanding any other provision of law, all accrued expenditures, assets, liabilities, balances of appropriations, transfers, revenues or other available funds in any account, or subdivision of any account, belonging to or intended for the institutions hertofore known as the Women's Correctional Center and the Stevens School may be transferred as specified in section 29 of this Act.

Sec. 25. Employee status. All personnel employed by the institutions heretofore known as the Men's Correctional Center and the Boys Training Center shall be considered employees of the Maine Correctional Center South Windham and the Maine Youth Center, respectively. The renamed organizational units shall remain the same and all seniority accrued by such personnel within the organizational units heretofore named Men's Correctional Center and Boys Training Center shall be retained.

The Commissioner of Mental Health and Corrections may designate such personnel as may be necessary to remain in service at the Stevens School and the Women's Correctional Center in Hallowell during the 90-day transitional period provided for in section 26. Funding for such positions and transitional services shall be from funds appropriated to the Stevens School and the Women's Correctional Center. During the transitional period, employees remaining at Stevens School and the Women's Correctional Center may apply for and be appointed to positions at the Maine Youth Center or the Maine Correctional Center and remain on temporary duty at the Stevens School and the Women's Correctional Center.

All personnel employed at the institutions heretofore known as the Stevens School and the Women's Correctional Center shall have preference under the Personnel Law over all other applicants for positions at the Maine Youth Center and at the Maine Correctional Center, or any other institution within the Department of Mental Health and Corrections, for a period of 90 days from the effective date of their actual layoff, providing such preference shall only attach to those applicants who are otherwise qualified for the position for which application is made. In addition, upon appointment within 90 days, for purposes of the retirement system, as specified in Title 5, Chapter 101, benefits shall be computed as if there had been no break in state service. In the event any such personnel are appointed from layoff status to positions at the Maine Youth Center or Maine Correctional Center within 3 years of the effective date of their actual layoff, all seniority accrued by such personnel within the organizational unit formerly known as Women's Correctional Center or the Stevens School shall be retained by such personnel in their new organizational unit.

Notwithstanding any special preference afforded by this section to personnel of the institutions heretofore known as the Women's Correctional Center and the Stevens School, such employees shall maintain all rights and privileges under the Personnel Laws and Rules.

The superintendent of the institution heretofore known as the Men's Correctional Center shall be considered the superintendent of the Maine Correctional Center located at South Windham upon the effective date of this Act. The superintendent of the institution heretofore known as the Boys Training Center shall be considered the superintendent of the Maine Youth Center on the effective date of this Act.

All provisions of this Act which affect the seniority and reemployment rights of employees shall apply equally to classified and unclassified employees.

Sec. 26. Effect on existing commitments. No provisions of this Act shall be construed as terminating any commitments to either the Stevens School or the Boys Training Center on the effective date of this Act and each such commitment shall be considered to be to the Maine Youth Center on the effective date of this Act. No provision of this Act shall be construed as terminating any commitments to either the Women's Correctional Center or the Men's Correctional Center on the effective date of this Act and each such commitment shall be considered to be to the Maine Correctional Center on the effective date of this Act and the Commissioner of Mental Health and Corrections shall have discretion to determine in which location of the Maine Correctional Center a committed person shall be placed.

The transfer of services and functions of the Stevens School and the Women's Correctional Center to the Maine Youth Center and the Maine Correctional Center, respectively, shall be completed no later than 90 days after the effective date of this Act. The Commissioner of Mental Health and Corrections shall give notice to the District and Superior courts 7 days prior to the date on which juvenile and adult female offenders can actually be received in the physical location of the Maine Youth Center and the Maine Correctional Center, respectively. Until such operative date, such female offenders shall be caused to be delivered to the facility formerly known as the Stevens School or the Women's Correctional Center.

Sec. 27. Correctional services plan. Prior to January 15, 1977, the commissioner shall present to the Legislature a correctional services plan which shall include, but not be limited to, the following:

1. A reassessment of the need for additional area correctional centers;

2. The requirements for the completion of any existing centers;

3. An implementation schedule based on any recommendations relating to subsections 1 and 2;

4. Recommendations relating to permanent correctional facilities and community facilities for women inmates;

5. Recommendations relating to the State's role in providing correctional services to inmates from other states;

6. Recommendations relating to the management and treatment of severely disturbed and disruptive inmates at the State Prison based on, in part, a study of the feasibility of using facilities at the Augusta Mental Health Institute for the residential care of the disturbed inmates; and

7. An examination and reassessment of existing policies relating to prerelease and work-release.

Sec. 28. Limitations on transfer of funds. Notwithstanding any other provision of law, funds appropriated to the Bureau of Corrections shall be used only for that bureau and shall not be transferred to any other bureau. Notwithstanding any other provision of law, if, prior to December 31, 1976, the Skowhegan location has not been approved for use as a location of the Maine Correctional Center, the remainder of any moneys appropriated to the Skowhegan location in this Act shall be transferred to other correctional institutional accounts. Notwithstanding any other provision of law, no more than $200,000 of the moneys appropriated to the Skowhegan location in this Act may be transferred to the Correctional Program Improvement Fund, as described in Title 34, chapter 62-A. Any of these funds transferred to the Correctional Program Improvement Fund unexpended at the end of the fiscal year shall not lapse but shall carry forward into subsequent fiscal years to be expended for the purposes of chapter 62-A.

Sec. 29. Adjustments of appropriations. The following adjustments shall be made in the appropriations authorized in the Private and Special Laws of 1975, chapter 78.

Stevens School/Women's Correctional Center

Personal Services	(-87)	($868,379)
All Other		(81,988)
Capital Expenditures		(4,650)

Maine Youth Center, So. Portland

Personal Services	(10)	$ 97,153
All Other		15,000

Maine Correctional Center, So. Windham

Personal Services	(6)	$ 57,822
All Other		--

Division of Probation and Parole

Personal Services	(8)	$ 92,984
All Other		—

Maine Correctional Center, Skowhegan

Personal Services	(39)	$414,920
All Other		49,500
Capital Expenditures		4,650

Maine State Prison

Personal Services	(13)	$ 94,717
All Other		—

Gallowell Campus

Personal Services	(11)	$110,783
All Other		17,488

Boys Training Center

Personal Services	(-2)	($ 15,100,

Maine State Prison

Personal Services	(2)	$ 15,100

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 13, 1976

A Maine Bill and Amendment

The bill and amendment chosen as examples, L.D. 2241 and Amendment H-995, both of which were soundly defeated, are significant for their contrasting use of the Statement of Fact. L.D. 2241 has a lengthy Statement of Fact, replete with background material not directly related to the content of the bill. The Statement of Fact for H-995 is admirable in that it clearly states the specific accomplishments of the amendment.

FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document **No. 2241**

H. P. 2078 House of Representatives, February 24, 1976

Reported by Mr. Davies from the Committee on Energy, pursuant to H. P. 1728 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule 3, pursuant to H. P. 1728.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-SIX

AN ACT to Increase the Excise Tax on Motor Vehicles According to Their Consumption of Gasoline.

Be it enacted by the People of the State of Maine, as follows:

36 MRSA § 1482, sub-§ 1, ¶ C, sub-¶ (4) is enacted to read:

(4) Tax surcharge. In addition to the excise tax imposed by this paragraph, there shall be levied a tax surcharge in the following amounts according to the gasoline consumption of each automobile with a seating capacity of not more than 8 persons.

Miles per gallon	Years 1977	1978	1979	1980
20 and over	—	—	—	—
19	—	—	—	$100
18	—	—	$100	200
17	—	$100	200	300
16	$100	200	300	450
15	200	350	450	650
14	350	500	650	850
13	550	700	900	1,100
Under 13	800	1,100	1,200	1,400

Miles per gallon for each model type shall be the final economy figure established for each model type of the Environmental Protection Agency in compliance with Section 503 of P.L. 94-163, the 1976 Energy Policy and Conservation Act. This tax surcharge will be imposed on all automobiles manufactured in model year 1977 and thereafter.

FISCAL NOTE

Using an estimate of 40,000 cars to be sold and assuming that 80% of these will have an Environmental Protection Agency rating of at least 17 miles per gallon, results in 8,000 automobiles that would be subject to this surcharge with the following possible breakdown.

M.P.G.	No. of Automobiles	Surcharge		Revenue
16	3,000	@ $100	=	$ 300,000
15	2,000	@ 200	=	400,000
14	2,000	@ 350	=	1,600,000
13	1,000	@ 550	=	550,000
				$2,850,000

Revenue from the excise tax is used for municipal purposes.

STATEMENT OF FACT

This bill provides a per car excise tax surcharge beginning with cars manufactured in model year 1977. The amount of tax is determined by each car's fuel economy. This legislation grew out of the Joint Standing Committee on Energy 1976 study, An Automobile Conservation Tax. This study stated in part:

The New England Governor's energy policy establishes a target date of 1985 by which New England will reduce it dependence on oil by 20%. Currently 81% of New England's energy needs compared to the national average of 47% are supplied by petroleum. Foreign oil comprises the bulk of petroleum used in New England. New England energy prices are 35-40% higher than the national average which is due, in part, to the high costs of oil.

Maine is the 3rd largest user of petroleum in New England in regard to the total consumption of oil.

OIL CONSUMPTION IN NEW ENGLAND

1974 - 1975
(in millions of barrels)

	1974	1975 (estimated)
Connecticut	99	152.4
Maine	43.3	66.7
Massachusetts	197.3	303.7
New Hampshire	24.2	37.2
Rhode Island	25.2	38.8
Vermont	12.4	19.1
Total	221.4	617.9
20% savings		494.3

Statistics provided by the Federal Energy Administration point out that Maine is tied with Massachusetts for 2nd place in regard to the dependence of each New England state upon petroleum as an energy source. In 1973, 85% of Maine's and Massachusetts' energy supply was derived from petroleum. Maine compared very favorably, however, with the other states in regard to the percentage of its total petroleum supply that is used for gasoline. Seventeen percent of Maine's petroleum supply is used as gasoline compared to 20% for Massachusetts and 28% for Vermont.

In 1974, roughly 38,000 new automobiles were sold in Maine compared to approximately 48,000 new car sales in 1973. Approximately 35,500 of the 38,000 automobiles sold in Maine were domestic cars. According to statistics provided by the Polk Institute to the Division of Motor Vehicles, roughly 30% of the automobiles sold in Maine in 1974 were gasoline conserving automobiles (18 mpg—city driving).

One means to reduce the United States' New England's dependence on oil is to initiate a gasoline conservation program. Presently, gasoline comprises 21% of the energy used in New England compared to the national average of 18%. The United States Congress recently enacted legislation that requires automobile manufacturers to increase the miles per gallon attained by new automobiles. The following schedule has been established:

MODEL YEAR	Average fuel economy of the Total Fleet Manufactured (in miles per gallon)
1978	18.0
1979	19.0
1980	20.0
1981-1984	To be determined by the Secretary of Transportation
1985	27.5

Critics of the legislation, led by Senator Ribicoff of Connecticut, pointed out that "the weakness of this measure is that it is a fleet standard applying across an entire manufacturer's line of cars. There is no gas guzzler provision. If a manufacturer meets the required mileage standards computed for his entire fleet... he... can continue to produce his most inefficient models. ... The provision saves virtually no gasoline in this decade and even in 1985 would only save 500,000 barrels a day...."

STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE
FIRST SPECIAL SESSION

(Filing No. H-995)

COMMITTEE AMENDMENT "A" to H.P. 2078, L.D. 2241, Bill, "AN ACT to Increase the Excise Tax on Motor Vehicles According to Their Consumption of Gasoline."

Amend said Bill by striking out everything after the enacting clause and inserting in place thereof the following:

'Sec. 1. 36 MRSA §1482, sub-§1, ¶C, sub-¶ (4) is enacted to read:

(4) Tax surcharge. In addition to the initial excise tax imposed by this paragraph, there shall be levied a once only excise tax surcharge in the following amounts according to the gasoline consumption of each automobile with a seating capacity of not more than 8 persons.

Miles per gallon	Automobile Model Year 1977	1978	1979	1980
20 and over	____	____	____	____
19	____	____	____	$100
18	____	____	$100	200
17	____	$100	200	300
16	$100	200	300	400
15	200	300	400	500
14	300	400	500	600
13	400	500	600	700
Under 13	500	600	700	800

Miles per gallon for each model type shall be the final economy figure established for each model type of the Environmental Protection Agency in compliance with Section 503 of P.L. 94-163, the 1976 Energy Policy and Conservation Act. This tax surcharge will be imposed on all automobiles manufactured in model year 1977 and thereafter. For the purposes of this section, the term "automobile" shall not include motorized homes, pick-up trucks or other motor trucks.

Sec. 2. 36 MRSA §1487, sub-§1, first ¶, as last amended by PL 1967, c. 23, is further amended to read:

1. Municipal tax collector. In the case of municipalitie or a municipally owned airport or seaplane base the municipal tax collector or such other person as the municipality may designate shall collect such excise tax or excise tax surcharge and shall deposit the money received with the municipal treasurer monthly.

Sec. 3. 36 MRSA §1489, sub-§1, is amended to read:

1. Municipal excise tax account. In municipalities the treasurer shall credit money received from excise taxes or excise tax surcharges to an excise tax account, from which it may be appropriated by the municipality for any purpose for which a municipality may appropriate money.'

Statement of Fact

This amendment accomplishes the following:

1. Insures that the surcharge is a once only levy;

2. Insures that trucks and mobile homes will not be assessed the surcharge;

3. Insures that the surcharge revenues will remain at the municipal level;

4. Decreases the size of the surcharge at different miles per gallon (thus reducing anticipated revenues from approximately $2,850,000 to approximately $1,700,000); and

5. Clarifies that the car is assessed the surcharge according to its model year not according to the year it is first registered.

Reported by the Minority of the Committee on Energy.

Reproduced and distributed under the direction of the Clerk of the House.
3/19/76

(Filing No. H-995)

A Maine Resolve

This Resolve has become law, notwithstanding the veto of the Governor.
(Constitution, Article IV, Part Third)

Received in the office of the Secretary of State JUN 14 1976

JUN 14 1976

CHAPTER 54 RESOLVES

STATE OF MAINE

H. P. 2269 — L. D. 2336

RESOLVE, to Require the Department of Human Services to Reopen the Itinerant Office in Belfast.

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment of the Legislature unless enacted as emergencies; and

Whereas, H. P. 2014, an Order, required the Committee on Health and Institutional Services to conduct a study of the effect on the Belfast area of the closing of the Belfast office of the Department of Human Services and to make recommendations including legislation; and

Whereas, the committee has found that the closing of the Belfast office has had an adverse effect on services for the department's clients in the Belfast area; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Belfast office reopened. Resolved: That the Department of Human Services is directed to reopen an office in the Belfast area for departmental staff, including, but not limited to, public health nurses, food stamp workers and vocational rehabilitation workers; and be it further

Resolved: That the Department of Human Services is directed to provide the necessary equipment for this office; and be it further

Resolved: That the department shall continue to maintain an operational office in the Belfast area unless the Legislature at a future date directs the department to close such an office; and be it further

Resolved: That there is appropriated from the General Fund the sum of $45,000 to carry out the purposes of this resolve; and that any of these funds unexpended at the end of the fiscal year shall not lapse but shall carry forward into subsequent fiscal years, to be expended for the purposes of this resolve.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

EFFECTIVE JUN 14 1976

A Maine Constitutional Resolve

CHAPTER 6

RESOLUTION, Proposing an Amendment to the Constitution Allowing the Governor Ten Days to Act on Legislation.

Constitutional amendment. RESOLVED: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Art. IV, Pt. 3, § 2, last sentence, as amended by CR 1973, c. 2, is further amended to read:

If the bill or resolution shall not be returned by the Governor within ~~five~~ ten days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.

Form of question and date when amendment shall be voted upon. Resolved: That the aldermen of cities, the selectmen of towns and the assessors of the several plantations of this State are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives at the next general election in the month of November or special state-wide election on the Tuesday following the first Monday of November following the passage of this resolution to give in their votes upon the amendment proposed in the foregoing resolution, and the question shall be:

"Shall the Constitution be amended as proposed by a resolution of the Legislature to allow the Governor ten days to act on legislation?"

The inhabitants of said cities, towns and plantations shall vote by ballot on said question, and shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the office of the Secretary of State in the same manner as votes for Governor and Members of the Legislature, and the Governor and Council shall review the same, and if it shall appear that a majority of the inhabitants voting on the question are in favor of the amendment, the Governor shall forthwith make known the fact by his proclamation, and the amendment shall thereupon, as of the date of said proclamation, become a part of the Constitution.

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing resolution, accompanied by a copy thereof.

A Maine Joint Resolution

WHEREAS, the value of Maine's public school buildings is reputed to be $738,000,000 and the cost of insurance premiums to pay for their protection during the last 4 years has been almost $6,000,000; and

WHEREAS, there is grave concern that, despite these high premiums, many school buildings are underinsured and their replacement in case of disaster would place a heavy burden on the state's taxpayers over and above the payment of claims by insurance companies; and

WHEREAS, the State of Maine, operating under a $500,000 deductible self-insurance program paid $329,000 in premiums in 1975 to cover $442,000,000 value in state buildings; and

WHEREAS, it is imperative that the Legislature identify unnecessary costs and the possibility of serious emergency cash demands wherever found in the thread of State Government; now, therefore, be it

ORDERED, the Senate concurring, that the special subcommittee of the Appropriation and Financial Affairs Committee study the funding of state agencies, review the procedures by which our public schools are presently insured, examine the possible financial jeopardy to the taxpayer in case of an emergency and identify alternative methods to protect school buildings which might offer more coverage at the same or lower cost; and be it further

ORDERED, that the subcommittee report its findings, along with suggested legislation it may choose to support, at the earliest possible time to this special session or the next special or regular session of the Legislature.

Remove the language requiring Senate concurrence and this would be a simple resolution.