

# MAINE STATE LEGISLATURE

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# MAINE LEGISLATIVE DRAFTING MANUAL



Published under the auspices of the  
Legislative Council, Maine State Legislature

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State House, Station 7  
Augusta, Maine 04333



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# **MAINE LEGISLATIVE DRAFTING MANUAL**

**1st Edition  
October 1990**

**Revised through November 1994**

**Published under the auspices of the  
Legislative Council, Maine State Legislature**

**Office of the Revisor of Statutes  
State House, Station 7  
Augusta, Maine 04333  
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## PREFACE

This manual is intended for use by those who draft legislation for consideration by the Maine Legislature. It is a guide to the form, format and legislative style that should be used in preparing and editing legislative text. It does not attempt to provide instruction in the legal and constitutional considerations that both support and limit the actions of the Legislature. An understanding of this framework and appropriate background and legal research is essential to competent drafting.

This document sets out the general rules and accepted conventions used in Maine laws. It can not and does not attempt to address every situation or answer every question about proper form and format that arises each session. Nor is this manual intended to replace authorities such as Sutherland's Statutory Construction or Dickerson's Legislative Drafting. The standards set out in this manual have not been expressly adopted or endorsed by the Legislature, except as they are contained in statutes and legislative rules. While these principles are used by the staff of the Office of the Revisor of Statutes in preparing and reviewing legislation that is submitted to the Legislature, this manual has no legal authority and is not intended to be used as an aid in statutory construction.

Legislative style and statutory usage have evolved over time and will continue to evolve. This manual is designed to be periodically updated with replacement pages as new laws, rules, customs or conventions supersede those in effect in September 1990. If further information is desired, drafters are encouraged to contact the Office of the Revisor of Statutes with any questions regarding the submission and preparation of legislation.

We wish to thank those of our colleagues in the Legislature's staff offices and in the Attorney General's Office who submitted comments on a draft version of this manual. Their review and suggested refinements are appreciated.

The primary source for this manual is the Manual for Legislative Drafting (1980) by the Maine Legislative Research Office. We have also drawn heavily on a number of sources and authorities. We wish to particularly acknowledge the following:

Minnesota Revisor's Manual (1984) by the Minnesota Office of the Revisor of Statutes

The Fundamentals of Legal Drafting (1986) and Legislative Drafting (1954) by Reed Dickerson

Manual for Legislative Drafting (1988) by the Maine Office of Revisor of Statutes

A Guide to Maine Bill Drafting (1976) by the Maine Office of Legislative Assistants

The Office of the Revisor of Statutes is pleased to dedicate this manual to the memory of Brian Blaisdell. Mr. Blaisdell was the Deputy Revisor of Statutes at the time of his death in 1988 and was a legislative drafter without peer.



# PART I

## THE DRAFTING PROCESS

### CHAPTER 1

#### THE OFFICE OF THE REVISOR OF STATUTES

The Office of the Revisor of Statutes is one of four nonpartisan staff offices that provide legal services, policy analysis, administrative support and staffing to the members and committees of the Maine Legislature. The nonpartisan offices, including the Office of Policy and Legal Analysis, the Office of Fiscal and Program Review and the Law and Legislative Reference Library, operate under the auspices of the Legislative Council and the council's Executive Director.

While the Revisor's Office traces its lineage back to the Board of Jurisprudence appointed in 1820 to draft the first General Laws of Maine, the first permanent Revisor of Statutes was appointed in 1930 and the office was established in 1931. The office's original functions were to assist Legislators in the drafting of legislation, to index and publish the Laws of Maine and to update the Maine Revised Statutes. These functions have continued to the present, and additional duties have been assigned by legislation, the Legislature's Joint Rules, and policies established by the Legislative Council.

The office now:

- Acts as the intake point for all proposed legislation and enforces the filing requirements and cloture dates established by the Joint Rules;
- Drafts initial legislation and amendments from requests submitted by or on behalf of Legislators;
- Edits the style, grammar, form and format of all documents presented for legislative action to ensure statutory consistency, and produces the final version of these documents;
- Publishes the Laws of Maine;

- Maintains a computerized database which has the full text of the Maine Revised Statutes and the history of each statutory section since 1964;
- Identifies and suggests the proper resolution of statutory errors; and
- Assists in the recodification of titles and the maintenance and publication of the Maine Revised Statutes Annotated.

While the office will not review or edit proposed legislation prior to filing by a Legislator or state agency, legislative attorneys are available to answer general questions concerning proper style, form and format not covered in this manual.

## **CHAPTER 2**

### **CLOTURE AND INTAKE**

#### **Section 1. Cloture**

Cloture is the date by which proposed drafts and legislative drafting requests must be filed in the Office of the Revisor of Statutes. The deadlines for the filing of requests are set forth in the Joint Rules, which are adopted at the commencement of each Legislature and supplemented by policies adopted by the Legislative Council. Joint Rules are subject to change at each biennium and may be amended during a legislative session. Questions about deadlines and procedures in effect at any point should be directed to the Revisor's Office.

It is important to note that the filing of a bill title or a brief statement of intent is not sufficient to meet the cloture deadline. In order for a bill request to be considered "complete" for cloture purposes, it must contain enough information and instructions for a drafter to prepare a draft for introduction. The standard for determining whether a request is complete is: Can an experienced drafter, working with the information and directions contained in the request or with generally available reference materials specified in the request, draft a bill that would be suitable for introduction? Requests that contain insufficient information are classified as incomplete and are voided.

Bill requests submitted after the cloture deadline are submitted to the Legislative Council for review and approval. These requests will not be processed by the Revisor's Office until a majority of the council votes in favor of having the legislation considered.

#### **Section 2. Authority for introduction**

Each legislative instrument must be introduced under a proper authority. Although bill requests come from a wide variety of sources, including Legislators, state agencies, study groups, joint standing committees, interest groups, lobbyists and others, the authority under which a bill may be introduced is generally derived from one of the three following categories.

**A. Legislators.** The majority of bills are authorized for introduction as Legislators' bills filed before cloture or after deadline. As provided in Joint Rule 28, these bills have a prime sponsor and may have an unlimited number of cosponsors. Citizens, interest groups or lobbyists must have a legislative sponsor who agrees to the filing of their bill.

**B. Departments and agencies.** Bills that originate from departments or agencies follow the same rules of sponsorship but also bear a legend on the bill jacket indicating the bill's origin. Governor's bills do not have a jacket legend.

**Example:**

Submitted by the Department of Human Services  
pursuant to Joint Rule 24.

**C. Other.** Bills may also be submitted pursuant to other authorities such as a public law, a resolve, a private and special law, the Maine Revised Statutes, a joint order or a legislative rule. Bills submitted under these authorities do not have sponsors. Instead, these bills bear appropriate legends on the bill jackets indicating their authority.

**Examples:**

Submitted by the Joint Standing Committee on Audit  
and Program Review pursuant to the Maine Revised  
Statutes, Title 3, chapter 23.

Submitted by the Joint Standing Committee on State  
and Local Government pursuant to Joint Order H.P. 9.

### **Section 3. Legislative confidentiality**

Legislative bill requests and related working papers are exempt from disclosure during the legislative session or sessions in which the papers are prepared or considered or to which the papers are carried over under the freedom of access provisions contained in the Maine Revised Statutes (see Title 1, section 402, subsection 3, paragraph C).

The Legislative Council has adopted a comprehensive policy on legislative confidentiality which provides, among other things, that:

- Legislative staff may prepare or change drafts of bills or amendments only for Legislators or others who have authority to introduce legislation;
- Drafts may be released only to the sponsor and persons that the sponsor has specifically designated; and
- Any information concerning a bill request is completely confidential, unless a Legislator has expressly waived confidentiality, for all or a part of the request, except that nonpartisan staff may share confidential information with each other when necessary in accordance with their office policies.

#### **Section 4. Legislative numbering**

When a bill request is received by the Revisor's Office it is entered onto a computerized tracking system by its title and the name of the sponsor or other authority. It is then assigned a Legislative Reference (L.R.) number which appears at the bottom of the page of all drafts. Because the L.R. number is used by the nonpartisan staff offices to track drafts before they are introduced, anyone inquiring about the status of a draft should refer to the L.R. number.

When a bill is introduced in the House or Senate, it is given a Legislative Document (L.D.) number, and it is also assigned a House or Senate paper number (e.g., H.P. 123 or S.P. 456).

Amendments or other subsequent requests relating to the bill are given the L.R. number of the original bill request, along with an item suffix (e.g., L.R. 1288 (2)) that identifies the particular document. If the amendment is introduced, the Clerk of the House or Secretary of the Senate assigns it an amendment letter (e.g., Committee Amendment "A") and a filing number (e.g., H-749).

When a bill is enacted by the Legislature, the enactor receives its own item suffix which appears at the bottom of the page. If the Governor approves the legislation it is assigned a chapter number by the Engrossing Department. Chapter numbers are issued



sequentially, based on the type of the enacted law (i.e., Public Law 1989, chapter 1 is followed by Public Law 1989, chapter 2, etc., but the first enacted Resolve is designated Resolve 1989, chapter 1, and so on).

While the Revisor's Office can locate a document using any of the above numbering systems, it is always most helpful to specify the L.R. number when inquiring about a specific item.

## CHAPTER 3

### THE INITIAL DRAFT

The ultimate goal of a drafter of legislation is the creation of a law that effectuates the intent of the sponsor, committee or commission in a simple and clear manner. Drafting such a law involves much more than converting an idea into proper language. The drafter must gain a clear understanding of the intended goal and must review the existing legal and factual framework that forms the background of the drafting request. Only then can the drafter create a broad outline with which to work, carefully cover the significant details, and add the fine touches to polish the draft. As a final step, the drafter must make sure that the finished product is consistent with the rest of the law. This chapter identifies the important sources that must be considered and highlights important steps in the drafting process.

#### **Section 1. Preliminary research and resources**

In preparing an initial draft, the drafter must consider the existing legal and factual framework and develop a draft that is consistent with that framework or that addresses any inconsistencies.

The United States Constitution, the Constitution of Maine, the Maine Revised Statutes, federal law, judicial opinions and opinions of the Attorney General provide parameters for drafting. In addition, other tools, documents and resources are available to the drafter, but not all of these resources will be useful in the drafting of every bill.

**A. The United States Constitution.** Volumes have been written on the relationship of the provisions of the federal Constitution to the states and their laws, and this manual does not attempt to cover this complex subject area.

A drafter must be aware that the United States Constitution is the supreme law of the land, and the Supremacy Clause (Article VI, paragraph 2) provides that the provisions of the United States Constitution and federal law take precedence over state constitutions and laws.

Article I, Section 10 sets forth a number of explicit restrictions on the powers of the states, but the Tenth Amendment reserves all powers not delegated to the federal government by the Constitution to the various states.

Drafters should be alert to the possibility of federal constitutional issues which may be raised by proposed legislation and should refer to standard reference sources or their counsel. The Constitution of the United States, published by the Library of Congress and Lawrence Tribe's Constitutional Law are good starting points for constitutional analysis.

**B. The Constitution of Maine.** A working knowledge of the Constitution of Maine is of vital importance in drafting legislation, since the provisions of the Constitution override any conflicting statutory provisions. When dealing with issues pertaining to the Constitution of Maine, a drafter must consider interpretations of the Constitution by relevant federal and state court cases, as well as relevant opinions of the Attorney General.

A complete analysis of the limitations the Maine Constitution places on the drafter is beyond the scope of this manual. Sections of the Constitution of Maine that have a very direct effect on the drafting of legislation include:

Article I, Section 3	Right of religion
Article I, Section 4	Freedom of speech
Article I, Section 11	Bills of attainder, ex post facto laws and laws impairing contracts
Article I, Section 15	Right of petition
Article I, Section 21	Right to private property
Article III, Section 2	Separation of powers; delegation
Article IV, Part First, Section 1	Requirement that bills contain an enacting clause
Article IV, Part Third, Section 1	Convening of the Legislature; limitation on business of Second Session

Article IV, Part Third, Section 2	Signing of bills; vetoes
Article IV, Part Third, Section 7	Limitation on law increasing legislative salaries
Article IV, Part Third, Section 9	Requirement that revenue bills originate in the House of Representatives
Article IV, Part Third, Section 13	Limits on private and special legislation
Article IV, Part Third, Section 14	Limitation on the creation of corporations by special acts of the Legislature
Article IV, Part Third, Section 15	Procedure for calling a constitutional convention to amend the Constitution of Maine
Article IV, Part Third, Section 16	Effective date for legislation and requirements and restrictions on emergency bills
Article VIII, Part Second, Section 1	Legislative power concerning procedures for alteration of municipal charters
Article IX, Sections 9 and 14	Restrictions on state bonding authority and property taxes
Article X, Section 3	Effect of laws in force prior to adoption of the Constitution of Maine

**C. Maine Revised Statutes Annotated.** The Maine Revised Statutes Annotated (MRSAs), published by West Publishing Company in cooperation with the Office of the Revisor of Statutes, contains the text of the Maine Revised Statutes. Included after each section are very brief summaries of case law issued by the Maine Supreme Judicial Court and various federal courts which have interpreted the Maine statutes.

The text of a particular section contained in a bound volume may have been updated since that volume was published. Updated text and recent annotations are contained in annual "pocket parts" at the rear of each volume, and it is essential that a drafter consult the pocket part as well as the bound volume.

In certain cases, there may have been additional changes made since the pocket part was published. If so, these changes may be located using the Laws of Maine, West's Maine Legislative Service and recent chaptered laws. It is often necessary to read the bound volume, the pocket part and more recent changes together in order to understand correctly the law that is currently in effect.

The MRSA also contains an annually updated subject index that references the title and section of statutes on each subject. The following tables are located in the last volume of the Maine Revised Statutes Annotated after the alphabetical subject index.

(1) Table 1 is the cross-reference table for revisions of the Maine Revised Statutes. The table indicates where statute chapters and sections contained in the previous revision of the statutes may be found in the new revision.

(2) Table 2 is a conversion table for the session laws enacted by the Legislature since 1954 and the Maine Revised Statutes. This table lists the public laws for all sessions of the Legislature since 1954 and indicates where the subjects covered in these laws are located in the Maine Revised Statutes.

(3) Table 3 is a table of the popular names of acts. It shows where acts with popular names are located within the Maine Revised Statutes. The drafter should not take the information in this table at face value, however, since the popular name of an act can not be used unless the text of a section of the Maine Revised Statutes clearly authorizes the citation of that body of law by its popular name.

(4) Table 4 indicates where Uniform Acts and Interstate Compacts adopted by the State are located within the Maine Revised Statutes.

(5) Table 5 lists certain statutes of the Maine Revised Statutes of 1954 and other laws passed between 1954 and 1964 that were not repealed by the act that enacted the Maine Revised Statutes of 1964 and that were not contained in the text of the 1964 revision.

**D. Maine case law.** The opinions of the Maine Supreme Judicial Court (also known as the "Law Court") are contained in the Atlantic Reporter, published by West Publishing Company, and are an important resource in bill drafting. Cases are cited by the names of the parties, and volume, page and year of decision (e.g., Norris v. State, 541 A.2d 926 (Me. 1988)).

A portion of the Atlantic Reporter which contains only Maine cases is published as the Maine Reporter, but the Atlantic Reporter citations are also used to cite and locate the cases in this series. Until 1965 there was a parallel "official" publication for Law Court cases. This series, the Maine Reports, is cited using a slightly different form (e.g., Cole v. Lord, 160 Me. 223 (1964)).

Additional cases of the United States District Court for Maine may be located in the Federal Supplement, cases of the First Circuit Court of Appeals are printed in the Federal Reporter, and United States Supreme Court cases are found in the United States Reports and the Supreme Court Reporter.

Maine Superior Court opinions are not compiled in an official publication, although there are a number of commercial services that publish summaries of these decisions. If a Superior Court decision is relevant to a particular piece of legislation, a copy of the opinion can be obtained from that court's clerk's office.

**E. Maine Key Number Digest.** This digest, also published by West Publishing Company, brings together under one standard classification system annotations of opinions of Maine's Supreme Judicial Court, the Attorney General, and the federal courts when construing Maine law. A brief annotation summarizing the holding of each case is included, along with a citation to the Atlantic Reporter or the appropriate federal reporter.

**F. History and disposition: old legislative documents as models.** The Legislative Information Office compiles a record of the actions taken on all legislation introduced in each legislative session, the dates on which action was taken and the final disposition of the legislation. Following each legislative session, a paperbound volume is published by the Legislative Information Office entitled History and Final Disposition of Legislative Documents. It lists the title, legislative history and disposition of all legislation introduced at that session. The Office of Policy and Legal Analysis publishes Joint Standing Committee Bill Summaries which briefly summarize the content of every bill referred to a legislative committee, along with the actions taken on the bill. These two publications provide access to relevant documents from previous sessions, which are often good models on which to base drafts. Copies of these publications are available in the Law and Legislative Reference Library.

**G. Laws of Maine.** The Laws of Maine contains all of the laws enacted in any given session of the Legislature, including private and special laws and resolves not found in the Maine Revised Statutes Annotated.

Each annual volume of the Laws of Maine contains a subject index and a cross-reference table to the statutes. At intervals, an index volume is published that contains a cumulative subject index, a cumulative cross-reference table, a table of all Public Laws not allocated to the Revised Statutes of 1964 that were affected by subsequent session laws, and a table of all Public Laws exempted in revisions prior to 1964 that were affected by subsequent session laws.

**H. Index to private and special laws.** The Office of the Revisor of Statutes maintains a cumulative subject index covering all private and special laws enacted by the Legislature. This index should be checked if the drafter suspects that the requested legislation may have been the subject of previous special legislation.

**I. Opinions of the Attorney General.** The Attorney General frequently issues formal opinions providing guidance as to the constitutionality or effect of various laws, delineating rights and responsibilities of state agencies, and resolving questions arising out of disputes between departments or branches of government. While not binding, these opinions are carefully researched and should be carefully considered by the drafter.

**J. Department rules.** Statutes often give departments or agencies authority to issue rules to implement legislative policies or to provide a level of detail not appropriate in legislation. When adopted in accordance with the Maine Administrative Procedure Act, these rules have the force of law. A drafter should ascertain whether agency rules have been issued covering the subject area in question, and should avoid creating conflicts between the proposed statute and the rules, except when that is the object of the draft. In that case, the relevant rule should be clearly identified and explicitly overruled.

**K. Study reports.** Committees and commissions directed to study a particular issue or subject are usually required to submit a report. The completed report is often accompanied by proposed legislation, which can provide a good model from which to draft later proposals relating to the same subject. Study reports are published and are available through the Law and Legislative Reference Library.

**L. Laws of other states.** Because problems that affect Maine frequently affect other states, a drafter may find that legislation similar to the request being drafted has been enacted in another state. Legislation enacted in other states may also be found in the annual Suggested State Legislation published by the Council of State Governments.

**M. Uniform and model acts.** The National Conference of Commissioners on Uniform State Laws prepares uniform acts, which it publishes in Uniform Laws Annotated. Table 4 in the last volume of the Maine Revised Statutes Annotated shows where uniform acts adopted by the State are found in the Maine Revised Statutes.

**N. The Law and Legislative Reference Library.** The Law and Legislative Reference Library maintains materials on subjects of legislative interest, including information on programs of other states, uniform state legislation, copies of bills and resolutions introduced in previous sessions of the Legislature and comprehensive studies of particular problems compiled by various public and private groups from this State and other states.



**O. Other resources.** The Revisor's Office, the Office of Policy and Legal Analysis (OPLA), the Office of Fiscal and Program Review (OFPR) and the Attorney General's office have extensive expertise and, depending on the nature and source of an inquiry, may be able to offer assistance.

The personnel in OPLA specialize in certain specific subject areas through their work with the joint standing and select committees of the Legislature and legislative and special study groups. The analysts in OFPR have expertise concerning fiscal issues in specific subject areas and can provide the drafter with fiscal information.

Experts may also be found within state agencies, independent agencies and the private sector. Private sector resources include lobbyists, persons in business or industry or representatives of public service or interest groups.

## **Section 2. Writing**

**A. Structure.** After completing any necessary research and before beginning to write, determine the structure of the draft. The structure of many bills is apparent due to the nature of the topic. For instance, if a bill will include a set of new procedures, write the draft following the chronological order of those procedures. When the structure of a bill is not as apparent, outlining is a particularly important first step because it forces the drafter to construct a logical progression.

In structuring a bill, remember that normally:

- General provisions precede special provisions.
- More important provisions precede less important provisions.
- Permanent provisions precede temporary provisions.
- Technical or housekeeping provisions appear last.

Refer to Part II for more specific rules on the form and format of proposed legislation.

In addition to writing a draft on a typewriter or word processor, the following methods may be useful. So long as they are legible, the Revisor's Office will accept drafts in these formats.

**(1) Mark-up.** To use the mark-up method, the drafter uses a photocopy of the existing law, as it appears either in the Maine Revised Statutes Annotated, including pocket parts, in the Laws of Maine or in an updated statutory database printout, and marks the desired changes using strike-through and underscoring, as appropriate. This method obviates errors, such as omitting and inadvertently changing portions of existing law, that may occur if existing wording is rewritten or retyped.

**(2) Cut-and-paste.** The cut-and-paste method is similar to the mark-up method and allows the drafter to insert blocks of text that make changes to existing law interspersed with blocks that enact new law. This method and the mark-up method are helpful when using existing statutory language as a model for the draft.

**B. Final review.** Before a draft is submitted to the Revisor's Office for processing, the drafter should double check a few items. Are the sections numbered in order? Are all references and citations correct? Have terms been used consistently? Are internal and external cross references consistent? The following is a checklist of items that should be considered or addressed in most instances.

- (1) Appropriate type of legislative instrument?
- (2) Constitutional limits?
- (3) Relevant statutes?
- (4) Conflicting laws?
- (5) Definitions?
- (6) Administrative powers?
- (7) Appropriation?
- (8) Effective date?
- (9) Accurate title and statement of fact?
- (10) Statutory references?

Most importantly, after the drafter has determined the bill's technical correctness, grammar and legal elegance, make sure it still reflects the underlying purpose and intent.

After applying the above checklist to a draft, you may wish to ask legal counsel or another person to read over the draft and suggest improvements.

After the initial draft is written and reviewed, it is ready for processing. Once submitted to the Revisor's Office by or on behalf of a Legislator, the draft is the property of and is under the control of the legislative sponsor. Any subsequent changes made to the draft must be authorized by the bill's sponsor and should be made on the computer-printed version that has been through draft processing in the Revisor's Office.

### **Section 3. Draft processing**

**A. Attorney review.** When a draft is submitted, it is first reviewed and revised by one of the legislative attorneys in the Revisor's Office. The logical structure, the proposed allocation to the Maine Revised Statutes, and the form and format are examined. The language is edited where necessary to conform to the legislative style and grammar explained in Part III, and any unnecessarily gender-specific terms are eliminated.

Questions concerning intent and clarity sometimes arise at this stage, and the sponsor or proponent is contacted when necessary to resolve these issues.

**B. Technical processing.** The technical processing of a draft is done by one or more legislative technicians in the Revisor's Office. Technicians supply the technical elements of legislative instruments, such as appropriate legislative histories, and may fix or point out errors made in drafts, such as amending a law that is already repealed, amending a law that is in conflict without addressing the conflict, or making erroneous allocations to the Maine Revised Statutes.

**C. Legal proofreading.** Proofreaders in the Office of the Revisor of Statutes edit the technically processed draft for grammar, punctuation, spelling, structure, arrangement, consistency, coherence and clarity. Proofreaders often offer suggestions or pose questions to address substantive ambiguities or inconsistencies in the draft. These issues are resolved by legislative attorneys, who consult as appropriate with the sponsor or outside drafter.

A draft goes through one or more cycles of attorney review, technical processing and proofreading, until it is judged ready for introduction. At that point the sponsor and any cosponsors are notified that the draft is ready to be signed, and are sent a copy for review. After incorporation of any final changes, the draft is sent to the sponsor's chamber, and the Secretary of the Senate and the Clerk of the House assign an L.D. number, suggest reference to the appropriate committee, and order the bill printed. Only then does the draft become public.



## PART II

# FORM AND FORMAT OF LEGISLATIVE INSTRUMENTS

After deciding what the objectives of a particular piece of legislation are, the drafter must determine which type of legislative instrument is proper to accomplish those objectives. Each type of legislative instrument is discussed in a separate chapter of this Part. The final version of each of these instruments is processed in the Revisor's Office.

## CHAPTER 1

### BILLS

#### Section 1. Types of bills

There are two types of bills, or acts. Both types of bills effect laws of potentially unlimited duration.

**A. Public law.** Public law bills propose laws that affect all of the people of the State or all persons or things of a particular class. Since these bills affect the general law, the sections of a public law bill that are of general or long-lasting application are almost always allocated to the Maine Revised Statutes; that is, they are placed somewhere in the existing statutory framework. Temporary provisions of a public law bill or housekeeping provisions, such as transitional provisions, retroactivity clauses, appropriation or allocation clauses, effective date clauses and emergency clauses, dealt with in more detail later in this Part, pages 7 to 17, generally are not allocated to the statutes but are drafted as unallocated law and placed at the end of the bill.

**B. Private and special law.** A private and special law bill is distinguished from a public law bill in that it has a much narrower scope. A private and special law bill proposes a law that relates to particular persons or things or to a class of particular persons or things, or operates on or over a portion of a class instead of the entire class. For example, water and sewer districts are routinely created by means of a private and special law bill. A private and special law is not allocated to the Maine Revised Statutes, but appears in the printed volumes of the Laws of Maine.

Occasionally, a bill will propose laws relating to the people of the State in general (public laws) as well as to particular entities (private and special laws). If possible, a drafter should avoid proposing public laws and private and special laws in the same bill, since it may be unclear which provisions are of general application, and it would be difficult to index and locate the laws. If combining them can not be avoided, bills affecting both public and private and special laws are classified as public law bills.

## **Section 2. Elements of bills**

The elements of a bill are listed below in the order in which they appear in bills. Bills need not contain all of the elements listed.

**A. The title.** The purpose of a bill title is to provide a general idea of the subject matter of the bill. Titles of bills always begin: "An Act ..."

Unlike many other states, Maine has no constitutional requirement concerning the titles of bills, and titles do not have to be all-inclusive of the content of the bill. A title should be short and descriptive of the content and scope of the bill and should not attempt to be an exhaustive index of every subject covered by the bill. In addition, titles should not be overly broad or vague, such as "An Act Concerning Labor."

The title of a bill should state the subject of the bill in an objective manner. Avoid using inflammatory or biased language in the title, such as: "An Act to Improve the Moral Character and Health of the Citizens of Maine by Prohibiting the Drinking of Liquor on Sunday." The Revisor of Statutes corrects inaccurate, overbroad or misleading bill titles.

Bill requests are given titles for filing, tracking and indexing purposes. The title of a bill, however, is not finalized until every other part of the bill is written. To ensure that the title accurately reflects the subject matter of the bill and is not misleading or incorrect, draft the title to fit the bill; never draft the bill to fit the title.

Similarly, when amending or redrafting a bill, check the title of the original bill to be sure that the changes in the bill do not require a change in the title. This is particularly important in bills dealing with appropriations of funds where the amount of the appropriation is set out in the title and the amounts are being changed.

The following are examples of bill titles:

"An Act to Extend the Statute of Limitations for Medical Malpractice Cases"

"An Act to Clarify the Traffic Movement Standards under the Site Location of Development Laws"

"An Act to Restrict Smoking in Enclosed Shopping Malls"

"An Act to Establish an Income Tax Exemption for National Guard Members and Certain Members of the Military"

**A-1. The mandate preamble.** The Constitution of Maine, Article IX, Section 21 requires that if a bill requires a local unit of government to expend funds from local revenues but does not provide funding for at least 90% of those expenditures, passage of the bill requires an affirmative vote of 2/3 of all the elected members.

The mandate preamble appears directly after the bill title and before the emergency preamble, if an emergency preamble is used.

**Example:**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.



**B. The emergency preamble.** If a measure is to take effect sooner than 90 days after adjournment of the legislative session, it must contain an emergency preamble and an emergency clause (as discussed in this Part, page 16) and be enacted as emergency legislation.

The emergency preamble, if used, appears after the title of the bill. The first and last paragraphs of the emergency preamble are standard in form and appear in every emergency preamble. The middle paragraphs are used to set out the background situation that necessitates the emergency enactment as required by the Constitution of Maine. In practice, the elements contained within the bill itself, such as an early reporting deadline for a study commission, may require the bill to be an emergency.

**Example:**

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

**Whereas,** current law preserving rental housing for low-income households will expire on August 1, 1989; and

**Whereas,** 2,000 rental units will be at risk in 1990 and 18,000 units will be at risk over the next decade; and

**Whereas,** no new federally subsidized low-income rental units have been constructed since 1984 while, at the same time, the number of low-income households has increased significantly; and

**Whereas,** it is necessary to preserve as many of these low-income rental units as possible for low-income households; 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,

**C. The enacting clause.** The Constitution of Maine, Article IV, Part First, Section 1 requires an enacting clause on every public law bill or private and special law bill. The enacting clause appears after the title of the bill or, if the bill is an emergency measure, after the emergency preamble. The enacting clause reads: "**Be it enacted by the People of the State of Maine as follows:**"

**D. The main body of the bill.** The main body of the bill contains the substantive language of the bill as well as the technical and housekeeping provisions listed below. Not all of the elements listed are necessary in all, or even most, cases. When the inclusion of some of these elements is necessary or desirable, they are arranged according to the type of law affected or effected, as discussed in this Part, pages 22 and 23. Within that order, the sections are further arranged by subject matter as follows:

**(1) Short title.** A short title section, one that establishes the popular name of an act, is not mandatory, but often is useful when a bill enacts a large uniform code or other major segment in the Maine Revised Statutes. Short titles are not used in private and special laws. The short title is useful when referring to that law elsewhere in the statutes and for use by courts, Legislators and others when dealing with that law as a whole. The following is an example of the standard language used in a short title section:

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**§771. Short title**

This chapter may be known and cited as the "Radon Registration Act."

(2) **Purpose clauses.** As a rule, purpose clauses, however titled, should not be included in acts or resolves. A well-drafted law does not require the inclusion of an aid for interpretation, and the unnecessary inclusion of a purpose clause may actually obfuscate the plain meaning of substantive provisions, leaving the court to guess the Legislature's true intent. Another danger in using these clauses is that drafters tend to rely on them to convey the intent of the Legislature in lieu of including language in the substantive provisions of the law that effectuate that intent. For these reasons, the Revisor's Office routinely removes purpose clauses that do not fall under one of the limited exceptions listed below.

Purpose clauses may be used:

- (a) To strengthen a law against a constitutional challenge; or
- (b) When there are major changes in existing law and there may be uncertainty as to whether the changes should be construed as merely updating existing language or structure, or as a substantive change in legislative intent.

If, for purposes other than those listed above, a guide for interpretation is necessary, consider including a rule of construction in the statute rather than a purpose clause.

Example:

**§302. Rule of construction**

This section must be liberally construed.

If, however, the use of a purpose clause can not be avoided, the clause should be concise and address the specific construction problem. Purpose clauses should not contain any substantive provisions.

**(3) Definitions.** A definition section should be included in a bill only when necessary. A definition may be used to:

- (a) Maintain clarity and consistency when using terms that may be interpreted differently from their common meanings;
- (b) Define words that are difficult or technical; or
- (c) Define terms that may be substituted for longer terms or phrases used repeatedly in the law.

If a word has a common meaning and is clearly understood without a special explanation, a definition should not be used. A definition section should never include substantive provisions of law.

The standard language used to introduce a definition section is: "As used in this (Title, Part, chapter, section, etc.), unless the context otherwise indicates, the following terms have the following meanings."

Defined words should be arranged alphabetically. When writing definition sections, use the term "means" rather than "shall mean" following each word or phrase being defined.

Example:

**§1971. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Commissioner.** "Commissioner" means the Commissioner of Inland Fisheries and Wildlife.

2. **Cowling.** "Cowling" means the forward or rear portion of the vehicle, usually of fiberglass or similar materials, surrounding the motor and clutch assembly.

If a definition is intended to be illustrative rather than exhaustive (i.e., rather than setting out all items covered by the word, the definition sets out only examples of the type of item to be covered by the word), the term "includes" is used. An example of an illustrative definition would be:

"Tuna" includes that fish commonly called a horse mackerel.

A more complete discussion of the proper use of definition sections can be found in chapter VI of The Fundamentals of Legal Drafting by Reed Dickerson.

**(4) General rules, permanent provisions and most significant provisions.** These sections set out the main portions of the law or the general rules that will apply to the persons to whom the law is addressed. These sections form the core of the enacted law and should be clear and concise. Each separate idea or rule should be expressed in a separate section.

**(5) Subordinate provisions, temporary provisions and exceptions.** These sections include any major exceptions to the general provisions and rules set out in the preceding sections and also include minor provisions of the law that are of less general application or interest. Administrative provisions, for example, would be included in these sections.

**(6) Penalty or enforcement provisions.** When a law requires or prohibits a certain action or type of conduct, it is generally necessary to include an enforcement mechanism such as a penalty or sanction for failure to comply. The technique for writing civil and criminal penalty provisions is described in Part IV, chapter 3.

**(7) Housekeeping.** The main body of a bill may include several technical housekeeping provisions. These sections are placed at the end of the main body of the bill and are not generally allocated to the Maine Revised Statutes, even in public law bills. The most common of these sections, listed in the usual order of their appearance, are as follows.

(a) **Savings or application clause.** The Maine Revised Statutes, Title 1, section 302 contains a general savings clause; that is, a provision that preserves preexisting rights which have vested before a change in the law. Laws, however, may require special savings clauses to address special problems created in the passage of those laws. If, for example, current procedures or actions will be disrupted when the new law takes effect, a savings clause may be used to exempt, or "grandfather," certain classes of persons from the law. Likewise, if rights or duties already have matured or proceedings have begun, the drafter may wish to limit the application of the new law.

Examples:

**Sec. 20. Savings.** This Act does not apply to any license or permit proceeding, appeal, reconsideration or other action pending before the Department of Environmental Protection on the effective date of this Act.

**Sec. 21. Application.** This Act applies to all employees injured on or after November 20, 1987, who have not had a rehabilitation plan developed under the Maine Revised Statutes, Title 39, section 83, subsection 3, as of the effective date of this Act.

(b) **Transition clause.** When a state department or agency is reorganized or abolished or its duties are significantly altered, it is often necessary to provide for the transfer of the functions, property and personnel of the prior agency to the new agency or to accommodate the change in duties. This is accomplished through the use of a transition clause.

Example:

**Sec. B-43. Transition provisions.**

1. The Maine State Museum is the successor in every way to the powers, duties and functions of the former Maine State Museum Bureau.

2. All existing rules, regulations and procedures in effect, in operation or promulgated in or by the Maine State Museum Bureau or any of its administrative units or officers, are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority.

3. All existing contracts, agreements and compacts currently in effect in the Maine State Museum Bureau continue in effect.

4. Any positions authorized and allocated subject to the personnel laws to the former Maine State Museum Bureau are transferred to the Maine State Museum and may continue to be authorized.

5. All records, property and equipment previously belonging to or allocated for the use of the former Maine State Museum Bureau become, on the effective date of this Act, part of the property of the Maine State Museum.

6. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the "Maine State Museum Bureau" may be utilized by the Maine State Museum until existing supplies of those items are exhausted.

For an example of an extremely detailed and thorough transition provision, see Senate Amendment "A" to Committee Amendment "A" to L.D. 1768 from the 115th legislative session.

**(c) Implementation provisions.** Other unallocated provisions may be necessary to implement the law and should be given descriptive headnotes indicating the substance of the provisions.

**(d) Revision clause.** If a bill changes the name of a state agency or other entity or changes the proper name of a code or act throughout the entire Maine Revised Statutes, a revision clause is the preferred way to change the references. A revision clause may be relied upon only to make uniform changes; if individual changes are necessary, those changes should be made in an allocated bill section.

Example:

**Sec. 30. Maine Revised Statutes amended; revision clause.** Wherever in the Maine Revised Statutes the words \_\_\_\_\_ appear or reference is made to those words, they are amended to read and mean \_\_\_\_\_, and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.



**(e) Severability clause.** The Maine Revised Statutes, Title 1, section 71 provides that if any provision or application of a law is invalid, that invalidity does not affect other provisions or applications of the law that are otherwise valid. Thus, the inclusion of a severability clause in a bill is unnecessary and may result in confusion, since a court may attach significance to the presence of a severability clause in one law, given the absence of those clauses in other laws.

There are older laws still in existence that contain severability clauses. When amending or reenacting sections of the law that contain such clauses, it is the policy of the Office of the Revisor of Statutes to remove the severability language, and to insert the following explanatory paragraph in the statement of fact:

This bill does not reenact language on severability removed in section \_\_\_ from Title \_\_\_, section \_\_\_, because that language is unnecessary given the general rule of construction governing severability in Title 1, section 71, subsection 8, that applies to all of the statutes. It is the intent of the Legislature that the removal of the severability language from Title \_\_\_, section \_\_\_ has no substantive effect on the severability of this chapter or the applicability of that general rule of construction.

**(f) Nonseverability clause.** As discussed above, the Maine Revised Statutes, Title 1, section 71 contains a severability clause that applies to all of the Maine Revised Statutes. If the sponsor of a bill intends the bill to be considered an inseparable whole and does not want the bill sections to be severable, a nonseverability clause is necessary.

Example:

**Sec. 10. Nonseverability.** Notwithstanding the provisions of the Maine Revised Statutes, Title 1, section 71, if any provision of this Act or its application is held invalid, it is the intent of the Legislature that the entire Act is invalidated.

**(g) Sunset provision.** A sunset provision establishes a procedure for review of an agency, program or other statutory provision. If a state or independent agency is the subject, the drafter needs to amend Title 3, chapter 33, which sets out the schedules for periodic review and justification. Drafters should consult with the principal analyst for the Joint Standing Committee on Audit and Program Review, or its successor, when adding or amending an agency's sunset provision. If a program or other statutory provision is the subject, the drafter should, at a minimum, clearly identify who is to conduct the review, what is the scope of the review and the date by which the review must be completed.

**(h) Appropriation sections.** An appropriation is the Legislature's authorization for a person or organization, generally a state agency, to make an expenditure from the General Fund. An appropriation section should be drafted to provide, in as few words as possible, a clear and concise identification of the particular funds, the purpose of the appropriation, and the fiscal year involved.

A drafter of an appropriation section should note that:

- Appropriations run concurrently with the State's fiscal year from July 1st of one year to June 30th of the next year;
- Appropriations are broken down into no more than the following line categories: "Personal Services," "All Other," "Capital Expenditures," and "Unallocated";
- If positions are being authorized on an ongoing basis, the personal services appropriation may include the number of positions to be funded by that appropriation;
- Any salaries included in a personal services figure include a state retirement contribution factor;

- Abbreviations or popularized names to refer to agencies or programs to which funds are appropriated are not used, and are generally avoided in explanatory language for appropriations;
- Appropriations are rounded to the nearest dollar;
- Unencumbered funds lapse to the General Fund at the end of the fiscal year unless the appropriation section specifically states that the funds may not lapse, or unless the account specifically by statute does not lapse. A statement concerning whether the funds lapse appears after the appropriation section in a separate paragraph;
- Restrictions or directions on the use of appropriated funds are placed in a separate paragraph after the appropriation section;
- Appropriations can not be made for fiscal years beyond the current legislative biennium; and
- Deappropriations are drafted following the same format as appropriations, except that deappropriated funds are indicated by enclosure in parentheses.

For more information on appropriations, see the Maine Revised Statutes, Title 5, Part 4, chapters 141 to 159, dealing with miscellaneous financial matters. See also the general budgetary provisions in the first part of the most recent general appropriations bill for State Government, and the current "State of Maine Budget Document."

There are many possible variations in appropriations (see Part IV, chapter 8 for examples). A standard form for appropriations follows.

Example:

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

(List fiscal years  
in which funds will be  
expended)

**1989-90            1990-91**

**NAME OF MAJOR UNIT**

(to which appropriation  
is made, usually a state  
department, branch of State  
Government or independent  
agency)

**Name of Program**

Line category (that is,  
general item categories  
for which money is  
appropriated)

\$Amount

\$Amount

Explanatory paragraph  
(describes how or for what  
money may be expended)

**NAME OF MAJOR UNIT**

**TOTAL**

\_\_\_\_\_  
\$Total

\_\_\_\_\_  
\$Total

(i) **Allocation sections.** An allocation is the Legislature's authorization for an expenditure from the federal expenditure fund, a federal block grant or a special revenue fund, such as the Highway Fund or other dedicated fund. A special revenue fund contains money that, by provision of the Constitution of Maine or by statute, may be spent only for specified purposes. Allocation sections are drafted in basically the same manner as appropriation sections, except that in the introductory paragraph the language reads "The following funds are allocated from the (specified fund) to carry out the purposes of this Act." See Part IV, chapter 8 for the format of allocation sections.

Allocation sections may also appear in less rigid format as in the following example. Use of this format is discouraged.

**Sec. 10. Allocation.** There is allocated from the Highway Fund the sum of \$50,000 for fiscal year 1988-89 to carry out the purpose of this Act. Any unexpended balance may not lapse but must remain a continuing carrying account until the purpose of this Act has been accomplished.

**(j) Retroactivity clause.** A bill that has a retroactive application should be drafted with caution. Courts generally will not give a law retroactive application unless the intent of the Legislature to make it retroactive is clear and unambiguous.

Example:

**Sec. 10. Retroactivity.** This Act applies retroactively to January 1, 1980.

**(k) Repeal clause.** The use of a repeal clause is discouraged when it is possible to indicate in the text of the Maine Revised Statutes that a particular section, chapter, etc. is repealed on a certain date. If placing a repeal in the statutes is impractical because the bill affects too many statutory provisions, include a repeal clause to repeal the act on a certain date. In the past, an expiration clause was used to accomplish the same purpose.

The following is an example of an unallocated repeal clause.

Example:

**Sec. 10. Repeal.** This Act is (or sections 1 to 6 of this Act are) repealed January 1, 1992.

**(l) Effective date clause.** Pursuant to the Constitution of Maine, Article IV, Part Third, Section 16, the general effective date for acts is 90 days after the adjournment of the session of the Legislature passing those acts. Any act that does not contain an emergency preamble and clause or a provision that sets a specific effective date takes effect on the general effective date.

If it is desirable to delay the operation of a law for a period of time longer than 90 days after recess of the Legislature to allow those affected by the law to make preparations to comply with its provisions, then an effective date clause is necessary. An example of this is the Maine Criminal Code which was enacted in 1975 but did not go into effect until May 1, 1976.

There is no provision in the Constitution of Maine prohibiting the Legislature from designating a specific date on which a law will become effective or naming a specific occurrence or event that will trigger its operation, as long as that date or triggering occurrence or event is at least 90 full days following recess of the Legislature and an effective date clause is included in the bill. Remember, however, that you can not appropriate or allocate funds beyond the current biennium. Examples of effective date clauses setting out a specific effective date are as follows:

**Sec. 10. Effective date.** This Act takes effect on January 1, 1995.

**Sec. 10. Effective date.** Sections 2 and 3 of this Act take effect on January 1, 1987. (Note here that the sections of the Act not given a specific effective date would take effect on the general effective date.)

The following is an example of an effective date clause citing the contingency that will trigger the effectiveness of the law:

**Sec. 2. Effective date.** Section 1 of this Act does not take effect unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provision of this Act pursuant to the United States Code, Title 25, Section 1725 (e) (1), copies of which must be submitted by the Secretary of State, the Secretary of the Senate and the Clerk of the House, except that in no event may this Act take effect until 90 days after adjournment of the Legislature.

If the effective date clause is allocated to the Maine Revised Statutes (for example, the Maine Criminal Code, Title 17-A, section 1, subsection 1), the word "Act" may only be used in the effective date clause to refer to the enacted bill if the bill has a short title that includes the word "Act" and the short title has been allocated to the Maine Revised Statutes (for example, the Maine Administrative Procedure Act). Otherwise, the statutory portion being enacted should be named. For example: "This chapter (or Part, section, subsection, etc.) takes effect on January 1, 1988."

If a bill contains a referendum provision, the effective date provisions will usually be included in the referendum clause.

**(m) Emergency clauses.** If any part of a bill is to become effective immediately upon approval or sooner than 90 days after adjournment of the Legislature, it must be passed as emergency legislation and contain an emergency preamble and emergency clause. It is the emergency clause that indicates when the bill becomes effective. The emergency clause, like the effective date clause, is placed at the end of the main body of the bill. The emergency clause may provide that the bill will become effective immediately upon approval (i.e., immediately upon approval of the Governor or upon passage by the Legislature over the veto of the Governor), may set a specific date on which the bill will take effect, or may name a specific occurrence or event that will trigger the operation of the bill. A bill may provide that various parts of the bill take effect at different times.

Examples:

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

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect on July 1, 1986.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

**Emergency clause.** In view of the emergency cited in the preamble, sections 1, 4 and 5 of this Act take effect when approved and sections 2 and 3 of this Act take effect on July 1, 1986.

**(n) Referendum clause.** A Legislator may wish to submit a proposed bill to the voters of the State or of the area being affected by the bill before the bill takes effect. This is done through a referendum clause which appears at the end of the body of the bill, generally replacing the effective date clause. The referendum clause provides that, upon passage by the Legislature, the act must be submitted to the voters of the State or other unit and if the voters accept the act, it will take effect at some specified time, usually following calculation of the vote and proclamation of those results.

Statutory, municipal and advisory referenda are discussed in greater detail and examples are given in Part IV, chapter 2. Bond issues, which are also subject to referenda, are discussed in Part IV, chapter 1.

**E. Fiscal note.** Every bill or resolve affecting state revenues, appropriations or allocations that has a committee recommendation other than "Ought Not to Pass" must include a fiscal note, to be incorporated in the bill before it is reported out of committee. Thus, a fiscal note is required if the bill will have a negative or positive effect on state revenue, appropriations or allocations if any member of the committee hearing the bill gives it a favorable report. Fiscal information for bills relating to counties and municipalities is further governed by the Maine Revised Statutes, Title 3, section 163-A, subsection 12 and Title 30-A, section 5684. Fiscal notes are generally added by committee amendment to the bill or in a new draft of the bill, except that fiscal notes sometimes appear in original departmental or executive bills. In addition, any amendment introduced that would affect the fiscal impact of the original bill must also include a fiscal note.



Generally, fiscal notes do not involve appropriations, as any needed appropriation should be included in the appropriation section of the bill. Because the Office of Fiscal and Program Review has sole responsibility for preparing all fiscal notes, a legislative staff drafter needing a fiscal note for a bill must request one from that office. A fiscal note may not be added to a bill unless it originates from the Office of Fiscal and Program Review, or it appears on a budget bill submitted through the budget office of the executive branch. Fiscal notes are usually in the following forms:

Example:

**FISCAL NOTE**

This bill will have the following effect on revenues:

	<b>1989-90</b>	<b>1990-91</b>
Other Special Revenue	\$96,771	\$116,058

The Department of the Attorney General will receive additional dedicated revenue from the Board of Registration in Medicine to pay for the costs incurred during the investigation of complaints brought to the board.

The Board of Registration in Medicine and the Board of Osteopathic Examination and Registration will not need to increase current fee schedules to meet the additional costs resulting from this legislation in the 1990-91 biennium. Future fee increases, however, may be required.

Example:

**FISCAL NOTE**

This bill may result in additional workers' compensation payments by the State as an employer. Neither the amount nor the timing of the additional payments can be estimated.

**F. Statement of fact and comments.** A statement of fact provides a brief summary of the bill, resolve or amendment. This may include a brief description of the purpose of the bill or the problem that the bill is intended to solve.<sup>1</sup> The Office of the Revisor of Statutes is responsible for ensuring that each bill has an appropriate statement of fact and rewrites proposed statements of fact which are overlong, testimonial or misleading. Statements of fact should be straightforward and factual and may not be testimonial or advocate a position. Brevity in a statement of fact, however, should not override the need for accuracy and thoroughness. In a bill dealing with a broad subject matter, a more detailed statement of fact may be necessary.

The following are some examples of statements of fact.

Example:

#### STATEMENT OF FACT

The purpose of this bill is to allow greater flexibility in residential placement of individuals who are near the age of 18. Under this bill, the Department of Human Services may allow persons who reach the age of 18 to remain in a children's home for a period of up to 9 months after that birthday or allow a person 17 years of age or older to be placed in an adult care home. The decision concerning placement would be based on the best interest of the resident.

Example:

#### STATEMENT OF FACT

The purpose of this bill is to provide landowners whose property has been the subject of a revaluation adequate time to qualify for the tree growth tax or farm and open space programs.

<sup>1</sup>Draft proposed statements of fact carefully, because they may be relied on by a court as a "proper and compelling aid to ascertaining the legislative purpose and intent," Franklin Property Trust v. Foresite Inc., et al., 438 A.2d 218, 223 (Me. 1981). A drafter, however, may not rely on a statement of fact to fill holes in a poorly drafted bill since, if the statute is unambiguous and at variance with the statement of fact, the court will disregard the statement of fact. Stone v. Board of Registration of Medicine, 503 A.2d 222 (Me. 1986).

Example:

### STATEMENT OF FACT

This bill establishes a licensing fee schedule for restaurants.

Example:

### STATEMENT OF FACT

This bill establishes the Emergency Medical Services Fund to support emergency medical services operations, provide matching funds to licensed service providers and promote training of emergency medical persons.

Revenue for the fund is generated by a \$25 fee imposed on all persons convicted of a moving violation involving the operation of a motor vehicle and resulting in an accident.

The following is an example of a statement of fact for a broad subject matter bill aimed at reducing medical malpractice.

### STATEMENT OF FACT

This bill accomplishes the following:

1. It adds 3 members of the public to the Board of Registration in Medicine;
2. It requires that investigation of consumer complaints by the board be done in a timely fashion;
3. It requires a report by the board to the Legislature concerning the disposition of complaints received;
4. It requires that the board budget for adequate personnel to handle consumer complaints in a timely fashion;
5. It increases the biannual registration fee for physicians from \$250 to \$500 to fund the additional board activities required by this bill;
6. It requires that physicians and hospitals post material prepared by the board indicating to consumers the procedure for filing complaints against physicians; and
7. It provides for staggered terms for the initially appointed additional public members.

Some uniform laws and code enactments, such as the Maine Criminal Code and the Maine Probate Code, contain explanatory comments that appear after each section. These comments may supplement the statement of fact and are not part of the law, although they may be used in some cases as a guide to legislative intent. For examples of comments, see 1975 Legislative Document 314, 1979 Legislative Document 1, and Committee Amendment "A" to 1989 Legislative Document 2074.

**G. Correctional impact statements.** In accordance with the Maine Revised Statutes, Title 34-A, section 1402, subsection 9, every bill or resolve receiving a favorable committee report that has an impact on the correctional system must include a "correctional impact statement." The correctional impact statement is appended to the committee amendment statement of fact and appears in quotes exactly as it is received from the Department of Corrections.

**Example:**

#### **STATEMENT OF FACT**

The amendment clarifies that the court may impose a community service requirement in lieu of a fine rather than imposing and suspending the fine. The amendment also clarifies that the county is responsible for overseeing the community service imposed.

The Department of Corrections prepared the following correctional impact statement on the original bill pursuant to the Maine Revised Statutes, Title 34-A, section 1402: "Counties will be able to implement the requirements of this bill with existing funding that is available to them pursuant to Title 34-A, section 1210, subsection 6-A. Under that provision, a county may apply to the state for some of the \$279,000 retained by the State for the use of counties to hire staff to develop and coordinate community-based programs, including the type of community service programs required by the bill."

### **Section 3. Technical style**

**A. General organizational rules.** A bill may contain any number of provisions although, to avoid confusion, it should deal with only one major subject. These

provisions are organized into bill sections that are numbered consecutively (i.e., "Sec. 1," "Sec. 2," etc.). Each distinct provision or idea should be in a separate section.

If the body of a bill contains several distinct pieces that may in turn be logically divided into bill sections, divide the bill into Parts designated "Part A," "Part B" and so on. Sections within a Part are numbered as "Sec. A-1," "Sec. A-2," etc.

Arrangement of bill sections is governed primarily by the law type affected or enacted, discussed below, and secondarily by the subject matter of each section, discussed in detail in section 2 of this chapter. Note that if a bill has parts, the sections in each part follow the rules for section arrangement.

**(1) Arrangement by type of law affected.** A bill section may enact or in some way affect the Maine Revised Statutes, a public law, a private and special law or a resolve. A bill section also may enact new law that is not allocated to the statutes or tied to any of these other types of instruments. A bill may have any combination of these proposed actions, but if it has any sections allocated to the Maine Revised Statutes, it is a public law bill. If a bill proposes to amend or affect only a resolve, then the proper instrument is a resolve, not an act. Generally, if the bill only enacts unallocated law or amends or affects only a private and special law, then the bill is a private and special law bill. For further distinctions between allocated and unallocated law, see this chapter, section 1.

Once the drafter has determined the law type affected or enacted in each section of the bill, those sections are arranged in the following order of priority.

**(a) Maine Revised Statutes.** Sections of the bill enacting or affecting a section or sections of the Maine Revised Statutes are arranged in ascending numerical order, according to the statutes the bill sections affect, by title and section or larger statutory unit.

For example, a bill affecting:

Title 12, §32  
Title 12, §3  
Title 36, §1760  
Title 5, §361

should be arranged as follows:

Sec. 1. 5 MRSA §361  
Sec. 2. 12 MRSA §3  
Sec. 3. 12 MRSA §32  
Sec. 4. 36 MRSA §1760

**(b) Public laws.** Sections that enact or affect sections of public laws are arranged so that the section affecting the earliest enactment appears first and the section affecting the latest enactment appears last.

For example, for a bill affecting:

Public Law 1987, c. 4  
Public Law 1989, c. 110  
Public Law 1987, c. 300

arrange the sections in the following order:

Sec. 1. PL 1987, c. 4  
Sec. 2. PL 1987, c. 300  
Sec. 3. PL 1989, c. 110

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**(c) Private and special laws.** If a private and special law bill only enacts new law, the elements are arranged as described in this chapter, section 2, since there would be no allocation to the Maine Revised Statutes and no other overriding method of arranging the sections.

If a private and special law bill enacts new law and affects existing private and special laws, the new enactments appear first in the body of the bill, followed by the sections affecting existing law, arranged by date of enactment.

Bill sections that enact sections in private and special laws or amend existing private and special laws are arranged sequentially from earliest to latest enactment as with the sections that affect public laws.

**(d) Resolves.** Sections that enact sections in resolves or amend existing resolves are arranged sequentially from earliest to latest enactment.

**(e) Mixed instruments.** Bills that affect various law types are arranged by allocated public law sections, other public laws or sections, private and special laws, and resolves.

For example, for a bill affecting:

Private and Special Law 1985, c. 102  
Public Law 1989, c. 110  
Title 12, §3  
Resolve 1985, c. 43

arrange the sections in the following order:

Sec. 1. 12 MRSA §3  
Sec. 2. PL 1989, c. 110  
Sec. 3. P&SL 1985, c. 102  
Sec. 4. Resolve 1985, c. 43

**(f) Unallocated law.** Sections of a public law bill that are not allocated to the statutes and do not affect other existing laws or resolves are arranged so that they appear last in the main body of the bill. (If, however, the bill is a



private and special law bill, unallocated sections enacting new law appear before sections effecting changes to other private and special laws, as described in paragraph (c) above.)

(2) **Conflicting law.** When law proposed by a bill conflicts with existing law, the existing law should be expressly changed or repealed. In addition, a drafter should not rely on general language such as "This Act applies notwithstanding any other law to the contrary" to take care of inconsistent law. Use of such general language is confusing and does not make clear which of several inconsistent laws is to prevail. When laws are repealed in a bill, the repealers are placed according to the bill section arrangement scheme outlined above, not grouped at the end of the bill.

**B. Technical rules.** The following are the technical rules that must be followed when drafting bills.

(1) **The Maine Revised Statutes.** The statutes are the codified law in Maine that contains the general law of long-lasting application.

(a) **Structure of the Maine Revised Statutes.** The statutes are divided into titles. The current general arrangement of titles was created in the 1964 revision. Each title covers a general subject area. For example, Title 20-A relates to education and Title 32 contains provisions regulating professions and occupations.

Titles are subdivided into smaller units to assist in arranging subject matter logically and systematically. The usual and preferred structure is as follows, with the method of designation shown in parentheses.

TITLE (1, 2, ...)  
SUBTITLE (1, 2, ...)  
PART (1, 2, ...)  
SUBPART (1, 2, ...)  
CHAPTER (1, 2, ...)  
SUBCHAPTER (I, II, ...)  
ARTICLE (1, 2, ...)  
SUBARTICLE (1, 2, ...)

SECTION (§1, §2, ...)  
SUBSECTION (1, 2, ...)  
PARAGRAPH (A, B, ...)  
SUBPARAGRAPH ((1), (2), ...)  
DIVISION ((a), (b), ...)  
SUBDIVISION ((i), (ii), ...)

Some titles, such as titles enacting uniform laws, discussed in more detail in Part IV, chapter 4, deviate somewhat from this structure and occasionally other discrepancies appear in the statutes, such as articles that are designated by roman rather than arabic numerals. The drafter should follow the existing designating convention for the statutory grouping in which the drafter is working.

When enacting new units, the drafter should avoid using subtitles, subparts and subarticles, as these units are usually unnecessary and are not easily accommodated by the computerized database maintained by the Legislature.

New material should be allocated to the title of the Maine Revised Statutes in which it most logically fits. The Office of the Revisor of Statutes reviews, and alters when necessary, allocations to the Maine Revised Statutes to ensure and preserve the arrangement of the statutes. When allocating to the statutes, the drafter should follow the rules listed below.

- Whenever possible, the numerical designation of a new chapter should be an odd number (e.g., 1, 3, 5, 7, and so on). This leaves room for the enactment of new chapters at later dates.
- When a new chapter is enacted, the number assigned to the first section of that chapter should be sufficiently higher than the last section number of the preceding chapter to permit the future addition of sections between those chapters.
- The first section of any chapter should be given a numerical designation with a last digit of "1" (e.g., §101, §381, §5221, etc.).

- When a chapter, section, paragraph, or other unit must be inserted between two existing consecutively numbered units, the inserted unit is given the same number or letter as the preceding one, followed by a hyphen and a number or letter. For example, a new section inserted between sections 113 and 114 is 113-A. A new paragraph inserted between paragraphs A and B is A-1. Additional sections or paragraphs are lettered and numbered consecutively as §§113-B, 113-C, 113-D, ... or ¶¶A-2, A-3, A-4, ... This method may only be used once; that is, a section should never be designated as §113-A-1.

This technique is often used when the drafter must repeal a part, chapter, section, or other unit and replace it with new material that is substantively related to the repealed material but is sufficiently different to warrant the repeal, or uses headnotes and a structure not consistent with the material repealed.

- A section or smaller subdivision that was repealed in the past may be reenacted with its former numerical or alphabetical designation only if the section being reenacted is identical, word for word, to the section that was repealed. When the substance of the repealed section is the same, but the wording is not identical, use an alpha designation after the unit's former designation. For example, if the Maine Revised Statutes, Title 38, section 599 was repealed during the 114th Legislative Session and was enacted again with small language changes in the next session, it would be designated Title 38, section 599-A.

**(b) Amending clauses and legislative actions.** Each bill section that affects the Maine Revised Statutes begins with an amending clause that recites the specific provision of the Maine Revised Statutes being affected, the appropriate historical reference for that provision and the legislative action proposed by the bill section. The only possible legislative actions are:

- Enacting new law;
- Amending existing law;
- Repealing existing law;
- Repealing existing law and replacing it with new law;
- Reallocating existing law; and
- Reenacting law that was repealed.

New statutory language, whether it appears as a new enactment, as repeal and replacement language or as an addition to existing law, is indicated by underscoring. Statutory language that is to be removed is shown by striking through the existing text. If a statutory provision is repealed in its entirety, no text follows the amending clause. The drafter needs to supply allocation information but need not supply historical references, as that information is provided and double-checked in the technical processing and proofreading stages in the Revisor's Office. The amending clauses in the following examples do not contain the historical information that is routinely provided by the Revisor's Office.

Examples:

**(i) Enacting new law.**

**Sec. 1. 20-A MRSA §256, sub-§7** is enacted to read:

7. Women in administration; data; report. The commissioner shall compile data, annually, on the number of women holding administrative positions requiring certification and shall report the data annually, on or before January 1st, to the joint standing committee of the Legislature having jurisdiction over educational matters.

**Sec. 2. 36 MRSA §1760, sub-§§72 and 73** are enacted to read:

72. Nonprofit housing development organization. Sales to nonprofit organizations for the development of housing for low-income people; and

73. Nonprofit home construction organizations. Sales to local branches of incorporated nonprofit organizations whose purpose is to construct low-cost housing for low-income people.

**(ii) Amending existing law.**

**Sec. 1. 5 MRSA §15138, first ¶,** is amended to read:

Agencies of State Government shall cooperate to assess the needs of zones and provide appropriate assistance to these zones. A committee is established, composed of, at a minimum, the Commissioner of Economic and Community Development, Director of the State Planning Office, Commissioner of Transportation, Commissioner of Labor, Commissioner of ~~Educational and Cultural Services~~ Education, Executive Director of the Maine Technical College System, Chief Executive Officer of the Finance Authority of Maine and the Director of the Maine State Housing Authority. The committee shall meet quarterly with representatives from each zone to review projects, assess the coordination of existing resources and identify any other potential resources to ensure that the needs of the zones are being addressed to the fullest extent possible.

**(iii) Repealing existing law.**

**Sec. 1. 20-A MRSA c. 505-A** is repealed.

**(iv) Repealing and replacing existing law.**

**Sec. 1. 24-A MRSA §4203, sub-§3, ¶M,** is repealed and the following enacted in its place:

M. A description of the proposed quality assurance program, including the formal organization structure, methods for developing criteria, procedures for comprehensive evaluation of the quality of care rendered to enrollees, and processes to initiate corrective action and reevaluation when deficiencies in provider or organizational performance are identified;

**(c) Section structure.** The text of a statute section may be organized as indented paragraphs or in outline or tabular form. Be aware of the distinction between indented and blocked paragraphs within a section as discussed in Part III, pages 14 and 15. In using the outline form, follow the guidelines set out in Part III, pages 9 to 14, and include headnotes and lead-ins as discussed below.

**(d) Title; headnotes.** Any unit of the Maine Revised Statutes higher than a section must have a title. Generally, sections and subsections of the Maine Revised Statutes must have headnotes. No portion of a statute below a subsection has a headnote. Headnotes are important because they aid the reader in finding a given section by identifying the substance of the section. A headnote or title does not have the force of law (see Maine Revised Statutes, Title 1, section 71, subsection 10) and consequently, no formal amendment is needed to change a headnote or title. A drafter should, however, revise a headnote or title when a statutory change makes the existing one obsolete or misleading.

Titles and headnotes should be concise. If a section headnote can not be made both concise and complete, it may indicate that the scope of the section is too broad and that the section should be divided into more than one section or subsection.

Note that a few titles in the Maine Revised Statutes, such as some uniform laws and the Maine Criminal Code, do not use subsection headnotes. The drafter should be consistent with the conventions used in the title being affected.

**(e) Lead-ins.** A "lead-in" is an introductory phrase or sentence after a headnote that provides a transition from a unit to a subunit. A lead-in is required between a subsection and a lettered paragraph but is optional between a section headnote and a subsection. While this requirement appears to produce redundant language, recall that a headnote is not part of the law. This same rationale requires that subsections always contain text in addition to the headnote.

**(2) Unallocated law.** The technical style used in drafting unallocated law in public or private and special law bills is much less complicated than in the Maine Revised Statutes.

**(a) New law.** When enacting a section of new unallocated law, the section must begin with a section headnote. Within that section the drafter may include indented paragraphs and the same outline form used for working in the statutes, with the exception that headnotes are not used for subsections. The text for a section of new unallocated law is not underscored.

**(b) Existing law.** A bill section may propose a legislative action that affects in some way existing unallocated law found in a public law, a private and special law or, occasionally, a resolve. (See this Part, pages 26 and 27 for a discussion of possible legislative actions.) Such a section begins with an amending clause that recites the specific provision of unallocated law being affected, the appropriate historical reference for that provision and the legislative action proposed by the bill section. The drafter need not supply the historical reference, however. Language that is to be removed is shown by striking through the existing text. New language is indicated by underscoring.

#### **Section 4. New drafts**

A specialized type of bill is a "new draft." A new draft is a new version of an existing bill and must be authorized by a committee report as "Ought to Pass in New Draft" and by the presiding officers pursuant to the Joint Rules.

A new draft always indicates the L.D. number of the original bill and the new title if the title is changed. A new draft is, however, a legislative document in its own right and has its own paper and document numbers.

#### **Section 5. Examples of complete bills**

This section provides examples of public law bills and private and special law bills.

**A. EXAMPLE A** is a public law bill.

**[TITLE]**

**An Act to Increase Funding for Lobster Hatcheries**

**[ENACTING  
CLAUSE]**

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

**[BODY OF BILL]**

**Sec. 1. 12 MRSA §6134** is enacted to read:

**[AMENDING  
CLAUSE,  
ALLOCATED  
SECTION]**

**§6134. Lobster hatcheries**

In addition to any money otherwise provided by law, the commission shall administer a nonlapsing lobster hatchery program fund from which to make grants in support of the establishment and operation of lobster hatcheries. The grants are for a one-year period. A hatchery may not receive more than 30% of the fund during any one-year grant period. The commissioner shall develop rules, including biological and economic criteria for evaluating proposals. The commissioner shall require the grantee to keep a log of activities regarding the hatchery and shall require a written report at the termination of each grant. Grants to individual hatcheries may not exceed \$35,000 annually.

**[APPROPRIATION  
SECTION,  
UNALLOCATED  
SECTION]**

**Sec. 2. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<b>1989-90</b>	<b>1990-91</b>
<b>MARINE RESOURCES, DEPARTMENT OF</b>		
<b>Bureau of Marine Development</b>		
All Other	\$175,000	\$175,000

Provides funds to make grants in support of the establishment and operation of lobster hatcheries. These funds may not lapse but must be carried forward for the purposes identified.



**[STATEMENT OF  
FACT]**

**STATEMENT OF FACT**

This bill establishes a \$175,000 nonlapsing fund from the General Fund to administer a lobster hatchery grant program. This program supplements other lobster hatchery funding.

**B. EXAMPLE B** is an emergency public law bill.

**[TITLE]**

**An Act to Increase the Annual Public Utilities Commission Regulatory Fund Assessment, Establish a Consumer Assistance Specialist Position and Make Certain Other Changes**

**[EMERGENCY  
PREAMBLE]**

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

**Whereas,** the 90-day period may not terminate until after the beginning of the next fiscal year; and

**Whereas,** the Public Utilities Commission requires additional funds in fiscal years 1989-90 and 1990-91 for ongoing services to ensure reliable service at just and reasonable rates for state ratepayers; and

**Whereas,** these funds must be assessed by May 1, 1989 to be available in fiscal year 1989-90; 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,

**[ENACTING  
CLAUSE]**

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

**Sec. 1. 2 MRSA §6-A, sub-§3-B** is enacted to read:

**[BODY OF BILL]**

3-B. Other employees; range 18. The salaries of the following employees are within range 18:

**[ALLOCATED  
SECTIONS]**

A. Administrative secretary to the chair.

**Sec. 2. 5 MRSA §931, sub-§1, ¶J,** as repealed and replaced by PL 1987, c. 631, §2, is amended to read:

J. Staff attorney, financial analyst, chief utility accountant, utility accountant III, assistant administrative director, administrative assistant to the administrative director, administrative secretary to the chair and assistant to the director of consumer assistance positions at the Public Utilities Commission;

**Sec. 3. 35-A MRSA §107, sub-§2, ¶¶A and C,** as amended by PL 1987, c. 631, §3, are further amended to read:

A. The general counsel, the administrative director, the assistant administrative director, the administrative assistant to the administrative director, the administrative secretary to the chair, the director of finance, the director of technical analysis, the director of consumer assistance and the assistant to the director of consumer assistance ~~shall~~ serve at the pleasure of the commission and their salaries ~~shall~~ must be set by the commission within the ranges established by Title 2, section 6-A.

C. The salaries of the other subordinate officials and employees of the commission, other than those of the general counsel, the administrative director, the assistant administrative director, the administrative assistant to the administrative director, the administrative secretary to the chair, the director of finance, the director of technical analysis, the director of consumer assistance, the assistant to the director of consumer assistance and the staff attorney, financial analyst, chief utility accountant and utility accountant III positions, ~~shall-be~~ are subject to the Civil Service Law, except as provided in paragraph D.

**Sec. 4. 35-A MRSA §116, sub-§1,** as amended by PL 1987, c. 631, §4, is further amended to read:

1. **Utilities subject to assessments.** Every electric, gas, telegraph, telephone and water utility and ferry subject to regulation by the commission ~~shall be~~ is subject to an assessment of not more than .25% on its intrastate gross operating revenues to produce no more than ~~\$2,386,000~~ \$2,700,000 in revenues annually beginning in the ~~1988-89~~ 1989-90 fiscal year and not more than \$2,914,000 in revenues annually beginning in the 1990-91 fiscal year. The commission shall determine the assessments annually prior to May 1st and ~~shall~~ assess each utility for its pro rata share. Each utility shall pay the assessment charged to the utility on or before July 1st of each year. Any increase in the assessment that becomes effective subsequent to May 1st may be billed on the effective date of the act authorizing the increase.

A. The assessments charged to utilities under this section are just and reasonable operating costs for rate-making purposes.

B. For the purposes of this section, "intrastate gross operating revenues" means intrastate revenues derived from filed rates, except revenues derived from sales for resale.

C. Gas utilities subject to the jurisdiction of the commission solely with respect to safety ~~shall~~ are not be subject to any assessment.

D. The commission may correct any errors in the assessments by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year.

E. The commission may exempt utilities with annual intrastate gross operating revenues under \$50,000 from assessments under this section.

**Sec. 5. 35-A MRS §116, sub-§4,** as amended by PL 1987, c. 631, §5, is further amended to read:

4. **Use of funds.** The Public Utilities Commission may use the revenues provided in accordance with this section to fund ~~45~~ 47 employees and 2 seasonal legal researchers and to defray the costs incurred by the commission pursuant to this Title, including administrative expenses, general regulatory expenses, consulting fees and all other reasonable costs incurred to administer this Title.

**[UNALLOCATED SECTION]**

**Sec. 6. Allocation of Public Utilities Commission Regulatory Fund.** Income not otherwise allocated from the Public Utilities Commission Regulatory Fund is allocated for the fiscal years ending June 30, 1990 and June 30, 1991 and must be segregated, apportioned and disbursed as designated in the following schedule:

	<b>1989-90</b>	<b>1990-91</b>
--	----------------	----------------

**PUBLIC UTILITIES COMMISSION**

**Regulatory Fund - Public Utilities Commission**

Positions	(2)	(2)
Personal Services	\$35,000	\$38,000
All Other	277,000	490,000
Capital Expenditures	2,000	

Funds to be used for 2 new positions, a consumer assistant specialist and a part-time position in the administrative division; and for increases in personnel and general operating expenses.

**PUBLIC UTILITIES COMMISSION TOTAL**

	\$314,000	\$528,000
--	-----------	-----------

**[EMERGENCY CLAUSE]**

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

**[FISCAL NOTE]**

**FISCAL NOTE**

This bill will have the following effect on revenues:

	<b>1989-90</b>	<b>1990-91</b>
Public Utilities Commission - Regulatory Fund	\$314,000	\$528,000

This bill increases the limits on the Public Utilities Commission Regulatory Fund by \$314,000 and \$528,000 in fiscal years 1989-90 and 1990-91, respectively. The increases in dedicated revenues to the Public Utilities Commission are allocated fully for general operating expenses and 2 new positions.

**[STATEMENT OF  
FACT]**

**STATEMENT OF FACT**

This bill increases the annual Public Utilities Commission Regulatory Fund assessment by \$314,000 to a total of \$2,700,000 beginning in fiscal year 1989-90 and by an additional \$214,000 to a total of \$2,914,000 beginning in fiscal year 1990-91. Together with the General Fund appropriation and the existing level of Public Utilities Commission Regulatory Fund assessments, these increases will provide the commission with sufficient funds to carry out its duties. The additional funds will be used to fund increases in personnel costs and general operating expenses. This bill also funds 2 new positions: a consumer assistance specialist for the consumer assistance division and a part-time position for the administrative division; and it places the administrative secretary to the chair in the unclassified service.

**C. EXAMPLE C** is an emergency private and special law bill.

**[TITLE]**

**An Act to Clarify Procedures in the Waldoboro Sewer District Charter**

**[EMERGENCY  
PREAMBLE]**

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

**Whereas,** it is necessary that this legislation be enacted as an emergency in order that the procedures regarding nomination papers be clarified prior to the final date of filing in March 1989 and that the results of that referendum take effect immediately; 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,

[ENACTING  
CLAUSE]

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

[BODY OF BILL]

Sec. 1. P&SL 1963, c. 146, §14, 3rd ¶, 2nd to 6th sentences, are repealed and the following enacted in their place:

Nomination papers must be made available by the municipal clerk to prospective candidates during the 40 days prior to the final date of filing and, before issuance, the town clerk may complete each sheet by filling in the name of the candidate, the title and the term of office that is being sought. Each voter who signs a nomination paper shall add the candidate's place of residence with the street and number, if any. The voter may subscribe only to as many nomination papers for each office as there are vacancies to be filled. All nomination papers must be filed with the clerk during business hours on or before the 35th day next prior to the day of election. With the nomination papers, there must be filed the consent in writing of the persons proposed therein as candidates, agreeing to accept the nomination if nominated, not to withdraw and, if elected at the municipal election, to qualify as the quasi-municipal officer. When filed, the nomination papers must be made available by the clerk to public inspection under supervision. The clerk shall keep them in the office for 6 months.

Sec. 2. P&SL 1963, c. 146, §17, first sentence, as amended by P&SL 1963, c. 216, §1, is further amended to read:

For accomplishing the purposes of this act Act, said the district, by resolutions of its board of trustees, without district vote, is hereby authorized to borrow money temporarily and to issue therefor its negotiable notes, and for the purpose of renewing and refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act Act, including organizational and other necessary expenses and liabilities incurred by the district or the Town of Waldoboro, the district being authorized to reimburse said the Town of Waldoboro for any such expense incurred or paid by it, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating a sewage plant or system and making renewals, additions, extensions and

improvements to the same and to cover interest payments during the period of construction, ~~said the~~ Waldoboro Sewer District, by resolutions of its board of trustees, without district vote, is also hereby authorized to issue, from time to time, bonds, notes or other evidence of indebtedness of the district in one series or in separate series, in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine; provided, however, that the total indebtedness of ~~said the~~ district at any one time outstanding ~~shall~~ may not exceed the sum of \$250,000 \$1,000,000 and that any single expenditure that exceeds \$100,000 must be approved by district vote.

**[EMERGENCY  
CLAUSE]**

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

**[STATEMENT OF  
FACT]**

**STATEMENT OF FACT**

This bill clarifies the procedures regarding nomination papers under section 14 of the Waldoboro Sewer District charter. The bill also authorizes an increase in the limit on the district's indebtedness and a district vote for any single expenditure in excess of \$100,000.

## CHAPTER 2 RESOLVES

Resolves have the force of law. Resolves do not affect the general law and are restricted in application, much the same as private and special law bills. Resolves, however, are of a very limited duration. According to an opinion of the Attorney General concerning resolves, "a resolve will not be interpreted as making permanent, substantive changes in the general law." Op. Me. Att'y Gen. (March 3, 1980). Resolves are the proper instrument for one-time occurrences, such as annual county budgets, legislative authorization for an individual to sue the State, or the establishment of a study commission with a specified reporting date.

### Section 1. Elements of a resolve

The following elements are listed in the order in which they appear in a resolve. Resolves need not contain all of the elements listed. A resolve never contains an enacting clause.

**A. Title.** The title of a resolve begins "Resolve, ..." followed by a concise statement of the contents of the resolve. Follow the same rules set out for drafting titles of bills when drafting resolves.

#### Examples:

Resolve, for Laying of the County Taxes and  
Authorizing Expenditures of Kennebec County for the  
Year 1987

Resolve, Authorizing the Bureau of Public  
Lands to Convey by Sale to the Town of Dennysville  
the State's Interest in Certain Real Property in  
the Town of Edmunds

**B. The emergency preamble.** The emergency preamble in a resolve is the same as that used in a bill except that the words "and resolves" appear in the standard first paragraph.



Example:

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

**Whereas,** Kennebec County has certain expenses and liabilities that must be met as they become due; and

**Whereas,** it is necessary that the taxes for the year 1987 hereinafter mentioned be immediately assessed in order to provide the required revenue for the county; 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

**C. Preamble.** Although it is not common, a resolve may have a preamble other than an emergency preamble when it is necessary to provide an explanation or background to the resolve.

Example:

**Preamble.** Whereas, the 112th Legislature in 1985, reacting to concerns that the State's thousands of learning-disabled children and adolescents were not being properly identified and appropriately served by the educational system, created a joint select committee to study the problem; and

**Whereas,** the joint select committee identified serious areas of concern related to the training and certification of teachers in the area of learning disabilities, identification and evaluation of learning-disabled children and adolescents and the provision of services for learning-disabled children and adolescents; and

**Whereas,** no formal mechanism exists to monitor the implementation of the joint select committee's recommendations; now, therefore, be it

**D. The main body.** Prior to the First Regular Session of the 114th Legislature, most resolves were not divided into numbered sections, but instead consisted of unnumbered paragraphs. Because it was difficult to refer to these paragraphs when amending a resolve, sections are now numbered. Each section must have a headnote that briefly indicates the subject content of the resolve section. A resolve section may consist of more than one paragraph and may have subsections and other smaller units within it.

The following is an example of the body of a resolve:

**Sec. 1. Board of Trustees of the University of Maine System authorized to study establishment of training program.**

**Resolved:** That the Board of Trustees of the University of Maine System is directed to conduct a study to determine the costs of establishing an advanced nursing degree program for nurse practitioners in northern Maine; and be it further

**Sec. 2. Reporting date established. Resolved:** That the board of trustees shall report its findings, including proposed location of the program, to the Legislature by February 1, 1990.

The contents of the resolve should be arranged, by subject matter, in a logical and consistent manner, with each separate provision being set out in a separate section of the resolve.

A resolve may contain any of the types of sections that have been discussed as possible sections of a bill (appropriation clauses, effective date clauses, emergency clauses, etc.). The only difference is that if the word "Act" is used in any of those particular sections, it should be changed to "resolve" when being used in a resolve.

**E. Fiscal note and statement of fact.** The rules for drafting fiscal notes and statements of fact are the same as those set out in the chapter on bills except that the word "resolve" is used instead of the word "Act."

## **Section 2. Technical style**

A resolve may enact new law or affect other resolves. If a resolve does both of these, those sections enacting new law appear first in the draft, followed by sections affecting existing resolves arranged sequentially from earliest to latest enactments.

**A. New law.** A section of a resolve enacting new law must begin with a headnote. The new law appears without underscoring.

**B. Existing law.** A section of a resolve affecting existing law begins with an amending clause that recites the specific provision of the resolve being affected, the appropriate historical reference for that provision and the legislative action proposed by the resolve section. Drafters need not supply historical references, as that information is supplied by the Revisor's Office. Language that is to be removed is shown by striking through the existing text. New language is indicated by underscoring.

## **Section 3. Examples**

**A. Emergency resolves; amending existing resolves.** The following example illustrates the use of a resolve to amend another resolve and the use of an emergency preamble and clause in a resolve.

Example:

**[TITLE]**

**Resolve, to Extend the Deadline for the Study of the Relationship between Nonprofit Service Agencies and Professional Liability and Other Hard-to-Obtain Lines of Liability Insurance**

**[EMERGENCY  
PREAMBLE]**

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

**Whereas,** the Joint Standing Committee on Banking and Insurance pursuant to Resolve 1987, chapter 65, requires additional time to complete its study; and

**Whereas,** the completion deadline has already passed; 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

**[BODY OF  
RESOLVE]**

**Resolve 1987, chapter 65. Resolved:** That Resolve 1987, c. 65, 5th ¶ from the end before the emergency clause, is amended to read:

**Findings. Resolved:** That the committee shall report its findings and any recommended legislation to the Legislature by ~~November-15--1987~~ February 15, 1988; and be it further

**[EMERGENCY  
CLAUSE]**

**Emergency clause.** In view of the emergency cited in the preamble, this resolve takes effect when approved.

**[STATEMENT OF  
FACT]**

#### **STATEMENT OF FACT**

This resolve extends the reporting deadline for the Joint Standing Committee on Banking and Insurance.

**B. Laying of county taxes.** Resolves are always used for the laying of county taxes and authorizing county expenditures. A single resolve may involve only a single county. For examples, please refer to 1989 Resolves, chapters 7, 8, 13 and 16.

## CHAPTER 3

### CONSTITUTIONAL RESOLUTIONS

The only way to amend the Constitution of Maine is by a constitutional resolution, which is passed by the Legislature, and then submitted to the voters for approval. A resolution proposing a constitutional amendment should contain only proposed changes in the existing language of, or an addition to, the Constitution of Maine. Any changes in public or private and special laws necessitated by the acceptance of the resolution should be done in a bill enacted after acceptance of the resolution. A constitutional resolution is quite different in form from a bill or a resolve, although certain basic elements are similar.

#### **Section 1. Elements of constitutional resolution**

The following elements are listed in the order in which they appear in a constitutional resolution.

**A. The title.** The title of the constitutional resolution always begins "RESOLUTION, Proposing an Amendment to the Constitution of Maine to..." followed by a short description of the resolution's content. Again, the general rules for drafting a title of a bill should be followed. The following is an example of a title to a typical constitutional resolution:

RESOLUTION, Proposing an Amendment to the  
Constitution of Maine to Require Residency of  
Candidates at the Time of Nomination for Placement  
on the Ballot

**B. The introductory clause.** In all constitutional resolutions there is a standard introductory clause that reads as follows:

**Constitutional Amendment(s). RESOLVED:** Two  
thirds of each branch of the Legislature  
concurring, that the following amendment(s) to the  
Constitution of Maine be proposed:

**C. The main body.** The main body of a constitutional resolution is divided into paragraphs, each dealing with a proposed amendment or addition to the Constitution of Maine. Each paragraph proposing new or amended language to the Constitution begins with an amending clause that recites the specific provision of the Constitution to be affected and the appropriate legislative action. The paragraphs are arranged by order of the constitutional provision they propose to amend, repeal or enact. The constitutional provision with the lowest article, part and section designation comes first and the resolution continues in sequence to the end. The paragraphs of a constitutional resolution are not given section designations.

**D. The referendum provision.** The Constitution of Maine, Article X, Section 4, provides that the Legislature, by a two-thirds vote of both houses, may propose amendments to the Constitution. The proposed amendments do not become part of the Constitution unless approved by the majority of voters voting on the referendum. The referendum provision is generally set out in a standardized form but it may be varied judiciously to meet particular needs. Note that the session during which a referendum is proposed makes a difference in the form: a resolution proposed at the first regular session of the Legislature is generally voted on at a special statewide election and a resolution proposed at the second regular session is generally voted on at the general election.

Example:

**Constitutional referendum procedure; form of question; effective date. Resolved:** That the municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a (statewide election, at a special statewide election, on the Tuesday following the first Monday of November) (general election, at the next general election in the month of November) following the passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

(Here set out a brief description of the proposed amendment in question form usually paraphrasing the title. Insert double quotation marks around the question.)

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment becomes part of the Constitution on the date of the proclamation; and be it further

**Secretary of State shall prepare ballots. Resolved:** That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purpose of this referendum.

Occasionally, a sponsor will request that two companion questions appear in the referendum section. If the sponsor can not be discouraged from pursuing this course, the following example of a referendum section is offered as a model.

Example:

**Constitutional referendum procedure; form of question; effective date. Resolved:** That the municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, at a statewide election, on the Tuesday following the first Monday of November following the passage of this resolution, to vote upon the ratification of the amendments proposed in this resolution by voting upon the following questions:

Question A: "Do you favor amending the Constitution of Maine to establish 4-year terms of office for Representatives in even-numbered districts beginning in 1994, and 4-year terms of office for Representatives in odd-numbered districts beginning in 1996?"

Question B: "Do you favor amending the Constitution of Maine to establish 4-year terms of office for Senators in even-numbered districts beginning in 1994, and 4-year terms of office for Senators in odd-numbered districts beginning in 1996?"

AND 11/21

The legal voters of each city, town and plantation shall vote by ballot on these questions and designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of Question A, the Governor shall proclaim that fact without delay and the amendment becomes part of the Constitution on the date of the proclamation and, if it appears that a majority of the legal votes are cast in favor of Question B, the Governor shall proclaim that fact without delay and the amendment becomes part of the Constitution on the date of the proclamation; and be it further

**E. The effective date.** The effective date provisions in a constitutional resolution are generally incorporated in the referendum provisions. While the most frequently used effective date for constitutional resolutions is upon proclamation by the Governor, other effective dates may used.

**Example:**

The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment becomes part of the Constitution on January 1, 1991.

**F. Statement of fact.** Like a bill, a constitutional resolution contains a statement of fact. The drafter should refer to page 19 of this Part for rules on drafting statements of fact.

## **Section 2. Technical style**

**A. Structure of the Constitution.** The Constitution of Maine is composed of a preamble and 10 Articles. Unlike the Constitution of the United States, amendments to the Constitution of Maine are integrated into the body of the Constitution according to subject matter and not placed at the end. The Constitution of Maine requires the Chief Justice to recodify the Constitution every 10 years. Recodification allows for removal of unnecessary language and proper numbering of sections. The structure of the Constitution is:



PREAMBLE  
ARTICLE  
PART (Used only in ARTICLES IV, V and VIII)  
SECTION  
SUBSECTION

Language that is to be removed from the Constitution is shown by striking through the existing text. New language is indicated by underscoring.

**Section 3. Example**

Following is an example of a complete first session constitutional resolution with the labeled parts:

**[TITLE]**                    **RESOLUTION, Proposing an Amendment to the Constitution of Maine to Commit State Support of Affordable Housing**

**[INTRODUCTORY CLAUSE]**                    **Constitutional amendment. RESOLVED:** Two thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of Maine be proposed:

**[BODY OF RESOLUTION]**                    **Constitution, Art. IX, §14-E** is enacted to read:

**[AMENDING CLAUSE]**                    **Section 14-E. Authority to insure payment of mortgage loans.** For the purpose of fostering and encouraging the acquisition, construction, repair and remodeling of affordable housing owned or to be owned by Maine citizens, the Legislature by proper enactment may insure the payment of mortgage loans on such houses not exceeding in the aggregate \$25,000,000 at any one time and may also appropriate funds and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured in this section.

; and be it further

**[REFERENDUM AND EFFECTIVE DATE PROVISIONS]**                    **Constitutional referendum procedure; form of question; effective date. Resolved:** That the municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, at a statewide election, on the

Tuesday following the first Monday of November following the passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

**[QUESTION]**

"Do you favor amending the Constitution of Maine as proposed by a resolution of the Legislature to insure the payment of mortgage loans for affordable housing for Maine citizens, not to exceed \$25,000,000 in the aggregate?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment becomes part of the Constitution on the date of the proclamation; and be it further

**Secretary of State shall prepare ballots. Resolved:**  
That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purposes of this referendum.

**[STATEMENT OF  
FACT]**

**STATEMENT OF FACT**

This constitutional resolution authorizes the State to pledge its full faith and credit to insure the payment of mortgage loans for affordable housing for Maine citizens. The full faith and credit of the State is limited to \$25,000,000 outstanding at any one time.

## **CHAPTER 4**

### **RESOLUTIONS**

Resolutions are formal expressions of legislative sentiment, opinion, or will and do not have the force of law. A resolution may be directed to another branch of state or local government, another state government, the federal government, an official of those governments or to another person or entity. Unlike bills, statements of fact do not appear on resolutions. The following are a number of specific types of resolutions.

#### **Section 1. Joint resolutions; elements**

Joint resolutions are jointly issued by the House of Representatives and the Senate to express special sentiment or opinion. Requests for specific joint resolutions should be filed initially with the Revisor's Office. The Revisor's Office sends requests to the President of the Senate and the Speaker of the House of Representatives. The President and the Speaker may approve or reject a request or instruct the Revisor's Office to process the request as a legislative sentiment.

The title begins with the words "JOINT RESOLUTION ..." and it should describe concisely the contents of the resolution. The preamble follows with paragraphs that set out the reasons for the sentiment or opinion that is expressed in the body.

The body of the joint resolution is used to set out the sentiment or opinion that the Legislature wishes to convey. If copies of the resolution are to be sent to a specified person or persons, indicate in the last paragraph of the main body that those copies are to be sent by the Secretary of State.

The following joint resolution is a typical example of the commemoration of an anniversary of a political subdivision of the State:

**[TITLE]**

JOINT RESOLUTION COMMEMORATING THE 200TH  
ANNIVERSARY OF WASHINGTON COUNTY

**[PREAMBLE]**

**Whereas,** the most easterly county in these United States, Maine's Washington County, is the home of crystalline lakes, granite mountains, great expanses of beautiful forests and a spectacular and craggy "bold coast"; and

**Whereas,** this proud region has been home to generations of hardy citizens who have made a resourceful living by carefully stewarding their limited material resources while industriously harvesting and utilizing the abundant bounty of the county's fields, forests, rivers and seacoast; and

**Whereas,** the "Sunrise County, USA" has historic significance, as it was originally a part of York County, was then part of Lincoln County and was separately set off and incorporated by the General Court of the Commonwealth of Massachusetts on June 25, 1789, and as the first naval battle of the Revolutionary War was fought off Machias on June 11, 1775; and

**Whereas,** the rugged beauty of this region, from Quoddy Head Light to Cobscook Bay, to Deblois' blueberry barrens, to Cutler's majestic fiord-like bays, to Grand Lake Stream, has been preserved for the enjoyment of visitors from throughout this State and around the world; and

**Whereas,** downeast Maine and the people who inhabit it have captured our nation's imagination, and epitomize the self-reliance and independence of all Mainers; now, therefore be it

**[BODY OF  
RESOLUTION]**

**Resolved:** That We, the Members of the One Hundred and Fourteenth Legislature now assembled in the First Regular Session, take this occasion to recognize the Bicentennial Anniversary of Washington County, to commend the inhabitants and officials of this county for the success they have achieved together for two centuries, and to extend to each our sincere hopes and best wishes for continued achievement over the next 200 years; and be it further

**Resolved:** That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the citizens and officials of this proud region in honor of the occasion.

## **Section 2. Senate or House resolutions**

The elements of a Senate or House resolution are the same as those of a joint resolution. Like joint resolutions, these instruments express special sentiment or opinion, but they are issued by only one house. The form is similar to joint resolutions except that the title begins "RESOLUTION ..." and the references in the body of the resolution are to the particular house rather than to the Legislature as a whole.

## **Section 3. Memorials; elements**

Memorials are joint resolutions used to petition individuals or entities to take some action. Pursuant to the Joint Rules, memorials require approval of the Legislative Council before they may be introduced.

The elements of a memorial follow the form of joint resolutions except for the following elements. Titles of memorials begin "JOINT RESOLUTION MEMORIALIZING ..." Following the title and before the preamble is a standard introductory paragraph identifying the memorialists and the person or entity that is the subject of the petition.

The following memorial is a typical example of a memorial urging the Congress to take some specified action:

**[TITLE]**

JOINT RESOLUTION MEMORIALIZING THE CONGRESS  
OF THE UNITED STATES TO ENACT A NATIONAL MINIMUM  
CARAPACE SIZE FOR LOBSTERS

**[INTRODUCTORY  
PARAGRAPH]**

We, your Memorialists, the Members of the One Hundred and Fourteenth Legislature of the State of Maine now assembled in the First Regular Session, most respectfully present and petition the members of the Congress of the United States, as follows:

**[PREAMBLE]**

**Whereas**, a legal minimum carapace size limit for lobsters, *Homarus americanus*, is an effective way to manage and protect the lobster resource; and

**Whereas**, lobsters migrate from the coastal waters of one state to the coastal waters of other states; and

**Whereas,** lack of a uniform minimum carapace size limit between states that have a lobster industry is detrimental to the effective management of the lobster resource; and

**Whereas,** a national minimum carapace size limit for lobsters would provide uniform resource management and protection, enhance enforcement of the lobster laws concerning sale of undersize lobsters, and ease interstate tensions and rivalries in the lobster industry; now, therefore, be it

**[BODY OF  
MEMORIAL]**

**Resolved:** That We, your Memorialists, respectfully urge and request that the United States Congress enact legislation to establish a national minimum legal carapace size limit for lobsters; and be it further

**Resolved:** That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable George Bush, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, and to each member of the Maine Congressional Delegation.

**Section 4. In memoriam; elements**

A special type of joint resolution is known as an "in memoriam," which is used to express sympathy on the death of prominent local or state figures. The form of an in memoriam differs from other joint resolutions, and is highly standardized. All in memoriam joint resolutions are prepared by the Revisor's Office and questions about them should be referred to that office's staff.

The following is an example of an in memoriam:

**STATE OF MAINE**

**IN MEMORIAM**

**WHEREAS, THE LEGISLATURE HAS LEARNED**

**WITH DEEP REGRET OF THE DEATH OF**

Tom Jones, of Rockville, a man well-known as a dedicated citizen who took an active role in the civic affairs of Rockville and who provided sound leadership to the community as a member of the school committee;

AND BE IT RESOLVED THAT WE, THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES PAUSE IN A MOMENT OF UNDERSTANDING AND PRAYER TO INSCRIBE THIS TOKEN OF SYMPATHY AND CONDOLENCE TO ALL WHO SHARE THIS GREAT LOSS AND RESPECTFULLY REQUEST THAT WHEN THE LEGISLATURE ADJOURNS THIS DATE IT DO SO IN HONOR AND LASTING TRIBUTE TO THE DECEASED.

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## CHAPTER 5

### ORDERS

Orders are used for administrative or organizational functions that are internal to the Legislature. An order may also be used to express the Legislature's will that a certain action be taken or to convey the Legislature's sentiments or opinion. An order may be a joint order, a Senate order or a House order.

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#### **Section 1. Elements of an order**

Orders generally consist of a preamble, an introductory phrase and the body of the order. The preamble is routinely omitted in simple orders when no explanation of the background for the orders are needed. An order does not have a statement of fact.

**A. The preamble.** The preamble in an order is written in the same manner as that of a joint resolution.

**B. The introductory phrase.** The form of the introductory phrase depends on whether the order is a joint order, Senate order or House order. A joint order originating in the Senate reads "Ordered, the House concurring, that..." and one originating in the House reads "Ordered, the Senate Concurring, that ..." A Senate or House order begins with the phrase, "Ordered, that ..."

**C. The body.** The wording of the body of an order depends on the action that is being requested or the sentiment being expressed.

#### **Section 2. Common types of orders; examples**

Orders are used for a broad range of purposes, including to recall bills from legislative files or from the Governor's desk, to report bills out of committee, to adjourn, to amend the Joint Rules or the House or Senate rules, and to carry over bills to the next session. The most common order is a congratulatory order, also known as a legislative sentiment. Sentiments are prepared by the Revisor's Office using a standardized and



specialized format. Other orders have varying formats, depending on their purpose. While an example of a legislative sentiment and of an order to recall a bill follow, requests for orders should be sent to the Revisor's Office, where the order will be processed in the proper form.

Examples:

**STATE OF MAINE**

BE IT KNOWN TO ALL THAT

WE, THE MEMBERS OF THE SENATE AND  
HOUSE OF REPRESENTATIVES,

JOIN IN RECOGNIZING

Mr. and Mrs. John R. Smith, of Smalltown, on  
the occasion of their 50th Wedding  
Anniversary, December 1, 1989;

AND BE IT ORDERED THAT THIS OFFICIAL EXPRESSION OF  
SENTIMENT BE SENT FORTHWITH ON BEHALF OF THE  
LEGISLATURE AND THE PEOPLE OF THE STATE OF MAINE.

(Representative Jones)

SPONSORED BY: \_\_\_\_\_

TOWN: Augusta

(Senator Smith)

COSPONSORED BY: \_\_\_\_\_

COUNTY: Kennebec

(Representative Joe)

COSPONSORED BY: \_\_\_\_\_

TOWN: Waterville

(Representative Jane)

COSPONSORED BY: \_\_\_\_\_

TOWN: Sidney

STATE OF MAINE

\_\_\_\_\_

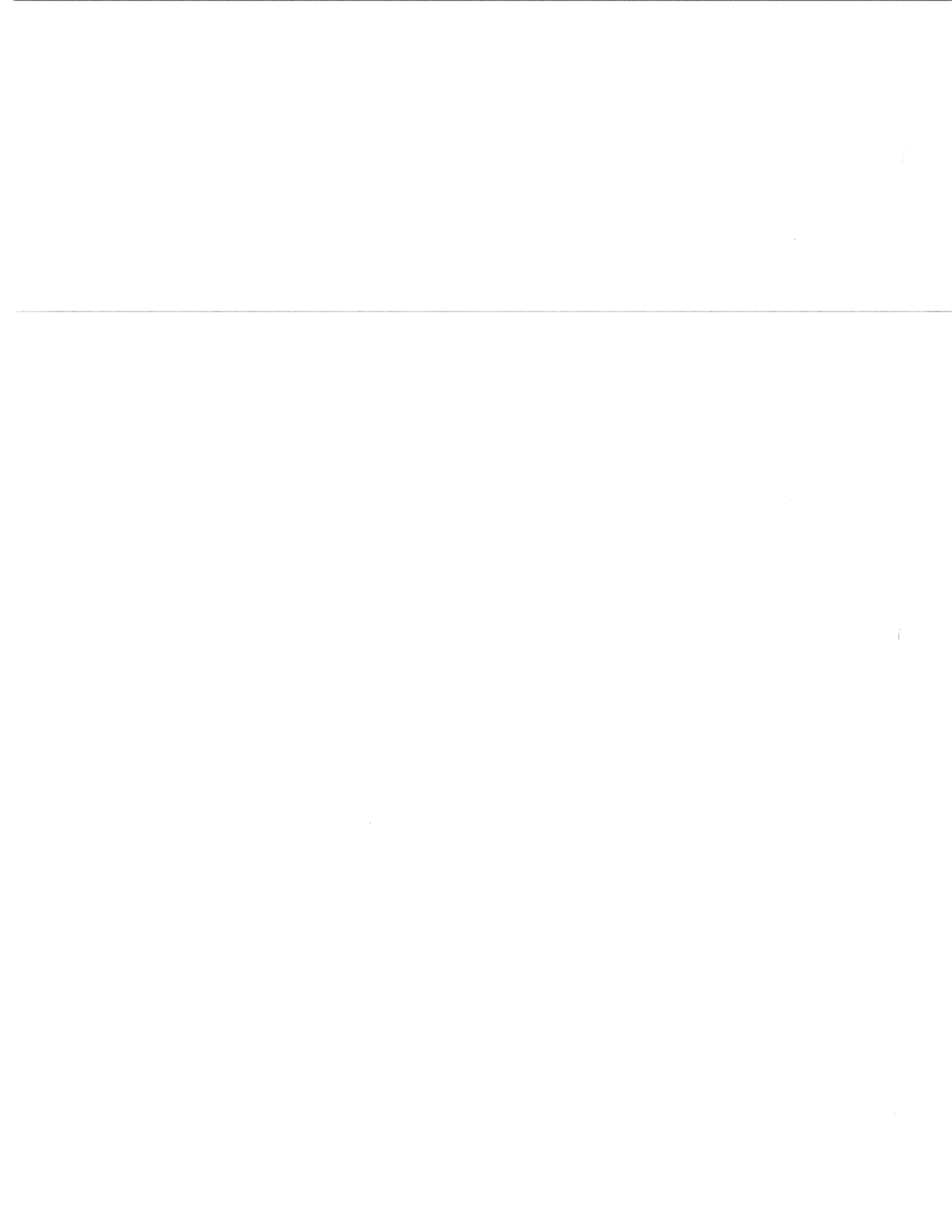
In House \_\_\_\_\_

Ordered, the Senate concurring, that Bill, "An Act Amending the Maine Uniform Transfers to Minors Act," H.P. 401, L.D. 601, and all its accompanying papers, be recalled from the legislative files to the House.

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(Representative Jones)  
SPONSORED BY: \_\_\_\_\_

TOWN: Augusta



## PART III

### STYLE AND GRAMMAR

This Part sets forth the conventions of style and grammar applied by the Revisor's Office to help ensure consistency throughout the statutes and other Maine laws.

Consistency in style and grammar is important because legislative instruments are drafted and redrafted by a broad range of people and because statutes are enacted, amended and reenacted over a long period of time. The goals of a standardized legislative style are to ensure that later revisions are internally consistent with earlier documents and to assist readers in understanding the purpose and intent of the laws.

Good legislative drafting is, however, an art rather than a science, and the constraints imposed by the drafting environment may sometimes present situations that require deviation from certain accepted drafting conventions. These situations, such as inserting a new section in the middle of an old chapter that has been extensively interpreted by the Law Court, require the drafter to use common sense and legal judgment. While the drafter may deviate from these conventions, the conventions may never be disregarded without the conscious decision to do so and a sound reason for that decision.

This manual does not attempt to enumerate all the rules of English grammar or even to set forth all the points that ensure clarity in legislative drafting. The staff of the Revisor's Office often consult The Fundamentals of Legal Drafting (2nd Ed.) and Legislative Drafting by Reed Dickerson along with The Elements of Grammar by Margaret Sherter, The Elements of Style by William Strunk, Jr. and E.B. White, and Fowler's Modern English Usage (2nd Ed.) as supplementary authorities and recommend them to the interested drafter.

# CHAPTER 1

## STYLE

A good statutory style requires consistency, coherence and clarity. Bill drafts should be precise and understandable. This chapter provides guidelines for drafting style to achieve these goals.

### Section 1. Audience

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All bills are not aimed at the same readers. The primary audience of a bill varies with the bill. Write laws that are addressed to the general public, such as laws that prohibit dumping in state parks, for people of average intelligence and education. However, if a bill will regulate securities sales, then brokers and bankers are the audience and the bill may involve the technical vocabulary of their trade. Whenever possible, assume the audience is the general public. Keep sentences short and eliminate or define difficult or technical words or words that have meanings that deviate from standard usage. In expressing legislative policy to any audience, simplicity is of primary importance.

### Section 2. Clarity

Brief, concise drafting usually leads to clear, understandable language. Clarity should not, however, be sacrificed for the sake of brevity. Generally, short words are preferable to long words. A simple sentence is easier to understand than a complex or compound sentence. If the meaning of a complex sentence can be precisely stated in two or more simple sentences, use the simple sentences. If a word has the same meaning as a phrase, use the word. Omit needless words. In drafting, attempt to find the balance between overdrafting and vagueness.

**A. Overdrafting.** Preciseness in drafting is a worthy goal, but can be taken too far. It is frequently unnecessary to name every single thing you are forbidding or requiring. An overzealous attempt at precision may result in redundancy and verbosity. Drafting too precisely may create unintended loopholes.

This example, adapted from a National Park Service rule, tries to cover all the possibilities:

**§5010. Trees, shrubs, plants, grass and other vegetation**

1. **General injury.** A person may not prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower, or part thereof, nor shall any person permit any chemical, whether solid, fluid, or gaseous, to seep, drip, drain or be emptied, sprayed, dusted or injected upon, about or into any tree, shrub, plant, grass, flower, or part thereof, except when specifically authorized by competent authority; nor may any person build fires, or station, or use any tar kettle, heater, road roller or other engine within an area covered by this part in such a manner that the vapor, fumes, or heat therefrom may injure any tree or other vegetation.

Using broad terms that include narrow terms is preferable and probably provides greater legal protection. In the above example, "cut" could include "chop," "saw" and "sever" (among others), making it unnecessary to list these included words. Still more broadly drafted, the rule might well read "a person may not harm the plants," and offer the same, if not more, protection.

**B. Vagueness.** Just as overdrafting can backfire and limit a provision in unforeseen ways, underdrafting is equally dangerous. Although it is often necessary or desirable to create a general or broad legislative standard or directive, beware of language that is so indefinite that it is meaningless or begs a challenge in court as invalid for vagueness. Generally, courts loathe declaring a law invalid on this ground, but careful drafting can eliminate the need for judicial scrutiny. Use subjective words prudently. Don't riddle drafts with unmeasurable words such as "fair," "reasonable," "proper," "competent," "substantial," "remote," "vulgar," "adequate," "gross," "normal" or "immoral."

### **Section 3. Consistency**

Although the generous use of synonyms is fundamental to most types of writing, it is particularly ill-suited for drafting legislation. When a word is used more than once in a law, a presumption arises that the word or phrase has the same meaning throughout, unless a contrary intent is clear. Three rules emerge from this:

- Don't use the same word to convey different meanings;
- Don't use different words to convey the same meaning; and
- Don't use a synonym if you are trying to indicate a difference in substance.

What may influence or control your choice of terms is an approach already taken in the same or a similar matter. If you are establishing an administrative mechanism for licensing a particular profession, for example, check the chapters of the Maine Revised Statutes, Title 32 for a possible model to follow. You don't want your choice of terms to affect existing law unintentionally.

Consistency builds in a certain degree of predictability of terms that aids legal research, both manual and computer-assisted. Using terms consistently, however, does not justify redundant writing. Don't write "... the purpose of screening is to screen ..." or "... the necessary steps required."

### **Section 4. Legislative objective: the legislative sentence**

By following a strict pattern of statutory expression and avoiding variation in sentence form, the statutory objective can be stated more easily. Each sentence should express a single thought, making it easier for the reader to comprehend the rule expressed. It is best to follow an order of development in which the sentence first identifies the person who must act followed by the action that the statute directs.

**A. Legal rule.** The simplest legislative sentence consists of a legal subject and a legal action. These two parts compose the rule. In more complicated forms, a sentence also may contain exceptions, conditions and cases.

(1) **Legal subject.** The legal subject identifies the person required or permitted to do something or prohibited from doing something. The description of the legal subject determines the person to whom the law will apply and should, therefore, be precise. Consider the following sentence:

Whenever a structure is in disrepair, it must be ordered demolished.

The sentence does not tell the reader who is to issue the order. The intent was probably to place a duty on someone to order the demolition. The person with the duty should be identified. Compare this sentence:

The inspector of buildings shall order the city to demolish any structure in disrepair.

Because the responsibility for legal duties, liabilities, rights, privileges and powers can reside only in a person, draft legal sentences in the personal form. It is illogical to direct a command at a "thing" because it is incapable of assuming responsibility. (See also discussion on voice, this Part, pages 16 to 18.)

(2) **Legal action.** Legal action directs the legal subject to act in a particular manner, describing the particular act permitted, required, limited or prohibited. The verb directs, limits or permits action or inaction. Often, the greatest problem for the drafter is selecting the proper verb form. (See discussion on legal action verb forms, this Part, pages 33 to 38.)

**B. Limitations on application.** Frequently, a rule is not designed to be generally or uniformly applied. If there is a limitation on a rule's application, it should be expressed as either the "case" to which the legal action is confined or as a "condition" upon which it will operate. Normally, the case and condition should precede the legal subject.



**(1) Case.** The case sets out the facts that confine the legal rule's scope or application.

Example:

CASE:       When an emergency exists,  
SUBJECT:    the director  
ACTION:     may restrict a licensee's operations.

The case has indicated under what circumstances the authority granted by the legal rule may be exercised.

Use "when" to introduce a case, not "in case," "in the event" or "where."

Stating the case at the beginning of a sentence immediately notifies the reader of the rule's limited application. However, if a single rule applies to different cases, it may be more convenient to outline the cases after the rule.

Example:

SUBJECT:    The director  
ACTION:     may restrict a licensee's operations:  
CASES:      1) When an emergency exists;  
              2) When a licensee has been indicted; or  
              3) When a licensee has been adjudicated  
              as bankrupt.

**(2) Conditions.** Until fulfilled, a condition suspends the operation of a rule and can apply to a rule of general application or to one restricted to certain cases. Place the condition before the rule and after the case.

Example:

CASE:                When an emergency exists,  
CONDITION:        if the director determines that the  
                      situation threatens the life or  
                      safety of any individual,  
RULE:               the director may restrict a  
                      licensee's operations.

When the legal action is stated affirmatively, introduce a condition with "if" or "until," as in the preceding example.

When the legal action is stated negatively, introduce a condition with "unless."

Example:

CASE:	When an emergency exists,
CONDITION:	unless the director determines that the situation threatens the life or safety of any individual,
RULE:	the director may not restrict a licensee's operations.

Do not use the future tense of a verb to state a condition.

Example:

Do not use:

If the board will approve the policy, applications will be considered in the order in which they are received.

Use:

If the board approves the policy, applications must be considered in the order in which they are received.

**(3) Exception.** Generally, an exception is used to exempt from the application of a law some matter that otherwise would be within the scope of the rule. The inappropriate use of exceptions, commonly in the form of "provisos" does more to confuse legislation than any other element of a legislative sentence. Exceptions should not be drafted in the form of a case or condition because this will lead to a complicated and unintelligible statute.

Do not use the phrase "provided that." You can accomplish the same thing with greater clarity by using "if," "except" or a new sentence or clause.

**Example of an unnecessary "provided that":**

The board may revoke a supervised release if the supervised releasee fails to enter a program; provided, however, that if no community program is available at the time of supervised release, the board may order the supervised releasee to enter the first available community program.

**Example of a clearer version, without "provided that":**

The board may revoke supervised release if the supervised releasee fails to enter a program. If no community program is available at the time of supervised release, the board may order the supervised releasee to enter the first available community program.

When properly used, the exception ordinarily precedes the case and condition, if any, and the rule.

**Example:**

EXCEPTION:            Except as provided in section 2,  
CASE:                 when an emergency exists,  
RULE:                 the director may ...

Another method preferred by some authorities for creating exceptions to a general rule is to create a section or subsection, with the headnote "Exception," and set out the exception separate from the rule. In this way, future exceptions may be added without harming the readability of the language.

**C. Putting the sentence together.** When finally put together, a complicated legislative sentence should follow this structure:

EXCEPTION:  
CASE:  
CONDITION:  
RULE:    Legal Subject  
          Legal Action

This structure should be modified, however, if the result is difficult to read. In such an instance, it is better to state the law in its generality and provide the limitations in separate sentences or sections. If the rule is to apply under several cases or conditions, you may state the rule first and then list the cases or conditions in an outline or tabular form as discussed in section 5 below.

## Section 5. Outlining

Outlining involves organizing language into units to clarify the relationship between provisions and make the language easier to understand.

### A. When to outline.

(1) **Subordinate clauses or ideas.** Outline text that contains provisions that include subordinate, related clauses or ideas. Drafters frequently make the mistake of treating independent related thoughts as subordinate ideas. In the following example, the organization of the section into subsections is appropriate. The further division of subsections into subordinate paragraphs is correct in subsection 1, but not in subsection 2.

#### §101. Collection of taxes

1. Documents. An application for registration may be granted if the following conditions have been satisfied. The applicant has:

A. Submitted a dealers certificate showing either that the sales tax due has been collected by the dealer or that the sale of the vehicle is not subject to tax; or

B. Properly executed and signed a use tax certificate.

2. Fee. Each official shall retain from the use taxes collected a fee of \$1.25 for each vehicle for which a use tax certificate has been submitted, even when a certificate indicates that no use tax was due.

A. Retained fees must be transmitted to the Treasurer of State and credited to the Highway Fund.

B. Taxes collected must be transmitted to the Treasurer of State and credited to the General Fund.

(2) **Complicated text.** When several of the items in a series are more than one typed line long or a section has complex internal punctuation, the text should be written in outline form for ease of reading. In addition, outlining is often useful when a legislative sentence contains several cases, conditions or exceptions. Occasionally, however, readability may suffer as a result of outlining if the method is used too extensively.

(3) **Formulas.** In the standard phrasing of formulas, the sentences are often long: they include long multiple conditions; they include references that block sentence flow and delay the arrival of the next sentence elements; and they have long subordinate clauses that separate modifiers from the things they modify. Moreover, formulas are usually in the passive voice and frequently include a misused "shall."

Example:

If only a portion of the rent constituting property taxes is paid by these programs, the resident shall be a claimant for purposes of this chapter, but the refund calculated pursuant to section 290 shall be multiplied by a fraction, the numerator of which is income as defined in subsection 3 reduced by the total amount of income from the above sources other than vendor payments under the medical assistance program or the general assistance medical care program and the denominator of which is income as defined in subsection 3 plus vendor payments under the medical assistance program or the general assistance medical care program, to determine the allowable refund pursuant to this chapter.

Reed Dickerson recommends the "cookbook" approach in drafting formulas, that is, describing the steps, one by one, that produce the right figure. Here is an adapted part of Dickerson's example:

3. **Computation of price.** The seller shall compute the price of any item that is packed in a new container type or size as follows. The seller shall:

A. Determine the most similar container type for which the seller has established a price. From that container type, the seller then selects the nearest size that is 50% or less larger than the new size or if that size does not exist, the nearest size that is 50% or less smaller. This is the base container; and

B. Take as the base price the seller's price for the product when packed in the base container. If this price is a price as delivered to any point other than the shipping point, the seller converts it to a price f.o.b. shipping point by deducting the transportation charges that are reflected in it.

The advantages of this method are short sentences, information delivered in small amounts and use of the active voice.

**B. Outlining sections.** If you use an introductory expression that ends with a colon to lead into subordinate clauses or other text, make certain that each clause reads as a logical and grammatical continuation of the introductory language.

In addition, begin each item with an upper-case letter, use a conjunction after the next to the last item, end each item except the last with a semicolon and end the last item with a period.

Example:

1. **Entrance salary; exceeding minimum rate.**  
The entrance salary may be above the minimum rate only if:
  - A. The individual's exceptional qualifications justify an appointment at a higher rate;
  - B. Others with similar qualifications are offered the same rate; and
  - C. The appointment at a higher rate is made at one of the established steps of the salary range.

When several items in a list are more than two typed lines long, or when the items are conditions that are complex, the list may need to be divided into separate sentences. Full sentences should have their first words capitalized and should end in periods.

### C. When to use a paragraph.

(1) **Existing language.** Because of the way laws are amended in Maine, consistency of form within a section is very important. A law written largely in paragraph form should remain in that form. If such a law is later amended to include some language in outline form, the instrument adding the new language or amending the old, as well as subsequent instruments, may have to include large amounts of unaffected existing language unnecessarily.

(2) **Series; lists.** A series of short items may be written in paragraph form without designation; that is, without numbers or letters marking each item. (For a discussion of the punctuation used in paragraphs, series and lists, see this Part, chapter 4.)

#### Examples:

Butter, fortified margarine, cream or salad oil may be used in moderate amounts to make food palatable.

#### **§302. Rules**

The administrator shall adopt rules that govern work hours, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance evaluation procedures, promotions, personal hygiene practices, attire, conduct, disciplinary actions and other matters that need to be regulated so that employees can do their jobs properly.

If you use an introductory expression, follow it with a colon.

#### Example:

The administrator shall keep the following records: register, daily logs, medical records, dental records, programming records and good time records.

If any one of the items in a series contains a comma, separate the items with semicolons.

Example:

... the following: soups; sweets such as desserts, sugar or jellies; or fats such as bacon, cream and salad dressings.

**(a) Parallelism.** When writing a series or list, be careful to keep similar ideas in similar, or "parallel," form. Here is an example of what to avoid:

An applicant may not be hired who has any of the following conditions: blood pressure over 160/60, any communicable disease or applicant not of good general health.

The key word is "conditions." "Applicant not of good general health" is not the name of a condition in the way that "blood pressure" and "disease" are. The last clause should be rewritten as "poor general health." Here is another example:

A person may not drain, throw or deposit upon the lands and waters within a state park any substance that would mar the appearance, create a stench or destroy the cleanliness or safety of the park.

"Appearance," "cleanliness," and "safety" all go with "of the park," but "stench" does not. The sentence needs to be rearranged in this way:

... any substance that would mar the park's appearance, destroy its cleanliness or safety, or create a stench.

When you write a series or list, make sure that every item in it performs the same function in the sentence.

**D. Flushing left.** When you outline, do not use numbered subsections or lettered paragraphs in the middle of running text, a device commonly known as "flushing left." For example:

1. **Minor; Class E crime.** A person who has not attained the age of 20 years who:

A. Consumes alcohol in a public place; or



B. Operates a school bus without a valid driver's license

commits a Class E crime.

The section is less confusing when written:

**1. Minor; Class E crime.** A person who has not attained the age of 20 years commits a Class E crime if that person:

A. Consumes alcohol in a public place; or

B. Operates a school bus without a valid driver's license.

Flushing left reduces readability and usually increases ambiguity.

## **Section 6. Indented and blocked paragraphs**

A paragraph may apply to the entire section or to a previous subunit (subsection, paragraph, etc.), depending on its format. In order to eliminate any ambiguity in determining this relationship, the drafters of the 1964 Revision of the Statutes established the following rule to govern "indented" and "blocked" paragraphs.<sup>1</sup> If the paragraph is unnumbered, unlettered, and indented only on the first line, the paragraph applies to the entire section. If the paragraph is "blocked" (the first line is not indented, but the paragraph may have an indented left margin), the paragraph applies to the nearest previous subunit that shares the same margin or is located the same number of spaces to the right of the margin. Because an indented paragraph relates to the section as a whole, a drafter should not intersperse indented paragraphs among smaller subunits in a single section.

### Example:

#### **§803. Explanation and notice to parent of minor**

If the insured is a minor who has not attained 18 years of age and the insurer is requested to do so by either of the minor's parents, the insurer shall provide that parent with:

**1. Payment or denial of claim.** An explanation of the payment or denial of any claim filed on behalf of the insured minor;

<sup>1</sup>Slosberg, Samuel H., Report of the Director of Legislative Research; October 12, 1964.

2. **Change in terms and conditions.** An explanation of any proposed change in the terms and conditions of the policy; or

3. **Notice of lapse.** Reasonable notice that the policy may lapse, but only if the parent has provided the insurer with the address at which the parent may be notified.

In addition, any parent who is able to provide the information necessary for the insurer to process a claim may authorize the filing of any claims under the policy.

The last sentence in the above section is indented and, therefore, applies to the entire section. The last sentence in the following example applies only to paragraph C:

A. The department, by rule adopted in accordance with subsection 9, shall determine the scope and amount of medical assistance to be provided to participants in the program.

B. The department, in consultation with the council, shall develop plans to ensure appropriate utilization of services.

C. The department shall adopt rules in accordance with subsection 9, setting forth a sliding scale of premiums, to be paid by persons eligible for the program, that meet the following criteria.

(1) The premium for a household is zero when household income does not exceed 100% of the federal poverty level.

(2) The premium for a household must not exceed 3% of the household income when household income exceeds 100% of the federal poverty level.

The department may, by rule, reduce or waive premiums for persons below 18 years of age whose household income does not exceed 125% of the federal poverty level.

## Section 7. Voice

A. Active vs. passive. Whenever possible, use the active voice rather than the passive voice. A sentence is in the active voice when the subject "does" the verb: "Agencies publish rules" is in the active voice. "Rules are published by agencies" is in the passive voice because the subject ("rules") is not the doer of the verb ("are published"). The doer is "agencies." "Rules are published" is still in the passive voice, although the doer of the action does not appear at all.

In laws and rules, passive sentences without phrases containing "by" are dangerous because they do not say to whom duties are assigned. Consider the problem in the following sentence:

Improvements to the licensed design made after the effective date of this section must be disclosed within 10 days of an improvement. Failure to do so is a material breach of the license agreement.

Nothing in the sentence tells the reader who must disclose improvements to whom. If rules and laws exist to explain people's responsibilities, then drafters must avoid sentences that don't assign responsibilities clearly.

When a sentence contains a phrase beginning with "by," you can often change the sentence to active voice.

### Examples:

#### Passive:

The required monitoring frequency may be reduced by the commissioner to a minimum of one sample analyzed for total trihalomethanes per quarter.

#### Active:

The commissioner may reduce the required monitoring frequency to a minimum of one sample analyzed for total trihalomethanes per quarter.

**Passive:**

When a demand is made upon the Governor of this State by the executive authority of another state for the surrender of a person charged with crime ...

**Active:**

When the executive authority of another state demands that the Governor of this State surrender a person charged with crime ...

Drafters use the passive voice needlessly when they concentrate on things and requirements rather than on people and duties. The passive examples above concentrate on "the required monitoring frequency" and "a demand." For drafting purposes, it is better to impose a duty or grant permission in the active voice than to state a requirement in the passive.

**B. Acceptable uses of passive voice.** In certain instances, use of the passive voice may be desirable or necessary.

**(1) Old or repeated information.** Passive voice lets you put old or repeated information at the beginning of the sentence where it demands less attention and new information at the end of the sentence where it stands out.

**Example:**

The indictment, information or affidavit must contain a charge that the person committed a crime and must be authenticated by the executive authority making the demand.

**(2) Noun strings.** Passive voice can also let you put a long string of nouns at the end of a sentence so that your reader will not have to work through the series before coming to the verb.

**Example:**

The application may be made by the prosecuting attorney of the county in which the offense was committed, the parole board, the chief executive officer of the facility or the sheriff of the county from which the person escaped.

(3) **Gender-specific language.** Sometimes passive voice will help you avoid using gender-specific language such as "he" or "she." (See this Part, section 14, pages 25 to 32.)

When you use passive voice for any of these reasons, be certain that the duty or permission is assigned clearly, either in the passive sentence or in one of the sentences nearby. If the passive voice does not solve these specific problems, it should not be used.

## **Section 8. Tense**

Laws are meant to be of continuing application and should be written in the present tense.

**A. Present tense.** Drafters are tempted to look forward to the time when a law will be applied and, therefore, to frame legislation in the future tense. Resist that temptation. Use the present tense and write the statute as you want it to read at the time it is applied.

### Example:

Do not use:

The duties of the board will include ...

Use:

The duties of the board include ...

Since the law speaks at the moment when read, avoid inserting words such as "current" or "existing" unless you also include the necessary temporal reference.

### Example:

Do not use:

An existing facility is exempt from licensure.

Use:

A facility existing on January 1, 1991, (or "on the effective date of this section") is exempt from licensure.

**B. Past tense.** When it is necessary to express a time relationship, recite facts concurrent with the operation of the instrument as present facts and facts precedent to its operation as past facts.

**Examples:**

If, having been convicted of a felony, an alien is found physically incapable of being deported within the time prescribed by section 402, the alien may ...

Any person who is or has been a member of the Legislature is disqualified from further participation, if that person ...

If it is necessary that a provision include past as well as future events, the drafter should use the present tense but insert before the appropriate verb the phrase "before (or after) this (title, part, section, etc.) takes effect."

**C. Future tense.** Although the future tense is rarely appropriate in drafting legislation, it is sometimes necessary. Keep in mind, however, that the temporal point of reference is the time at which the law is applied, not when it is written and not when it takes effect. The word "shall" is never appropriate to convey the future tense. The proper use of "will" is limited to something that happens in the future because of a preceding action.

**Example:**

If the contractor finds that service under section 3.02 of this contract will contribute to a violation of the law by the company, the contractor may ...

If spending in the bureau will result in a budget shortfall, the commissioner may reduce department allotment levels.

## **Section 9. Person**

Draft in the third person; that is, use "it," "its," "he," "his," "him," "she," "hers," "her," "they," "their" and "them" rather than the forms of "I," "we" or "you." Use gender-specific pronouns according to this Part, section 14.

## **Section 10. Singular and plural**

The Maine Revised Statutes, Title 1, section 71, subsection 9, provides that words of the singular number may include the plural and words of the plural number may include the singular. Nevertheless, a drafter should use the singular form of a noun rather than the plural whenever possible. This custom is based on the practical difficulty of using plurals consistently and the ambiguity that may arise as to the applicability of a provision. In the following example, the singular version would probably not be construed to apply only to an employee entering the premises alone, but must more than one employee enter the premises before the plural version applies?

### Example:

#### Singular:

If an employee enters the premises ...

#### Plural:

If employees enter the premises ...

If you use plurals to eliminate or avoid gender-specific pronouns, be sure to check your use for consistency and clarity.

## **Section 11. Nominal style**

Many verbs have related nouns: "decide" is related to "decision"; "complain" to "complaint"; "speak" to "speech." An idea can often be expressed with either a verb or a related noun. For example, you can complain or make a complaint.

Writing that uses verbs (verbal style) is usually brief and clear. Writing that uses nouns (nominal style) can be too formal and wordy. Many drafters overuse nominal style.

Example:

Do not use:	Use:
to implement pupil management techniques	to manage pupils' behavior
established a contractual relationship with	contracted with
has knowledge or suspicion that	knows or suspects that
make application for	apply for
make payment for	pay for
make provision for	provide for
upon X's request to Y	if X asks Y
upon a determination by X that	if X determines that

There are many other possibilities. The suffixes "-ance," "-ancy," "-ant," "-ence," "-ency," "-ent," "-ion" and "-ment" often mark nouns derived from verbs. Whenever you see these suffixes, check for nominal style and try to eliminate it.

## **Section 12. Splitting verbs and word groups**

Many sentences in bills have verbs in the infinitive form, or verbs with more than one part: shall + (verb), may + (verb), must + (verb). Sometimes a word is placed between these parts, as in "The commissioner shall immediately order an investigation of a reported epidemic." Although it is generally better not to interrupt the verb parts, particularly when using the infinitive verb form, one-word adverbs in this position do no harm. In some areas of law, the verb parts are normally split, for instance when referring to culpable states of mind, such as "to knowingly fail." Longer divisions, however, are difficult to read, as in this sentence:



Within 10 days after service of the notice of appeal, the appealing party **may** in writing, with a copy to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record, **order** from the Bureau of Mediation Services a transcript of any parts of the proceedings it considers necessary.

The interrupting words make no sense without the verb "order," but the reader must struggle through over 20 words to reach it. The interrupting words would serve better as a separate sentence:

The appealing party may order from the Bureau of Mediation Services a transcript of any parts of the proceedings it considers necessary. The transcript order must be in writing. The appealing party shall give a copy of the transcript order to the executive secretary of the Public Employment Relations Board and all parties or their representatives of record.

Similarly, avoid interrupting a group of words that must be understood together. In this sentence, the interrupting phrase is set off in commas:

The judge or magistrate must commit the accused to the county jail for a time, **not exceeding 30 days specified in the warrant**, that will enable the arrest of the accused to be made.

Again, the interrupting words should be a separate sentence:

The commitment time may not exceed 30 days.

Generally, the legal subject should be followed immediately by the legal action, but one-word adverbs may be used in some instances, as in "A person who knowingly disrupts ..."

### **Section 13. Modifiers**

A modifier is a word, a phrase, or a clause that qualifies another word, phrase or clause.

Examples:

- the escaped prisoner
- the executive officer of the county
- an order signed by the Governor
- a document stating the accused's name

**A. Placement of modifiers.** Similar to verb parts and other word groups, the placement of modifiers in a sentence affects not only readability but meaning. Modifiers should be placed as close as possible to the words they modify. When they are not, sentences can be confusing, as in this rule:

The public school district or intermediary service area shall inform the nonpublic school of the type, level and location of health services that are to be made available to the nonpublic school students by August 15th.

Are the services to be made available by August 15th, or is the district to inform the school by August 15th? The drafter probably meant "... shall inform the nonpublic school by August 15th ..." and should have written it that way.

Here are some misplaced modifiers:

"Card issuer" means a financial institution ... providing use of a terminal to a customer to be activated by a card.

The goals of food service in each facility is to provide food and beverages to clients that are nutritionally adequate.

Customers usually are not activated by cards and nutritionally adequate food and beverages, not clients, are the concern.

**B. Dangling participles.** An infamous type of misplaced modifier is the dangling participle. Participles are verb forms that end in "-ed," "-t," "-en" or "-ing." A participle that appears near a noun that it does not modify is a dangling participle.

Examples:

If asked, an effective date clause must be added by the drafter.

When completed, the requester shall pick up the certificate.

These participles are called "dangling" because they are not attached to the right words. In context, these sentences are probably clear, but could be made clearer by avoiding the dangling participle. Here are two sentences that use participles correctly:

If asked, the drafter shall add an effective date clause.

When completed, the certificate must be sent to the requester.

The participle goes with the nearest noun. The drafter is the one who is asked; the certificate is what is completed.

**C. Noun strings as modifiers.** A string of four or five nouns is hard to read because it masks the relationships between words. More words may be needed to make their relationships clear, as these examples show:

Do not use:

electronic financial terminal authorization  
application

Use:

use of an electronic financial terminal

Do not use:

Flesch scale analysis readability score

Use:

Flesch test score OR  
readability score on the Flesch scale

Do not use:

early childhood program alternative case loads

Use:

case loads for early childhood programs

## **Section 14. Gender**

The Legislature recently revised the rule of construction, Maine Revised Statutes, Title 1, section 71, subsection 7-A, on the use of gender-specific language in the statutes. The law currently reads:

7-A. **Gender.** In the construction of statutes, gender-neutral construction shall be applied as provided in this subsection.

A. Whenever reasonable, as determined by the Revisor of Statutes, nouns rather than pronouns shall be used to refer to persons in order to avoid gender identification.

B. In preparing any legislation which amends a section or larger division of statutes, the Revisor of Statutes shall be authorized to change any masculine or feminine gender word to a gender-neutral word when it is clear that the statute is not exclusively applicable to members of one sex. The Revisor of Statutes shall not otherwise alter the sense, meaning or effect of any statute.

C. The rule of construction concerning gender on the effective date of an Act or resolve shall apply to that Act or resolve.

All legislation, including new enactments, amendments, revisions of existing laws and constitutional amendments should be drafted according to the following guidelines.

**A. Intentional gender distinctions.** Do not tamper with a Legislator's intended meaning or application of a statute. If, for example, a Legislator wants to recognize "mothers" who have had three or more of their children killed serving in the Armed Forces, do not substitute "parents."

**B. Common sense gender distinctions.** If a statute, by the subject matter involved, can apply only to one sex, you may use words that identify that sex.

**Example:**

A woman who is beyond the first trimester of a pregnancy may be eligible for additional benefits if she ...

**C. Proper nouns and adjectives.** Formal names of people, places and institutions should not be altered.

**D. Common nouns and adjectives.** Gender-specific nouns and adjectives often can be easily replaced with neutral terms. The following is a list of some substitutions that may be useful.

Alternatives for Nouns and Adjectives

Do not use:	Use:
alderman	municipal officer
boatman	boater
bondsman	bonding institution
brakeman	brake tender
businessman	member of the business community
chairman	chair
clergyman	member of the clergy; cleric
committeeman	committee member
congressman	member of Congress
councilman	council member
craftsman	skilled worker; artisan
dairyman	dairy farmer
doorman	doorkeeper
draftsman	drafter
enlisted man	enlisted member
ferryman	ferry operator
fieldman	field worker
fireman	firefighter
fisherman (commercial)	person who fishes commercially
fisherman (recreational)	angler
flagman	flagger
foreman	supervisor
guardsman	guard; guard member
lawman	law enforcement officer
mailman	mail carrier

man	person or humanity
mankind	humankind
manmade	artificial or synthetic
manned	staffed; operated
manpower	work force; personnel
militiaman	militia member
motorman	driver
nurseryman	nursery operator
parts man	parts clerk or worker
patrolman	patrol officer
policeman	police officer; law enforcement officer
repairman	repairer
salesman	sales representative
selectman	municipal officer
serviceman	mechanic; member of the United States Armed Forces
signal man	signaller
spokesman	representative; spokesperson
storageman	storage agent; storer
talesman	substitute juror
thresherman	thresher
tillerman	tiller
tradesman	skilled worker; merchant
vestryman	vestry member
vice-chairman	vice-chair
warehouseman	warehouse operator
watchman	security guard
workman	worker
yardman	yard worker

**(1) Familial relationships.** Familial relationships can often be expressed without reference to gender.

Example:

Unless you must to distinguish on the basis of gender, use the following as a guideline.

**Do not write:**

husband, wife  
 widow, widower  
 mother, father  
 son, daughter  
 sister, brother  
 stepmother, stepfather  
 grandfather, grandmother

**Write:**

spouse  
 surviving spouse  
 parent  
 child  
 sibling  
 stepparent  
 grandparent

(2) **"Person" as suffix.** As a general rule, do not take the easy way out by replacing the suffix "man" with "person" or "people." For example, do not use "tradesperson" for "tradesman." Choose "merchant" or "skilled worker" as the context requires.

**E. Words with legal meanings or general acceptance.** As the Maine Revised Statutes, Title 1, section 71, subsection 7-A indicates, eliminating gender from the statutes must not change the meaning or effect of any statute. Some gender-based words have specific legal meanings or general acceptance and should not be changed.

**Examples:**

amicus	manhole
bachelor's degree	manslaughter
fellow	master
fellowship	master's degree
fraternity	midwife
journeyman	ombudsman
landlord	

**F. Pronouns.** Because the English language relies so heavily on them, pronouns can be the most challenging aspect of gender-neutral drafting. To complicate matters further, "he or she" is not used in the Maine Revised Statutes. All gender-specific pronouns must be eliminated. A drafter may use any of the following alternatives in eliminating gender-specific pronouns.

(1) **Repeating the noun.** Repeating the noun is usually the easiest and clearest way to eliminate gender-specific pronouns. It is also the approach statutorily favored by the Legislature.

**Example:**

The employer, upon written request from an employee or former employee, shall provide the employee, former employee or an authorized representative with an opportunity to review ~~his~~ the employee's personnel file if the employer has a personnel file for ~~him~~ that employee.

When repeating the noun results in a sentence that is cumbersome and confusing, redrafting the sentence according to one of the other alternatives set out below may be necessary.

(2) **Possessive pronouns.** Gender-specific possessive pronouns such as "his" or "her" can often be stricken or replaced with "a," "an" or "the."

Example:

When a public officer or employee is absent with leave under the provisions of this chapter and when it is necessary in the public interest to provide for the performance of the duties of ~~his~~ the position during ~~his~~ the absence, the authority having power to fill a vacancy in ~~his~~ the position may appoint a substitute.

(3) **Verbal expression.** Sometimes "his" or "her" can be avoided by changing a nominal to a verbal expression.

Example:

Any person who imports or ~~has-in-his-possession~~ possesses any untaxed intoxicating liquor commits a Class E crime.

(4) **Plurals.** Provisions that apply to classes of people can be made plural, but caution should be used with this approach. (See this Part, page 20.)

Example:

This chapter does not apply to ~~a~~ duly licensed ~~physician-or-surgeon~~ physicians or surgeons unless ~~he-practices~~ they practice dentistry as a specialty.

Do not, however, pair singular nouns with plural pronouns. For example, do not write:

A person who has their blood pressure checked at a location other than a doctor's office or other medical facility ...

(5) **"Who," "which" or "that."** "If ... then he" clauses can often be changed to "who," "which" or "that" clauses.



Example:

~~If an~~ An applicant who has been licensed in another state he shall submit verification of licensure and the required fee.

(6) **Passive voice.** Some clauses can be changed to passive voice, but this is risky. Be certain that the new version or its context still makes it clear who is doing what.

Example:

~~When the board has~~ After being certified by the board, the candidate ~~he~~ may begin supervised clinical practice.

Remember, however, that the active voice is the preferred voice. (See this Part, pages 16 to 18.) Make sure that the sentence can not simply be rewritten altogether to eliminate gender-specific pronouns.

Examples:

Active and gender specific:

The commissioner may delegate his duty to prepare an annual report.

Passive and gender neutral:

The duty to prepare an annual report may be delegated by the commissioner.

Active and gender neutral:

The commissioner may delegate responsibility for preparing the annual report.

(7) **"If" or "when."** "If" or "when" clauses can be changed to "on" or "upon" phrases, or modifiers without expressed subjects.

Example:

~~If the commissioner finds~~ Upon finding that the sampling frequency can be safely reduced, he the commissioner may order it reduced.

(8) "The other." When a pronoun refers to another person or entity, replace the pronoun with "the other."

Example:

Whoever obtains long distance telephone service by intentionally charging its cost to a false or nonexistent telephone or credit card number or to the telephone or credit card number of another without ~~his~~ the other's authority may be sentenced to imprisonment for not more than 90 days.

(9) **Recasting.** Sometimes the best choice is to recast the sentence completely, especially if it is long.

Example:

~~Every finder of a stray, within 7 days thereafter, shall notify the owner thereof, if to him known, and request him~~ A person who finds a stray and knows who owns it shall notify the owner within 7 days after finding the stray and request the owner to pay all reasonable charges and take that stray away ~~but if such owner be to him unknown, he, a finder who does not know who owns the stray shall~~ file a notice with the town clerk within 10 days.

(10) **Reflexive pronouns.** Omit or replace reflexive pronouns such as "himself" or "herself" as follows:

Examples:

An individual is considered to seek nomination or election if that individual has taken the action necessary under this chapter to qualify ~~himself~~ for nomination.

... to appear before grand juries or in any court of this State, as the Attorney General ~~himself~~ might do ...

The public official shall ~~remove-himself~~ withdraw if possible, in a manner prescribed by the board.

No person, ~~by-himself, his~~ personally or through a servant or agent, or as the servant or agent of another, may sell wood alcohol.

It is unlawful for any person, firm or corporation, by ~~himself~~-or itself, his ~~its~~ employee or agent, or as the employee or agent of another, to ...

The commissioner, ~~by himself~~ or ~~any of his assistants~~, the commissioner's designee is authorized ...

... as necessary to ~~inform himself~~ concerning ascertain the sanitary conditions of the establishments.

A person who ~~holds himself out~~ purports to be a medical doctor ...

**(11) Person, partnership, or corporation.** When "a person, partnership, or corporation" or other string of similar words occurs at the beginning of a sentence and is referred to as a "he" later in the same sentence, change the "he" to a noun that encompasses all of the terms.

Example:

If any company, joint stock association, copartnership, corporation, or individual files an application, ~~he~~ the applicant shall ...

## CHAPTER 2

### WORD CHOICE AND USAGE

#### Section 1. Legal action verbs: shall, must and may

In stating the legislative objective, the drafter must pay particular attention to the verb forms used to direct, limit or permit action or inaction.

##### A. Mandatory and permissive language.

(1) **Shall.** Although "shall" is somewhat uncommon in general English usage, it may be used correctly in legal drafting. Drafters, however, must pay close attention to the proper use of shall. Below are examples of the proper and improper use of "shall."

(a) **Proper use of "shall."** "Shall" may be used to impose a duty on a person or body or to mandate action by a person or body. Use it to say a person or a body "has a duty to" do something or "has to" do something.

##### Examples:

An association that issues shares by series shall keep a record of every certificate that it issues.

The commissioner shall promulgate rules.

##### (b) **Improper use of "shall."**

(i) "Shall" should not be used in conditional sentences.

*Do not write:*

If it shall have been established ...

Write:

If it is established ... OR  
If it has been established ...

*Do not write:*

When the officers shall have completed their investigation ...

Write:

When the officers complete their investigation ...

*Do not write:*

To be eligible for parole, a prisoner shall demonstrate ...

Write:

To be eligible for parole, a prisoner must demonstrate ...

(ii) Avoid using "shall" to confer a right when the recipient is the subject of an active sentence. A right should not be stated as a duty to enjoy the right.

*Do not write:*

The director shall receive compensation of \$12,000 a year.

Write:

The director is entitled to compensation of \$12,000 a year.

(iii) Similarly, don't use "shall" to say what the law is or how it applies in the future.

*Do not write:*

A person shall be eligible to apply for tax relief.

Write:

A person is eligible to apply for tax relief.

*Do not write:*

A person who traps lobsters in violation of this section shall be guilty of a Class E crime.

Write:

A person who traps lobsters in violation of this section is guilty of a Class E crime.

*Do not write:*

Grammatical errors shall not invalidate a rule.

Write:

Grammatical errors do not invalidate a rule.

*Do not write:*

It shall be unlawful ...

Write:

It is unlawful ...

*Do not write:*

Funds shall carry to ...

Write:

Funds carry to ...

(iv) In drafting definitions:

*Do not write:*

"Bottle" shall mean container ...

Write:

"Bottle" means container ...

**(2) Must.**

**(a) Subject other than person or body.** "Must," rather than "shall," should be used when the subject is not a person or body.

Examples:

A copy of the signed contract must be given to the debtor.

A record must be kept whenever a certificate is issued.

**(b) Requirements.** Use "must" rather than "shall" to express requirements, that is, statements about what people or things must be rather than what they must do. "Must" is usually correct in passive sentences imposing requirements.

Examples:

Applicants must be at least 17 years of age.

Public members of the board must not be members of health professions licensed by the State ...

**(c) Conditional sentences.** "Must" rather than "shall" is proper in conditional sentences.

Example:

To be eligible for benefits, an applicant must demonstrate ...

**(3) May.** "May" means "is permitted to," "is authorized to," "is entitled to" or "has power to." "May" authorizes or permits rather than commands.

Example:

The commissioner may call a special meeting when necessary.

If calling a special meeting is discretionary, "may" is the proper word. If the commissioner is required to call a special meeting, use "the commissioner shall ..."

**(4) Will.** "Will" should never be used as a command word. For a discussion of "will" as used in the future tense, see this Part, pages 18 and 19.

**B. Prohibitive and restrictive language.** Drafters should use positive language whenever possible to express ideas. Laws, however, are frequently prohibitive or restrictive in nature. Drafters must use care in wording these sections.

**(1) Prohibiting action.** Do not use "shall not." Use "may not" to prohibit an action. "May not" is broader than "shall not" as "may not" negates the authority to perform an action as well as prohibiting the action itself.

Correlative expressions to "shall not" and "may not" are "no person shall" and "no person may." Avoid "no person may" and never use "no person shall." Literally, "no person shall" means "no person has a duty to."

Consider this sentence: "No person shall conduct a picket line without a permit issued under this section." Literally, this means "No person has a duty to conduct a picket line without a permit issued under this section." If "may" replaced "shall" in the sentence, it would mean "No person is authorized to conduct a picket line ..." "No person may" in this context makes more sense.

In most instances, however, "no person may ..." is verbal overkill, similar to "any person." It provides unneeded emphasis. "A person" is probably sufficient to include anyone who should be included.

**Example:**

A person may not conduct a picket line ...



**(2) Negating duty or condition.** To negate a duty or a condition precedent, or to say a thing is not required, use "need not" or "is not required."

Example:

If fewer than 7 people object to a rule, a hearing need not be held (or "a hearing is not required").

**(3) Negating right or privilege.** To negate a right, use "is not entitled to."

Example:

The director is not entitled to compensatory time off.

## **Section 2. Jargon**

Jargon is the useful technical vocabulary of a trade or profession, but it can also refer to unclear expressions that have a technical ring. Real technical language can save time and space if the audience understands it and expects it. Jargon-like terms created to dignify a subject are simply hard to read. Learn to recognize them and weed them out.

If you must create a general term, do not make it more general than necessary. Legal writing is often full of empty phrases that sound imposing but mean little. One reason for this is that drafters often have to create names that cover broad classes. For example, the phrase "educational institution" in a bill might cover public schools, private schools, technical colleges and the University of Maine System. If you need to use such a broad term, define it to include its several meanings.

To avoid creating empty phrases when you write broad terms, minimize, when possible, using abstract words such as "facility," "entity," "organization" and "structure." Phrases such as "regional channel entity," "entity-operational structure" or "parallel policy options" are meaningless unless the reader looks back at the definitions. Be as specific as possible. If certain boards grant licenses, do not call them "credentialing organizations"; call them "licensing boards." Remember that what you create is likely to be perpetuated in future bills and rules.

Jargon already existing in the law creates special problems. Drafters often repeat any language that works legally to avoid lawsuits. Conform your wording with existing law but do not preserve bad wording without a compelling legal reason. Consistency is valuable, but so is clarity.

### **Section 3. Non-English terms**

Although a non-English term or phrase may have a definite meaning to the drafter and present an attractive shorthand expression to reduce the length of a section, its use may cause confusion. Consequently, the drafter usually should avoid using these terms and phrases. Phrases such as "in loco parentis" can be easily misunderstood by the public. Occasionally, the drafter must use a foreign term or phrase, such as "in camera," "in vitro" or "ex officio," but when doing so, the drafter should be judicious.

### **Section 4. Acronyms, abbreviations and symbols**

**A. Statutory text.** Generally, abbreviations and acronyms, such as using DEP to indicate the Department of Environmental Protection, are inappropriate in the text of the Maine Revised Statutes.

**(1) Common symbols and abbreviations.** The following common symbols and abbreviations are exceptions to this rule and may be properly used: "\$," "¢," "°," "%," "a.m." and "p.m."

Do not use the abbreviations: "e.g.," "i.e.," "et al.," "et seq." and "etc."

**(2) Statutorily defined abbreviations.** Acronyms and abbreviations specifically defined in a statute may be used.

Examples:

"AIDS" is defined in Title 5, section 19201.

"F.O.B." is a specifically defined abbreviation used in the Uniform Commercial Code.

"FIFRA" appears in the Maine Pesticide Control Act of 1975, Title 7, chapter 103, subchapter II-A.

**(3) Proper names.** An abbreviation may be used if it is part of a proper name, as in "Cargill, Inc." (See this Part, pages 48 and 61 for discussions of proper names.)

**(4) Special materials.** Abbreviations may be used in tables, illustrations, and similar materials, although these materials should be avoided in statutes because of the difficulty in amending them.

**(5) Land descriptions.** In legal land descriptions, use symbols for degrees ( $^{\circ}$ ), minutes ( $'$ ), seconds ( $"$ ), but abbreviate directions only when used with a degree.

Example:

Do not write:

West  $15^{\circ} 22' 13''$  East OR  
West 15 degrees, 22 minutes, 13 seconds East

Write:

W  $15^{\circ} 22' 13''$  E running in a southerly direction

Note, however, that if the draft quotes directly from a deed description or other similar document, use the symbols, abbreviations or words exactly as they appear in that document.

**B. Statements of fact.** Acronyms and abbreviations may be used sparingly in statements of fact using the following format.

**Example:**

This bill requires the Department of Environmental Protection, or DEP, ...

The acronym or abbreviation must appear immediately after the initial use of the whole word or phrase and then may be used in place of the whole word or phrase for the remainder of the statement of fact. Acronyms and abbreviations should be used only if the term occurs more than once.

**Section 5. Numbers**

Cardinal numbers appear in the text of the Maine Revised Statutes as Arabic numerals (2, 3, ...) unless the number is "one" or the first word in a sentence.

**Examples:**

The authority consists of the Commissioner of Economic Development and 8 public members.

For 10 days  
At least 30%  
Of 108 cubic feet  
Sixteen tons is the limit ...

Ordinal numbers also appear in the text of the Maine Revised Statutes in Arabic form, (2nd, 3rd, ...) unless the number is "first" or the first word in a sentence.

**Examples:**

On the first Monday after the 2nd Wednesday of December ...

The 3rd person designated in the application request ...

Exception: Session designations are written out.

Examples:

Usually, second regular session ends by May.

First Special Session of the 114th Legislature ...

However, the ordinal number "first" when it appears as part of a date immediately following the month, appears in the form "1st," for example, January 1st.

"One" and "first" are treated differently to minimize the confusion that may result from using "1" or "1st," both of which resemble typographical errors more than other numbers.

Fractions, both cardinal and ordinal, appear in Arabic form, except as the first word of a sentence.

Examples:

at least 1 1/2 feet from the floor  
by a 2/3 vote of the legal voters  
a sum equal to 3/4 the amount paid  
Two thirds of both Houses

Percentages appear in Arabic form, except as the first word of a sentence.

Examples:

50%  
0.5%  
Ten percent of voters

When designating a range of numbers, use the form "sections 2 to 5" to include both of the numbers listed and the intervening numbers.

## **Section 6. Dates; time and time periods**

**A. Dates.** Use the word "date" or "day," not "time," when referring to a specific date or if you intend that a period of time is to be measured in whole days.

Do not write:

120 days after the day when ...

Write:

120 days after the day on which ... OR  
120 days after (name a specific event)

Dates in the Maine Revised Statutes that contain a year appear in the form: Month, day, year.

Example:

The commission shall submit its final report no later than June 30, 1991.

Dates that do not contain a year appear either in the form:

February 1st  
June 30th

**B. Time; time periods.** Times in the Maine Revised Statutes are expressed in Arabic numbers followed by "a.m.," "p.m.," "noon" or "midnight."

Examples:

6:00 a.m.  
6:32 p.m.

The rules of construction, Maine Revised Statutes, Title 1, section 71, subsection 5, indicate "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." To express clearly what the first and last days are, avoid words such as "until," "by" and "from."

before July 1, 1990  
after June 30, 1990  
before the effective date of this Act

If an action must be completed by the end of a designated period that begins in the future, indicate whether the act:

- May be done before the designated period begins, as in "not later than the 90th day after the end of the tax year"; or
- Must be done within the designated period, as in "within the 90-day period immediately following the end of the tax year."

In calculating time periods, such as the 90-day period in these examples above, the general rule is that the day of the event that triggers the time period is excluded from the calculation. Opinion of the Justices, 484 A.2d 999 (1984).

## Section 7. Age

Ambiguities that arise when referring to ages can be avoided by specifying whether the age indicated is to be included or excluded from the described classification.

To establish a range of ages:

Do not write:

between the ages of 21 and 30

Write:

21 years of age or older and under 31 years of age

To establish a minimum age:

Do not write:

who is over 17 years of age

Write:

who is 17 years of age or older

To establish a maximum age:

Write:

who is under 21 years of age

Or:

who has not attained 21 years of age

To establish an exclusive age (law applies only to named age):

Write:

who is 17 years of age

## **Section 8. Relative pronouns; restrictive and nonrestrictive clauses: that, which and who**

**A. Relative pronouns.** A relative pronoun introduces a subordinate clause that modifies a noun or a pronoun occurring elsewhere in the sentence and connects a dependent clause to the main clause. It is also a substitute word that refers to its antecedent and stands for that antecedent in a subordinate clause.

### **Examples:**

The committee elected the new chair, who had years...

The office that is responsible for overseeing operations...

The bill, which was enacted in 1986, is not effective until 1987.

"Who" relates to a specific person. "That" relates to animals, persons or things and introduces restrictive clauses. "Which" relates to animals, things and ideas and introduces nonrestrictive clauses.



Examples:

John Doe, who was appointed ...

A person that commits assault ...

(Note: Although "that" is correct when the person or persons are not specifically identified, many writers prefer to use "who.")

The report, which was due in November, lists the committee's recommendations.

**B. Restrictive and nonrestrictive clauses.** Although the use of "who" causes little heartache, the distinction between "that" and "which" eludes many drafters.

(1) **That.** Use "that" to introduce restrictive clauses, that is, clauses upon which the meaning of the sentence depends; clauses that specifically identify the subject or object you are describing. These clauses are not usually set off by commas.

Examples:

The commissioner shall promulgate rules that address the concerns identified by this committee.

The Bureau of Public Lands shall acquire the parcel of land that adjoins Baxter State Park.

(2) **Which.** Nonrestrictive clauses are parenthetical or commentary in nature. "Which" introduces these clauses. Although they provide additional information about the subject or object, this information is nonessential to the meaning of the sentence. These clauses are generally set off by commas.

Example:

The suggested rules, which reflect the board's new statutory authority, outline the prohibited conduct.

The hearing, which was held during the special session, provided the impetus for this additional legislation.

(3) **Which + noun.** The following sentences contain obsolete types of relative clauses that should never be used.

Examples:

The executive secretary shall give as much notice as possible to all board members prior to any special meeting, which notice shall state the time, place and subject matter of the meeting.

All parties have the right to a hearing before the hearing examiner at which hearing the parties may cross-examine witnesses.

Changing the relative clauses to separate sentences produces more modern English and shorter sentences.

Examples:

Before any special meeting, the executive secretary shall give all board members as much notice as possible. The notice must state the time, place and subject matter of the meeting.

All parties have the right to a hearing before the hearing examiner. At this hearing, the parties may cross-examine witnesses.

## **Section 9. References to committees**

When referring to a standing or select legislative committee (e.g. the Joint Standing Committee on Agriculture), use the committee's proper name only when the provision you are drafting deals specifically with the current biennium or will not appear in the Maine Revised Statutes. If the provision's use or effectiveness extends beyond the current biennium, refer to the committee generically.

Examples:

**Current biennium:**

The board shall report to the Joint Standing Committee on Banking and Insurance by (date within the current biennium).

### Extended period:

The board shall report to the joint standing committee of the Legislature having jurisdiction over banking and insurance matters within the first 30 days of each regular session of the Legislature.

The reference varies because the official names of committees may change from session to session. Should this happen, a law effective beyond a biennium that refers to a specific committee by its proper name may refer to a committee that no longer exists. For this reason, general references to committees are usually in allocated law and specific references are usually in unallocated law.

### **Section 10. Proper names**

The drafter should be cautious when including a proper name in the statutes, because the name, goals or mission of the named organization may change in ways not anticipated by the Legislature and not consistent with the statutory provision that names the organization. Avoid using proper names; instead, attempt to define narrowly the parameters and purpose of an organization or corporation rather than citing its proper name in the statutes.

### **Section 11. Selected problem words**

This section does not contain an exhaustive listing of problem words; rather it identifies and discusses several words and phrases that frequently pose problems for the legislative drafter.

**A. "Such" and "said."** Improperly used, both of these adjectives are overly formal and legalistic and should be avoided. Generally, depending on the context, words such as "that," "the," "those," "it" and "them" better refer to a previously mentioned subject than "such" or "said."

Example:

Do not write:

As contained in such documents ...

Write:

As contained in those documents ...

"Such" may, however, be properly used as a synonym when coupled with "a," meaning "that kind of" or "as," meaning "like." If you use it alone, use it judiciously.

Example:

Documents such as wills, codicils, marriage or birth certificates ...

**B. "Person" and "individual."** As defined in the Maine Revised Statutes, Title 1, section 72, subsection 15, "person" may include a body corporate. If you want to refer only to humans and not to business entities, use "individuals." Keep this in mind, especially when making provisions for membership on a board or agency.

**C. "Respectively" and "as the case may be."** These terms are important in establishing the correct relationship between two sets or groups.

(1) If you want to show that:

A applies to X, B applies to Y and C applies to Z

it may be more convenient to state:

A, B and C apply to X, Y and Z, respectively.

(2) If you want to show that:

A applies, if X occurs; B applies, if Y occurs; or C applies, if Z occurs

it may be more convenient to state:

If X, Y or Z occurs, A, B or C applies, as the case may be.

**D. "And" and "or."** Never use "and/or" because it has no definite meaning. "And" is conjunctive. If the legislative intent is that all requirements be fulfilled, the drafter should use "and." "Or" is disjunctive. If the fulfillment of any one of several requirements is sufficient, use "or."

Compare the following two examples:

Under this example, all three requirements must be met:

A. To be eligible for benefits, an applicant must:

- 1) Be at least 62 years of age;
- 2) Have a medically recognized disability; and
- 3) Have an income of less than \$25,000 a year.

Under this example, only one of the three requirements must be met:

A. To be eligible for benefits, an applicant must:

- 1) Be at least 62 years of age;
- 2) Have a medically recognized disability; or
- 3) Have an income of less than \$25,000 a year.

The rules of statutory construction, the Maine Revised Statutes, Title 1, section 71, indicate that "and" and "or" "are convertible as the sense of a statute may require." Don't use this as an excuse to draft unclearly. The proper use of "and" and "or" will minimize the need for courts to interpret the wording of the law.

**E. "There."** Avoid starting a sentence or clause with "There is," "There are" or "There may be." Often these words are needless.

Example:

There is excluded in computing the percent of voting power or value stock owned directly by the other corporations.

The sentence is more direct if turned around.

Example:

Stock owned directly by the other corporations is excluded in computing the percent of voting power or value.

If you want to put different information at the end of the sentence, use the following construction.

Example:

In computing the percent of voting power or value, stock owned directly by the other corporations is excluded.

If you know who is to do the computing and excluding, put the verb in the active voice and make the sentence clearer and more direct.

Example:

When computing the percent of voting power or value, the registrar shall exclude stock owned directly by the other corporations.

**F. "Any," "each," "every," etc.** Generally, these adjectives should be avoided. Simple words such as "a," "an" or "the" nearly always can be used instead. There is no difference in the applicability of the following sentences:

Example:

1. Any person that commits arson is guilty of a Class C crime.
2. A person that commits arson is guilty of a Class C crime.

If it becomes necessary to use these words, there are certain rules that should be followed.

(1) **Any.** If a right, privilege or power is conferred, use "any."

Example:

Any employee may ...

(2) **Each or every.** If the legal subject is singular, use the term "every" or "each" only to clarify that all members of a class must discharge the obligation or privilege imposed by the rule.

Example:

Each employee shall ...

(3) **No.** Subject to the discussion on prohibitive and restrictive language in section 1, paragraph B of this chapter, pages 37 and 38, if a command to refrain is imposed, use "no."

Example:

No employee may ...

**G. "Deem."** "Deem" is only properly used in drafting to express a legal fiction. A legal fiction is a situation contrived by the law to permit a court to dispose of a matter.

Example:

A minor that commits murder is deemed an adult and is subject to full prosecution under the law.

Obviously, a minor is not an adult and a legal fiction is necessary to make a law that applies to adults apply to minors.

"Consider" or "determine" may be used in other contexts.

Example:

Do not write:

If an applicant is deemed eligible for benefits ...

Write:

If an applicant is determined eligible for benefits  
...

**H. "Rules" and "regulations."** State agencies do not promulgate "regulations" in state law under the Maine Administrative Procedure Act, Title 5, chapter 375; they adopt "rules."

Federal agencies and local authorities may promulgate rules or regulations. If referring to mandates, directives, guidelines or prohibitions at the state level, use the term "rules."

**I. "Oral" and "verbal."** If you are discussing the form in which an oath or testimony is given, a contract made, etc., keep in mind that "verbal" means relating to words and "oral" means spoken. Therefore, if you want to say, for example, that a spoken contract is binding, use "oral." A "verbal" contract, on the other hand, could be either written or spoken since it merely has to have words.

**J. "Biannual" and "biennial."** "Biannual" means twice a year. "Biennial" means every two years. Many drafters confuse these terms.

**K. "Attorney's fees."** This appears in Maine and federal statutes, court rules and judicial decisions in these varying forms: attorney fee, attorney fees, attorney's fee, attorneys' fee, attorney's fees and attorneys' fees. The preferred usage is attorney's fees.

## **Section 12. Forbidden and preferred words and phrases**

The following lists are designed to be a practical aid in drafting concisely. These examples are loosely based on those provided by the National Conference of Commissioners on Uniform State Laws and are by no means exhaustive.

### **A. Redundant and inconsistent couplets.**

**(1) Avoid the use of redundant couplets.** In each of the following couplets, use only one of the terms to avoid redundancy.



Examples:

alter and change  
authorize and empower  
by and with  
each and all  
each and every  
final and conclusive  
from and after  
full and complete  
full force and effect  
made and entered into  
null and void  
order and direct  
over and above  
shall have and exercise  
sole and exclusive  
type and kind  
unless and until

**(2) Avoid the use of inconsistent couplets.** In each of the following couplets, use only the broader or narrower term as the context requires.

Examples:

any and all  
authorize and direct  
desire and require  
means and includes  
necessary and desirable  
power and authority

**B. Indefinite or archaic words.** Avoid indefinite, archaic or legalistic words.

Examples:

aforementioned  
aforesaid  
before (as an adjective)  
before-mentioned  
hereafter  
hereby  
herein  
hereinabove  
hereinafter  
heretofore  
herewith  
said or such (as a substitute for "it," "he,"  
"she," etc.)

thereof  
thereto  
therewith  
thereupon  
to wit  
whatsoever  
whenever  
wheresoever  
whereupon  
whomsoever

Words such as "above," "below," "following," "hereinafter," "hereinbefore" and "preceding" are objectionable when referring to the position of a section or other statutory unit. If reference is necessary, specify the chapter, section, subsection, lettered paragraph, etc., as appropriate.

**C. Simple language.** Although complex terms are sometimes necessary, use simple language when possible.

**Examples:**

Complex:	Simple:
absolutely null and void and of no effect	void
accorded	given
adequate number of	enough
adjudged, ordered and decreed	adjudged
admit of	allow
afforded	given
among and between	among (if more than two things or persons are involved); between (if two or more things are involved but are treated individually)
attain	reach
at the place	where
at the same time	when

at the time	when
attempt (as a verb)	try
cause it to be done	have it done
cease	stop
commence, institute	start, begin
conceal	hide
consequence	result
constitute and appoint	appoint
contiguous to	next to
do and perform	do
does not operate to	does not
donate	give
during such time as	while
during the course of	during
endeavor (as a verb)	try
enter into a contract with	to contract with
evidence, documentary and otherwise	evidence
evinced	show
except that	but
excessive number of	too many
expiration	end
for the duration of	during or while
for the purpose of holding (or other gerund)	to hold (or comparable infinitive)
for the reason that	because
forthwith	immediately
frequently	often
from July 1, 1971	after June 30, 1971

full and adequate OR full and complete	full
hereafter	after this ... takes effect
heretofore	before this ... takes effect
however or provided	if, unless, except or state the condition
in order to	to
in a case in which	when
in case	if
indicate (in the sense "to show")	show
inquire	ask
institute	begin, start
interrogate	question
in the case of	whenever (only when emphasizing the exhaustive or recurring applicability to the proposition)
in the event that	if
in the interest of	for
is able to	can
is applicable	applies
is authorized and directed	shall
is authorized to	may
is binding upon	binds
is directed to	shall
is empowered to	may
is entitled (in the sense of has the name)	is called
is required to	shall
is unable to	can not
it is the duty	shall

it shall be lawful to	may
manner	way
maximum	most, largest, greatest
minimum	least, smallest
modify	change
necessitate	require
negotiate (in the sense of enter into a contract)	make
no later than June 30, 1971	before July 1, 1971
obtain	get
occasion (as a verb)	cause
of a technical nature	technical
on and after July 1, 1971	after June 30, 1971
on the person's own application	at the person's own request
on or before June 30, 1971	before July 1, 1971
on the part of	by
or, in the alternative	or
party of the first part	(the party's name)
per annum	per year
per centum	percent
period of time	period, time
portion	part
possessed	have or had
preserve	keep
prior or prior to	earlier or before (or immediately preceding)
proceed	go, go ahead

procure	obtain, get
prosecute its business	carry on its business
provided that	if, unless, but or except
provision of law	law
purchase (as a verb)	buy
remainder	rest
render (in the sense of give)	give
render (in the sense of cause to be)	make
require (in the sense of need)	need
retain	keep
shall have the power to	may
specified (in the sense of expressly mentioned or listed)	named
State of Maine	this State
subsequent	later
subsequent to	after
suffer (in the sense of permit)	permits
sufficient number of	enough
summon	send for, call
the Congress	Congress
the manner in which	how
to the effect that	that
under the provisions of	under
until such time as	until
utilize, employ (in the sense of use)	use
when	if

where  
within or without the  
United States  
with reference to  
with the object of  
changing (or other  
gerund)

in which  
inside or outside the  
United States  
for  
to change (or comparable  
infinitive)

## CHAPTER 3 CAPITALIZATION

### Section 1. General capitalization rules

**A. Initial word.** Capitalize the first letter of the first word:

- In a sentence;
- Following a colon, if the words after the colon could form a separate sentence; or
- Of each entry in an outline or tabulation.

**B. Proper nouns.** Capitalize the names of specific people, places, institutions, things or ideas when the full name is given.

Examples:

Jane Q. Public

Aroostook County (but do not capitalize the "c" in county if saying "Aroostook, Androscoggin and Cumberland counties")

Maine Medical Center

City of Portland (but do not capitalize the "c" in city if saying "the cities of Portland and Augusta")

**C. Titles; specific titleholders.** Capitalize all titles including those of government, rank, honor or respect when the title precedes the name of the person holding the title.

Examples:

Governor Baxter

Senator Margaret Chase Smith

Commissioner McGoo (but "the commissioner")

Judge Wapner

**(1) Maine titles.** Capitalize the following titles that do not name the specific titleholder if you are referring to people holding these positions in Maine. Legislative titles are listed under in this chapter, section 2.



Examples:

Governor  
Secretary of State  
Judge or Justice (of a specified court)

Commissioner (of a specified agency - "Commissioner of Human Services," but "the commissioner" if the specified agency does not follow the term)

Director (of a specified department or division - "Director of the Silviculture Division," but "the director" if the specified unit does not follow the term)

(2) **Federal titles.** Capitalize "president" when referring to the president of a nation regardless of whether the name is included. Capitalize both words of "vice-president" when referring to the vice-president of a nation.

**Section 2. Specialized capitalization rules**

**A. Government.**

(1) **Generally.** Capitalize words such as "department," "bureau," "office," "agency," "commission," "board" and "committee" only when referring to one of these entities by its entire formal name.

(2) **Courts.** Capitalize "Supreme Judicial Court," "Law Court," "Superior Court," "Administrative Court" and any other court that is created by the Constitution of Maine or the Legislature. Notice that "Juvenile Court" is capitalized even though the District Court actually sits as the Juvenile Court because the Legislature created the Juvenile Court to be a separate body. Do not capitalize shorthand expressions such as "a court" and "the court."

**(3) Federal and State.** Do not capitalize "government" when used alone, but use "State Government" when referring to Maine State Government and "Federal Government" when referring to the government of the United States. Likewise, do not capitalize "federal" unless it appears as part of the name of an act or a proper name. "State" should be capitalized when used possessively ("if in the State's interest"), as part of a proper noun, or as a noun referring to the State of Maine ("when the State is involved" or "residents of this State"). "State" should not be capitalized when used as a common adjective: "state employees" or "state-owned."

**(4) Legislature.** When referring to the Maine Legislature, capitalize the following:

Legislator  
Legislature  
Senate  
House of Representatives  
Legislative Council  
President of the Senate  
Speaker of the House of Representatives  
Senator

When these words refer to a legislature or legislators of another state, do not capitalize them unless they are part of a proper name. Do not capitalize "legislative" when used as a common adjective ("legislative intent").

When referring to sessions of the Legislature, capitalize references to specific sessions: "Second Regular Session of the 114th Legislature." Do not capitalize general references to legislative sessions: "during the first regular session or any special session."

**B. Legal instruments and documents.**

**(1) Acts.** Generally, capitalize "act" when making an internal reference to the instrument you are drafting ("as used in this Act"), when referring to a specific public or private and special law, or when using the title of an existing named act in the Maine Revised Statutes ("the Unemployment Compensation Act"). Otherwise, do not capitalize "act." ("An act of the Legislature must be approved by the Governor.")

(2) **Resolves.** Do not capitalize "resolve" except as part of a title.

(3) **Law.** Capitalize "law" only as part of a title or popular name designated in the Maine Revised Statutes ("Nuclear Activity Consent Law"). Do not capitalize "law" when referring to a particular subject ("motor vehicle law").

(4) **Constitution.** "Constitution" by itself should be capitalized when referring to a national or state constitution. Use the full title of the document to ensure clarity: "Constitution of Maine" or "United States Constitution."

(5) **Legislative documents and legislation.** Capitalize the abbreviations "PL," "P&SL," "Res." or "Con. Res." Do not capitalize "public laws," "private and special laws," "resolves" or "constitutional resolutions" unless naming a particular law (Public Law 1989, chapter 802).

(6) **Revised Statutes.** Capitalize "Revised Statutes" when referring to the Maine Revised Statutes.

(a) **Bill titles.** As in book, story or article titles, capitalize the first letter of every significant word in a bill title. Generally, capitalize nouns, verbs, adjectives and adverbs. Do not capitalize prepositions, conjunctions or articles, except as first words of titles.

Examples:

An Act to Improve the Early Childhood Education  
Plans Grants Program

An Act to Strengthen an Injured Employee's Right to  
Rehabilitation and to Improve the Workers'  
Compensation Rehabilitation System

**(b) Section and subsection headnotes.** Except when a word in a headnote falls under one of the general capitalization rules, capitalize only the first letter of the first word of the headnote.

**(c) Paragraphs, subparagraphs, divisions and subdivisions.** Capitalize the first letter of the first word even if it is not the beginning of a sentence.

Example:

1. **Notice.** The notice must:
  - A. Inform the taxpayer that property taxes have been deferred in the current year;
  - B. Show the total amount of deferred taxes;  
and
  - C. Inform the taxpayer that voluntary payment of deferred taxes may be made to the bureau at any time.

As for subunits within the text of the Maine Revised Statutes, capitalize "Title," "Subtitle," "Part" and "Subpart." Do not capitalize "chapter," "subchapter," "article," "subarticle," "section," "subsection," "paragraph," subparagraph," "division" or "subdivision."

**C. Funds.** When referring to a specific state fund by its proper name, capitalize the first letter of each word: "General Fund," "Highway Fund."

**D. Specific tables.** Capitalize the full name of specific tables, such as "The Commissioner's 1941 Standard Ordinary Mortality Table."

**E. Table and column headings.** Capitalize the headings of tables and columns, for example: "Table A," "Houses Equipped, 1978-80."

**F. Letters.** Capitalize letters used as designations, such as "Class E," "Grade B."

**G. Abbreviations.** Capitalize abbreviations in compliance with their use in codes or uniform laws, for example: "F.A.S." and "F.O.B." in the Uniform Commercial Code.

**H. Hyphenated words.** Capitalize only the first words of hyphenated compounds unless the compound is part of a proper noun, e.g., "An Act Relating to Long-distance Telephone Service," but "An Act Establishing the Franco-American Studies Center." "Ex" and "elect" used with a title are not capitalized: "ex-President," "Governor-elect." Prefixes such as "non" and "pro" are not capitalized when coupled with proper nouns or adjectives: "non-English speaking," "pro-American."

## CHAPTER 4 PUNCTUATION

To the extent punctuation clarifies an ambiguity in language, courts may base their interpretation of a law on punctuation or the lack of it. A court may, however, disregard punctuation that renders the language ambiguous. Revise any sentence that relies on punctuation to convey its meaning.

This chapter does not provide general punctuation rules as found elsewhere, but includes guidelines to which you should adhere if drafting for the Maine Legislature. Generally, punctuate as little as possible. Use short, simple sentences and outline when necessary. It is impossible to articulate rules applicable to every situation, but keep the following in mind.

### Section 1. Periods

In allocated text, use periods after subsection headnotes, section and subsection numbers, and paragraph letters. Do not use periods after titles, after section headnotes or after any unit greater than a section.

#### Example:

**§5959. Rules; reports**

1. **Rules.** The commissioner may promulgate rules.

A. The rules are subject to review by the board.

In unallocated text, use periods after section headnotes and after emergency preamble and clause headnotes.

#### Examples:

**Sec. 23. Effective date.** This Act takes effect on July 1, 1992.

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

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

## Section 2. Commas

Commas are probably the most misused and misunderstood punctuation marks in legal drafting and, perhaps, the English language. Use them thoughtfully and sparingly.

**A. Series.** Although authorities on punctuation may differ, when drafting Maine law or rules, don't use a comma between the next to the last and the last item of a series.

Do not write:

Trailers, semitrailers, and pole trailers

Write:

Trailers, semitrailers and pole trailers

Be careful if an item in the series is modified. For example:

Trailers, semitrailers and pole trailers of 3,000 pounds gross weight or less are exempt from the licensing provisions.

Does the 3,000-pound limit apply to trailers and semitrailers or only to pole trailers? If the limit is not intended to apply to trailers and semitrailers, the provision should read:

Pole trailers of 3,000 pounds gross weight or less, trailers and semitrailers are exempt from the licensing provisions.

If the limit is intended to apply to all three, the provision should read:

If a trailer, semitrailer or pole trailer has a gross weight of 3,000 pounds or less, it is not required to be licensed.

## **B. Clauses and phrases.**

(1) **"When," "if," "unless" or "which" clause.** As a general rule, a clause beginning with the word "when," "if," "unless" or "which" is set off by a comma.

(2) **Interrupting expressions.** Use commas to set off expressions that interrupt a sentence.

(a) **Appositives.** An appositive is a word or phrase that follows a noun or pronoun and further identifies or explains it.

### **Example:**

The Bureau of Taxation, an agency within the Department of Finance, shall ensure compliance.

(b) **Parenthetical expressions.** The following expressions are commonly used parenthetically and are set off by commas, particularly when a pause is needed for emphasis or clarity: "on the contrary," "therefore," "for example," "however" and "nevertheless." These expressions are seldom used in drafting law.

### **Example:**

The agency, however, may not release the name of the recipient.

(c) **Nonrestrictive clauses or phrases.** Clauses or phrases that are nonrestrictive, that is, parenthetical in nature, are set off by commas.

### **Examples:**

The commissioner, appointed as provided in section 2333, may adopt necessary rules.

The rules, which the commissioner is authorized to adopt under section 2332, must be adopted before September 1, 1992.



(3) Do not use commas to set off restrictive clauses or phrases that are essential to the meaning of the sentence.

Examples:

Any agency that is within the Department of Finance shall report all purchases to the commissioner.

The commissioner shall notify all applicants meeting the following qualifications of the department's actions.

**C. Multiple adjectives.** Use a comma between adjectives preceding a noun when they modify the same noun.

Example:

The commissioner shall submit a shortened, simplified, uniform report.

Do not use a comma between two adjectives preceding a noun if using the comma destroys the intended relationship because the adjectives are too closely related to be separated.

Examples:

additional reasonable cost  
huge boxlike building  
quaint old mining town  
outstanding military service

(Also see discussion on hyphenization, this Part, pages 72 to 74.)

### Section 3. Semicolons

Use semicolons in the following circumstances:

- Between two independent clauses when they are not joined by "and," "or," "but," "nor" or "for";
- In lists in which one or more of the items contains a comma;

- To separate groups of words, such as phrases or clauses, that are dependent on a general term or statement;
- To separate lengthy statements following a colon; and
- After lettered or numbered text following a colon in outlined provisions as described in this Part, pages 11 to 13.

#### **Section 4. Colons**

Use colons to introduce lists or to emphasize or elaborate an idea. Capitalize the first word after a colon when it introduces an independent passage or sentence; otherwise, do not.

Example:

The director may enforce the following requirements for admission: Residents must be able to care for themselves; rent is payable on the first day of the month; and residents must designate a responsible person to be called in cases of emergency.

Colons are also used at the end of an introductory expression when outlining.

#### **Section 5. Parentheses**

Parentheses are not used in the text of the Maine Revised Statutes except as part of a sample, such as a statutory will or lease that appears in the law. Generally, use commas or separate sentences to set off parenthetical language.

#### **Section 6. Brackets**

Brackets generally are not used in Maine law unless they are already included in text being quoted in the law, such as a deed description.

## Section 7. Quotation marks

Quotation marks appear most often in definition sections of the Maine Revised Statutes. All types of punctuation, except colons, semicolons and question marks, appear inside any quotation marks regardless, of whether the punctuation is part of the quoted words. A question mark is placed inside the quotation marks if it belongs to the actual quotation and outside of the quotation marks if the question mark is not part of the quotation.

### Examples:

"Domesticated animal" means an animal kept by ...

"Shall the Constitution of Maine be amended to provide property tax credits to low-income residents?"

... that Bill, "An Act to Prohibit Smoking in Hospitals," H.P. 728, L.D. 1005, be recalled ...

## Section 8. Hyphenization

### A. Compound adjectives. Hyphenate a compound adjective.

### Examples:

an after-school meeting  
day-to-day operations  
door-to-door soliciting  
teacher-pupil relationship  
well-planned program  
one-story house  
rule-making authority

Many words that are hyphenated as adjectives are not as nouns. For example, although it is correct to refer to "the commissioner's rule-making authority," it is likewise correct to require that the commissioner be responsible for "rulemaking."

B. Adverb or adjective ending in -ly. When one of the modifying words is an adverb or adjective ending in -ly, omit the hyphen.

Examples:

duly sworn official  
wholly owned subsidiary

**C. Certain prefixes.** Use a hyphen with all prefixes before proper nouns. With the prefixes "ex-," "self-," and "all-" and the suffix "-elect," use a hyphen with any nouns.

Examples:

un-American  
pro-British  
self-taught  
self-respect  
self-employed  
all-knowing  
ex-President  
Governor-elect  
(except: selfless)

Generally, do not use a hyphen between a prefix and the root word when the root word is not a proper noun.

Examples:

antisocial  
intramural  
nonofficial  
semiannually  
retroactive  
intercollegiate  
nonemergency  
  
mid-August  
non-European  
trans-Canada

**D. Civil and military titles.** Civil and military titles are not hyphenated.

Examples:

Ambassador at Large  
Chief of Police  
Attorney General  
Commander in Chief  
Chief Justice  
Attorney at Law  
Vice President  
Surgeon General

Notice that words denoting an office itself may be hyphenated, such as vice-presidency and attorney-at-law.

**E. Foreign phrases as adjectives.** Foreign phrases used as adjectives are not hyphenated.

**Example:**

in vitro fertilization

## CHAPTER 5 CITATION

Textual citations are the references to legal authorities, such as constitutions, statutes or rules, which permit the reader to understand the nature of the source and locate it if desired. This chapter does not deal with citations used in amending clauses; those citations are generally in more abbreviated form than textual citations. The general rule for textual citation is that material is always cited in descending order; that is, the type of item being cited is given first, followed by a citation to the largest relevant unit of that item, followed by a citation to the next largest unit and so forth. All public laws, private and special laws, resolves and constitutional resolutions are referred to by the first year of the biennium in which they were passed or enacted. The following sections illustrate the proper forms of citation when drafting legislation.

### **Section 1. Maine materials**

**A. Constitution of Maine.** In citing the Constitution of Maine, be familiar with the structure of the Constitution as set out in Part II, pages 47 and 48. Citations are made by listing the appropriate structural units in descending order.

(1) **Internal references.** A reference in the Constitution of Maine citing another portion of the Constitution of Maine should be made in the following form: "Article IV, Part First, Section 3."

(2) **External references.** Citations to portions of the Constitution of Maine made in text outside of the Constitution should be made in one of the following forms: "Constitution of Maine, Article IX, Section 14-A" or "Constitution of Maine, Article IV, Part First, Section 3."

**B. Maine statutes.** Maine statutes that have a short title, or popular name, may be referred to by that title or name. For instance, Maine Revised Statutes, Title 9, chapter 385, may be referred to as "the Charitable Solicitations Act."

In citing the Maine Revised Statutes, be familiar with the structure of the statutes as set out in Part II, pages 24 to 26.

**(1) Internal references.** A reference in the Maine Revised Statutes citing another title is made as follows: "Title 14, section 810" or "Title 22, section 396-D, subsection 9."

In accordance with the rule of construction set out in the Maine Revised Statutes, Title 1, section 71, whenever within the Maine Revised Statutes an indefinite reference is made to a unit smaller than a title (e.g. chapter, section, etc.), it refers to the unit with the same common denominator as that in which the reference is found. For instance, Title 14, section 3579, subsection 1 states that "a transfer or obligation is not voidable under section 3575 ..." This reference does not indicate under what title section 3575 can be found. Because the section in which the reference appears is contained in Title 14, it is not necessary to repeat "Title 14." A reference citing the same unit in which the reference appears is made as follows: "this Title," "this chapter," "this subsection" or "this Act" (if it is a named Act).

**(2) External references.** When referring to the statutes in text that will not become part of the Maine Revised Statutes, the citation form is: "Maine Revised Statutes, Title 5, section 1510, subsection 1" or "Maine Revised Statutes, Title 17-A, chapter 2."

### **C. Public laws.**

**(1) External.** Basic textual citation to a public law is as follows: "Public Law (year), chapter (number)." The citation may be more specific by listing a part and section of a public law, as appropriate, such as: "Public Law 1989, chapter 458, section 2."

**(2) Internal.** When referring in a public law to another portion of that same public law, do not recite "Public Law (year), chapter (number)," but use "this Act" or "section 6 of this Act," as it is assumed that any reference without a definite citation refers to another portion of the public law containing the reference.

**D. Private and special laws.** Basic textual citation to a private and special law is as follows: "Private and Special Law (year), chapter (number)." Other citation guidelines for public laws apply to private and special laws.

**E. Resolves.**

(1) **External.** Basic textual citation to a resolve is as follows: "Resolve (year), chapter (number)."

Most resolves are so short that it is unnecessary to refer to a more specific internal unit of a resolve; rather, the resolve itself is cited. If it is necessary to refer to a specific unit of a resolve, a drafter should note that while resolves are presently arranged by "resolve sections," there are earlier resolves having unusual internal arrangements, and no one rule for citation to internal portions of a resolve can be given. Commonly used methods of citation to specific internal units of a resolve include the following.

- For resolves with section numbers:

Resolve 1989, chapter 55, section 5 ...

- For older resolves without section numbers:

Resolve 1987, chapter 60, the last resolve clause, ...

- For county budgets, cite the section number and the location of that appropriation line number:

Resolve 1985, chapter 81, section 4, 3rd line from the end ...

- Or, cite the appropriation account number and the line under that appropriation account number:

Resolve 1977, chapter 68, section 3, Appropriation Account Number 2045, under the line "Contractual Services."



(2) **Internal.** When referring to another portion of the same resolve, do not recite "Resolve (year), chapter (number)," but use "this resolve," or "section 6 of this resolve" as it is assumed that any reference without a definite citation refers to another portion of the resolve.

**F. Constitutional resolution.** When referring to a constitutional resolution, the following form is used: "Constitutional Resolution 1989, chapter 2."

**G. Citations to Maine rules.**

(1) **Courts of the State.** Citations to rules that govern proceedings in the courts of this State are made in the following manner: "Maine Rules of Civil Procedure, Rule 80B," "Maine Rules for Probate Court, Rule 7" or "Maine Rules of Evidence, Rule 501."

(2) **Reference to department or agency rules of the State.** Due to recurring changes in department and agency rules and rule numbering, specific citation in the statutes to these types of rules should not be given by rule number; instead, identify or explain the content of the rule in the text of the statutes.

**Section 2. Federal materials**

**A. Constitution of the United States.** Citation to portions of the United States Constitution should be in the same form as for the Constitution of Maine, that is, the name "United States Constitution," followed by the largest division, which is either "Article (number)" or "Amendment (number)," followed by the next largest division and so forth.

**Examples:**

United States Constitution, Article I, Section 8

United States Constitution, Amendment XIV, Section 1

**B. Citations to federal statutes.** There are two citation sources for most statutes: the code, which collects statutory language after enactment, and the act, which is the original source of the statutory language. Basic rules for citation of federal statutes are listed below.

**(1) Code citation.** Always cite to the United States Code if available.

**(a) Name of act.** Give either the official or popular name of the act or title. Avoid abbreviations.

**(b) Codification.** Give the title number before the name of the code, then list all necessary subdivisions of the statute cited (articles, sections, etc.).

**(c) Year.** Indicate the year of the most recent version that contains the language cited.

**Examples:**

Amateur Sports Act of 1978, 36 United States Code,  
Sections 371-826, 391-96 (Supplement III 1979)

National Labor Relations Act, 29 United States  
Code, Sections 151 to 169 (1982)

**(2) Exception; citation to an original act.** Cite to the original act when the code is not available or when an act appears to affect so many scattered sections or titles that no useful citation to the code is possible.

**(a) Federal.** Unless clearly stated in the title, "federal" should precede the name of the act. "Federal" is not needed if the title of the act begins "United States or National ..."

**(b) Name of act.** As with citation to a code, give the official title of the act or a popular name. Avoid abbreviations.

(c) **Public law number.** Give the public law number, the relevant sections of the public law, the volume of Statutes at Large (the official compilation of federal session laws) and the relevant pages of the Statutes at Large.

(d) **Year of passage.** The year may be omitted when clearly indicated in the name of the act.

Examples:

federal Local Rail Service Reauthorizing Act,  
Public Law 101-213, Section 2, 103 Stat. 1843 (1989)

federal Clean Water Act of 1977, Public Law 95-217,  
Section 4, 91 Stat. 1566, 1567

C. Rules and regulations.

(1) **Code of Federal Regulations.** Whenever possible, cite all federal rules and regulations, except Treasury materials, to the Code of Federal Regulations (C.F.R.) by title, part, section and year of the most recent edition of the C.F.R.

Example:

12 Code of Federal Regulations, 226.19 (1990)

Each title of the C.F.R. is revised at least once a year; cite to the most recent edition. If a rule or regulation is commonly known by name, its name should be given.

Example:

Environmental Protection Agency Effluent  
Limitations Guidelines, 40 Code of Federal  
Regulations, 405.53 (1990)

(2) **Federal Register.** The Federal Register publishes rules and regulations before they are entered in the Code of Federal Regulations. Citations of rules or regulations in the Federal Register should give any commonly used name of the rule or regulation, the volume and page on which the rule or regulation begins and the year. Give additional pages for more specific references. When the Federal Register indicates where the rule or regulation will appear in the Code of Federal Regulations, give that information parenthetically.

Examples:

Amendment 1 of Regulation 361, 50 Federal Register, 37,638 (1985) (to be codified at 7 Code of Federal Regulations, Section 908.661)

50 Federal Register, 37,646 (to be codified at 14 Code of Federal Regulations, Section 75,100)

**D. Treasury materials.** Treasury materials are cited using a separate system. If you are involved in the tax law, consult the latest version of A Uniform System of Citation, published by the Harvard Law Review Association.

### **Section 3. Citations to court opinions and opinions of the Attorney General**

It is customary when referring to a court decision to give the name of the case or opinion and its citation in the appropriate court reports. Attorney General opinions are cited differently depending on the year of issuance. For the sake of uniformity, use Uniform Maine Citations, published by the Maine Law Review, in conjunction with A Uniform System of Citation, published by the Harvard Law Review Association when citing these materials. If these two sources differ, use the method set out in Uniform Maine Citations.



## PART IV

### SPECIALIZED DRAFTING PROBLEMS

This Part deals with several specialized drafting situations that require drafting conventions that are different from the usual forms. Although the situations set out in this Part do not represent all of the specialized situations a drafter may face, they do represent the situations a drafter is more likely to encounter.

#### CHAPTER 1

#### STATEWIDE BOND ISSUES

The following example is a model of a bond issue. Note that the session during which a bond issue is proposed may make a difference in the form of the referendum section (in the following example, section 10). A bond issue proposed in the first regular session of the Legislature is generally voted on at a special statewide election and a bond issue proposed in the second regular session is generally voted on at the general election. Like any other legislation, bills proposing bond issues require fiscal notes when they are voted out of committee.

Example:

**Preamble.** Two thirds of both Houses of the Legislature deeming it necessary in accordance with the Constitution of Maine, Article IX, Section 14, to authorize the issuance of bonds on behalf of the State of Maine to provide funds for \_\_\_\_\_.

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

**Sec. 1. Authorization of bonds to provide for \_\_\_\_\_.** The Treasurer of State is authorized, under the direction of the Governor, to issue bonds in the name and behalf of the State in an amount not exceeding \$\_\_\_\_\_ to raise funds for \_\_\_\_\_ as authorized by section 6. The bonds are a pledge of the full faith and credit of the State. The bonds may not run for a period longer than 20 years from the date of the original issue of the bonds. At the discretion of the Treasurer of State, with the approval of the Governor, any issuance of bonds may contain a call feature.

**Sec. 2. Records of bonds issued to be kept by the State Auditor and Treasurer of State.** The State Auditor shall keep an account of the bonds, showing the number and amount of each, the date when payable and the date of delivery of the bonds to the Treasurer of State. The Treasurer of State shall keep an account of each bond showing the number of the bond, the name of the successful bidder to whom sold, the amount received for the bond, the date of sale and the date when payable.

**Sec. 3. Sale; how negotiated; proceeds appropriated.** The Treasurer of State may negotiate the sale of the bonds by direction of the Governor, but no bond may be loaned, pledged or hypothecated on behalf of the State. The proceeds of the sale of the bonds, which must be held by the Treasurer of State and paid by the Treasurer of State upon warrants drawn by the State Controller, are appropriated solely for the purposes set forth in this Act. Any unencumbered balances remaining at the completion of the project in section 6 lapse to the debt service account established for the retirement of these bonds.

**Sec. 4. Interest and debt retirement.** The Treasurer of State shall pay interest due or accruing on any bonds issued under this Act and all sums coming due for payment of bonds at maturity.

**Sec. 5. Disbursement of bond proceeds.** The proceeds of the bonds must be expended as set out in section 6 under the direction and supervision of the (Commissioner, Department, etc.).

**Sec. 6. Allocations from General Fund bond issue; \_\_\_\_\_.** The proceeds of the sale of bonds must be expended (as designated in the following schedule) (as follows).

**Sec. 7. Contingent upon ratification of bond issue.** Sections 1 to 6 do not become effective unless the people of the State have ratified the issuance of bonds as set forth in this Act.

**Sec. 8. Appropriation balances at year end.** At the end of each fiscal year, all unencumbered appropriation balances representing state money carry forward. Bond proceeds that have not been expended within 10 years after the date of the sale of the bonds lapse to General Fund debt service.

**Sec. 9. Bonds authorized but not issued.** Any bonds authorized but not issued, or for which bond anticipation notes are not issued within 5 years of ratification of this Act, are deauthorized and may not be issued; except that the Legislature may, within 2 years after the expiration of that 5-year period, extend the period for issuing any remaining unissued bonds or bond anticipation notes for an additional amount of time not to exceed 5 years.

**Sec. 10. Referendum for ratification; submission at statewide election; form of question; effective date.** This Act must be submitted to the legal voters of the State of Maine at (a statewide election held on the Tuesday following the first Monday of November) (the next general election in the month of November) following passage of this Act. The municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting on the following question:

"Do you favor a \$\_\_\_\_\_ bond issue for \_\_\_\_\_?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if a majority of the legal votes are cast in favor of the Act, the Governor shall proclaim the result without delay, and the Act becomes effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this referendum.

### STATEMENT OF FACT

The funds provided by this bond issue, in the amount of \$\_\_\_\_\_, will be used to \_\_\_\_\_.



## CHAPTER 2 REFERENDA

A referendum, according to the Maine Revised Statutes, Title 21-A, Section 1, is an "election for the determination of a question." Under this process, a proposed new law is referred to the people of the State or a locality for their approval. It is vital that the question appearing on the ballot at a referendum be as clear, concise and objective as possible in order to facilitate informed voting by the citizens of the State. Do not attempt to lead or sway the vote in a referendum issue by phrasing the question in a biased or deceptive way. The Revisor's Office reviews all referendum questions to help ensure that they are not biased or misleading.

In addition to their use in constitutional resolutions (see Part II, pages 45 to 47), and bond issues (see this Part, chapter 1), referendum clauses are commonly used in the situations listed below. Note that the session in which a referendum is proposed may make a difference in the form: a referendum proposed in the first regular session of the Legislature is generally voted on at a special statewide election, and a referendum proposed in the second regular session is generally voted on at the general election.

### **Section 1. Statutory referenda**

The Legislature may wish to submit an issue to the voters for their approval after the Legislature approves the enactment of a bill that proposes a change to the Maine Revised Statutes. This is accomplished by adding a referendum clause to the bill. Thus, if the Legislature approves the statutory change proposed in the bill, the change must be approved by the voters of the State in order to be effective.

#### Example:

**Sec. XX. Statutory referendum procedure; submission at (statewide) (general) election; form of question; effective date.**  
This Act must be submitted to the legal voters of the State of Maine at (a statewide election held on the Tuesday following the first Monday of November) (the next general election in the month of November)

following passage of this Act. The municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting on the following question:

"Do you favor (subject of proposed action)?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are cast in favor of the Act, the Governor shall proclaim that fact without delay, and the Act takes effect 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this referendum.

## **Section 2. Advisory referenda**

Occasionally a Legislator may wish to submit an issue to the voters of the State to determine their feelings before the Legislature takes any action on that issue. This may be done through the use of an advisory referendum. A bill proposing an advisory referendum directs the Secretary of State to hold a referendum to determine the sentiment of the voters of Maine on a designated issue. It does not enact any statutory law.

### Example:

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

**Sec. 1. Special advisory referendum on (subject of referendum).** The Secretary of State shall, at (a special statewide election on the Tuesday following the first Monday of November) (the next general election in the month of November) following the passage of this Act, hold a special advisory referendum to determine the sentiment of the people on (subject on which referendum is to be held).

**Sec. 2. Advisory referendum procedure; submission at (special statewide) (general) election.** This advisory referendum must be submitted to the legal voters of the State of Maine at (a special statewide election held on the Tuesday following the first Monday of November) (the next general election in the month of November) following passage of this Act. The municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to give their opinion on this question by voting on the following:

"Do you favor (subject of referendum or proposed action)?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and shall proclaim, without delay, the total number of ballots in favor of and opposed to the (subject of the referendum or proposed action).

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this advisory referendum.

### **Section 3. Local referenda**

Occasionally, a bill will be drafted that affects a single county, town or quasi-municipal district and the sponsor may wish to make the enactment of the bill subject to approval by the voters of the area. In this case a specialized referendum clause must be used. The following is an example of a standard local referendum clause for a town.

Example:

**Sec. XX. Referendum; effective date.** This Act must be submitted to the legal voters of the Town (or municipality) of \_\_\_\_\_ at the regular town (or municipal) meeting in 19\_\_ or at a special town (or municipal) meeting called for the purpose within \_\_\_\_\_ days of the approval of this Act. That special town (or municipal) meeting must be

called, advertised and conducted according to the law relating to municipal elections; except, however, that the municipal officers of the town may not be required to prepare for posting, nor the town clerk (or municipal clerk) to post, a new list of voters and for the purpose of registration of voters, the board of voter registration must be in session on the secular day next preceding the special election. The town clerk (or municipal clerk) of the town (or municipality) shall prepare the required ballots, on which the clerk shall reduce the subject matter of this Act to the following question:

"(Question to be voted on)?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion of the same.

This Act takes effect (insert effective date language) if it is accepted by a majority of the legal voters voting at the election; and if the total number of votes cast for and against the acceptance of this Act equals or exceeds 20% of the total vote for all candidates for Governor cast in the town (or municipality) at the most recent gubernatorial election.

The result of the vote must be declared by the municipal officers of the Town (or municipality) of \_\_\_\_\_ and due certificate must be filed by the town clerk (or municipal clerk) with the Secretary of State.

**CHAPTER 3**  
**CRIMINAL PENALTIES, CIVIL VIOLATIONS AND**  
**THE MAINE CRIMINAL CODE**

**Section 1. Classification system of the criminal code**

The Maine Revised Statutes, Title 17-A, section 4, provides that all crimes defined by the Maine Criminal Code, except murder, must be classified as Class A, Class B, Class C, Class D and Class E crimes for sentencing purposes. The term of imprisonment for each class of crime, found in Title 17-A, section 1252, is as follows:

Class of Crime	Term of Imprisonment
A	Definite period not to exceed 40 years
B	Definite period not to exceed 10 years
C	Definite period not to exceed 5 years
D	Definite period less than 1 year
E	Definite period not to exceed 6 months

The maximum authorized fines for each class of crime established in Title 17-A, section 1301, are as follows:

Class of Crime	Natural Persons	Organizations
A	\$50,000	\$100,000
B	\$20,000	\$40,000
C	\$5,000	\$20,000
D	\$2,000	\$10,000
E	\$1,000	\$10,000

Section 1301 authorizes higher fines for individuals and organizations regardless of the class of crime so long as the fine does not exceed twice the pecuniary gain derived from the crime by the defendant. This section authorizes a fine in any amount for an organization found guilty of murder.

Criminal penalty provisions that are to be included in the Maine Criminal Code should be drafted to ensure that the provisions conform to the code and the requirements set in Title 17-A, section 4. By convention, provisions in the code are usually divided into subsections, with one subsection setting out the elements of the crime and another subsection, usually the last in the section, setting out the criminal class designation. Other subsections may be used as necessary to provide definitions, exceptions, etc.

Example:

**§507-A. Interference with cemetery or burial ground**

1. A person may not intentionally or knowingly destroy, mutilate, deface, injure or remove any tomb, monument, gravestone, marker or other structure placed or designed as a memorial for the dead, or any portion or fragment of any such memorial, or any fence, railing, curb or other enclosure for the burial of the dead.

2. Subsection 1 does not apply to a person:

A. Who performs an act as authorized under Title 13, section 1371; or

B. Who meets the requirements governing eminent domain as established by state or federal law.

3. A person who violates subsection 1 commits a Class D crime.

**Section 2. Criminal provisions outside the code**

The Maine Revised Statutes, Title 17-A, sections 4-A and 4-B, provide that a statute outside the Maine Criminal Code that defines criminal conduct but does not classify the crime according to the code's classification system is automatically converted into either a classified crime or a civil violation. Statutes outside the code that prohibit defined conduct but do not provide an imprisonment penalty are converted into civil violations. Those statutes providing for imprisonment for their violation are converted into classified crimes according to the following conversion schedule found in Title 17-A, section 4-A, subsection 3.

Maximum period of imprisonment authorized by the statute	Class into which the crime is converted
Exceeds 10 years	A
Exceeds 5 years but does not exceed 10 years	B
Exceeds 3 years but does not exceed 5 years	C
Exceeds 1 year but does not exceed 3 years	D
Does not exceed 1 year	E

The following language should be used when drafting a criminal penalty provision outside the code: "A person commits (name of crime) if that person (set out prohibited conduct). (Name of crime) is a Class (classification letter) crime."

In exceptional circumstances, a drafter may wish to exempt penalty provisions from conformity with the code. For example, the Legislature may want certain conduct to be defined as criminal conduct but not wish to impose an imprisonment penalty. Because Title 17-A, section 4-B, converts a statute outside the code that does not contain an imprisonment penalty into a civil violation, you should exempt the statute from the code by using the following language: "Notwithstanding the provisions of Title 17-A, section 4-B, (name of crime) is a Class (classification letter) crime except that a term of imprisonment may not be imposed."

Similarly, if a provision does not follow the statutory fine schedule of Title 17-A, section 1301, the provision should be expressly exempted from this section to eliminate any ambiguity concerning the operation of the code versus the operation of the provision. To do this, write: "Notwithstanding Title 17-A, sections 4-A and 1301, a person who violates or fails to comply with this section commits a Class (classification letter) crime and must be punished by a fine of (amount of fine)."

An additional problem found in statutes outside the code is the use of the terms "misdemeanor" and "felony" when referring to a type of crime punishable by a certain imprisonment term. For example, many of the licensing statutes provide that a person's professional license may be suspended upon the licensee's conviction of a felony. The code no longer uses these terms to refer to types of crimes and their use should be avoided. Instead of referring to a "felony," state the class of crime or write "a crime punishable by a maximum term of imprisonment of one year or more." Similarly, instead of referring to a misdemeanor, state the class of crime or write "a crime punishable by a maximum term of imprisonment of less than one year."

### **Section 3. Civil violations**

The language used in drafting a civil violation provision depends on the sanction that is to be imposed. The Office of the Revisor of Statutes uses the following convention. Fines of \$1,000 or less are "forfeitures." Fines exceeding \$1,000 are "penalties." In addition, "penalties" may be used when an entity other than the State is to collect the fine.

**A. Language for forfeitures:** "A person that (set out prohibited conduct) commits a civil violation for which a forfeiture not to exceed (maximum dollar amount of forfeiture) may be adjudged."

**B. Language for penalties:** "A person that (set out prohibited conduct) is subject to a civil penalty not to exceed (maximum dollar amount of penalty), payable to the State (if the penalty is payable to an entity or person other than the State, substitute the proper recipient). This penalty is recoverable in a civil action."

Caution should be used in setting penalties, however, since a civil violation that includes a relatively high penalty could be constitutionally challenged as a disguised criminal statute. See, e.g., State v. Freeman, 487 A.2d 1175 (Me. 1985).



## CHAPTER 4

### DRAFTING TO UNIFORM LAWS

Uniform laws (laws recommended for enactment in each state by the National Conference of Commissioners on Uniform State Laws) sometimes appear in the Maine Revised Statutes in forms different from that of the other Maine statutes. When complex uniform laws are enacted as Maine statutes, the basic numbering system, the mechanical structure and the internal organization recommended by the National Conference of Commissioners on Uniform State Laws are sometimes retained even when these forms differ from Maine Revised Statutes standards. This encourages uniform interpretation of complex uniform statutes among the various states.

When an amendment to the uniform law is recommended by the conference, it is in the form and style and is allocated and integrated into the uniform statute as recommended by the conference. If, on the other hand, the amendment is not one recommended by the conference, it conforms as closely as possible to the style of the uniform law being amended, but is allocated as any other amendment to the Maine Revised Statutes: for example, if the amendment replaces a section or subsection and if the subject matter of the amendment differs substantially from the subject matter of the item, the amendment is allocated to a different section or subsection number. This policy ensures uniformity of numbering where uniformity exists and highlights nonuniform changes where they are inserted into a uniform law.

The National Conference of Commissioners on Uniform State Laws has established rules for drafting uniform laws. These are available in the Law and Legislative Reference Library. Under the constitution and bylaws of the conference, the Revisor of Statutes is an associate member of the conference. Drafters may direct any questions on form or procedure to the Office of the Revisor of Statutes. See Part II, page 21 for a discussion on the use of comments in bills enacting or amending uniform laws.

## CHAPTER 5

### REAL ESTATE MATTERS

There are several ways in which legislation dealing with real estate may be drafted. When drafting these types of legislation, the drafter must be sure to include the name of the towns as well as the counties involved, and give a complete description of the property in the bill.

#### **Section 1. Converting a plantation to a town**

One frequently used type of legislation is the bill converting a plantation to a town, subject to referendum submitted to the voters of the area in question. This is done through a private and special law and the bill follows a specialized format. The following is the standard form for a private and special law bill converting a plantation to a town and is followed by an example.

#### Standard form:

#### **An Act Converting (name of plantation) Plantation to the Town of (name of town)**

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

**Sec. 1. Town of (name of town); incorporated.** (Name of plantation) Plantation, with its inhabitants, is incorporated into a town by the name of (name of town). The inhabitants of this town are vested with the powers, privileges and immunities that the inhabitants of towns within the State do or may enjoy. The town created takes the effects belonging to (name of plantation) Plantation and also assumes all of its obligations.

**Sec. 2. Legislative district.** Until the next legislative apportionment of Representatives, the Town of (name of town) remains in the same legislative district in which (name of plantation) Plantation is now classed.

**Sec. 3. First meeting; how called.** Upon acceptance of this Act by referendum as provided in section 4, the board of assessors of the plantation shall issue a warrant, in accordance with the general laws, for the first town meeting, to be held within one year of the referendum. Notification of the town meeting must be filed by the plantation clerk with the Secretary of State for determining the effective date of sections 1 and 2.

**Sec. 4. Referendum; certificate to Secretary of State.**

The board of assessors of the plantation shall submit this Act by ballot to the legal voters within the territory embraced within the limits of the proposed Town of (name of town) at a regular or special election to be held within one year after passage of this Act. This election must be called, advertised and conducted according to the Maine Revised Statutes, Title 30-A, sections 2528 and 2532. The plantation clerk shall prepare the required ballots, on which the clerk shall reduce the subject matter of sections 1 and 2 to the following question:

"Do you favor converting (name of plantation) Plantation to the Town of (name of town)?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion of the same. This Act must be approved by a majority of the legal voters voting at the special election and the total number of votes cast for and against the acceptance of sections 1 and 2 at the election must equal or exceed 50% of the total number of votes cast in the plantation for Governor at the last gubernatorial election.

The result of the vote must be declared by the board of assessors of (name of plantation) Plantation and due certificate must be filed by the plantation clerk with the Secretary of State.

**Sec. 5. Effective date.** Section 3 of this Act takes effect upon its acceptance by a majority of the legal voters at the election. Sections 1 and 2 of this Act take effect for all purposes at the first town meeting.

**STATEMENT OF FACT**

This bill authorizes the incorporation of the Town of (name of town) upon approval by the voters of (name of plantation) Plantation.

A referendum must be held no later than one year after this bill takes effect. If approved, the first town meeting must be held within one year after this bill takes effect.

Example:**An Act Converting Baring Plantation to the Town of Baring****Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. Town of Baring, incorporated.** Baring Plantation, with its inhabitants, is incorporated into a town by the name of Baring. The inhabitants of this town are vested with the powers, privileges and immunities that the inhabitants of towns within the State do or may enjoy. The town created takes the effects belonging to Baring Plantation and also assumes all of its obligations.

**Sec. 2. Legislative district.** Until the next legislative apportionment of Representatives, the Town of Baring remains in the same legislative district in which Baring Plantation is now classed.

**Sec. 3. First meeting; how called.** Upon acceptance of this Act by referendum as provided in section 4, the board of assessors of the plantation shall issue a warrant, in accordance with the general laws, for the first town meeting, to be held within one year after passage of this Act. Notification of the town meeting must be filed by the plantation clerk with the Secretary of State for determining the effective date of sections 1 and 2.

**Sec. 4. Referendum; certificate to Secretary of State.** The board of assessors of the plantation shall submit this Act by ballot to the legal voters within the territory embraced within the limits of the proposed Town of Baring at a regular or special election to be held within one year after passage of this Act. This election must be called, advertised and conducted according to the Maine Revised Statutes, Title 30-A, sections 2528 and 2532. The plantation clerk shall prepare the required ballots, on which the clerk shall reduce the subject matter of sections 1 and 2 to the following question:

"Do you favor converting Baring Plantation to the Town of Baring?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion of the same. This Act must be approved by a majority of the legal voters voting at the election and the total number of votes cast for and against the acceptance of sections 1 and 2 at the election must equal or exceed 50% of the total number of votes cast in the plantation for Governor at the last gubernatorial election.

The result of the vote must be declared by the board of assessors of Baring Plantation and due certificate must be filed by the plantation clerk with the Secretary of State.

**Sec. 5. Effective date.** Section 3 of this Act takes effect upon its acceptance by a majority of the legal voters at the election. Sections 1 and 2 of this Act take effect for all purposes at the first town meeting.

### STATEMENT OF FACT

This bill authorizes the incorporation of the Town of Baring upon the approval by the voters of Baring Plantation.

A referendum must be held no later than one year after this bill takes effect. If approved, the first town meeting must be held within one year after this bill takes effect.

### Section 2. Changing boundaries

Changing boundary lines of a town is also accomplished by a private and special law.

#### Example:

#### **An Act to Amend the Boundary Line between the Towns of Albion and Benton**

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

**Boundary line.** In Kennebec County, the boundary line between the Towns of Albion and Benton is as described.

Beginning at a drill hole in the top of a stone bound set in 1988 and engraved with the letters "A" and "B" on the respective sides facing the Towns of Albion and Benton; the stone bound is located on a polar bearing of South 78° 05' 44" East and 3,154.3 feet from the stone bound at Foss Hill marking the corners of Albion, Benton and Winslow, and along the existing municipal boundary between the Towns of Benton and Albion as established by Chapter 142, 1803 Laws and Resolves of Massachusetts; thence, North 11° 14' 14" East for 1,881.2 feet to a drill hole in the top of a stone bound set in 1988 near the southerly line of the Albion-Benton Road, the stone bound marked with the

letters "A" and "B" on the respective sides facing the Towns of Albion and Benton. Thence, North 11° 14' 14" East for 858.1 feet to a drill hole in the top of a stone bound set in 1988 marking a corner of the town line, the stone bound marked with the letters "A" and "B" on the respective sides facing the Towns of Albion and Benton; thence, North 78° 33' 11" West along the existing municipal boundary between the Town of Albion and the Town of Benton.

All bearings have been rotated to match a plan entitled "Albion-Benton Town Line" dated October, 1976, by S.L.F., Inc. All bearings are based on true north. The declination from true north to magnetic north is 18° 50' 51" West.

### STATEMENT OF FACT

The purpose of this bill is to establish an agreed-upon boundary between the Towns of Albion and Benton.

### Section 3. Deorganization

Deorganization of a plantation or town is usually accomplished through a private and special law bill subject to referendum submitted to the legal voters of the plantation or town in question. Not all of the provisions in the following example are necessary in every proposed deorganization.

#### Example:

#### **An Act to Deorganize Plantation E in Aroostook County**

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

**Whereas,** the citizens of Plantation E must vote on the deorganization of the plantation before the 90-day period after adjournment has elapsed; 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 enacted by the People of the State of Maine as follows:**

**Sec. 1. Deorganization of Plantation E.** Plantation E in Aroostook County is deorganized, except that the corporate existence, powers, duties and liabilities of the plantation survive for the purposes of prosecuting and defending all pending suits to which the plantation is, or may be, a party and all needful process arising out of any suits, including provisions for the payment of all or any judgments or debts that may be rendered against the plantation or exist in favor of any creditor.

**Sec. 2. Unexpended school funds.** The treasurer of the plantation or any other person who has custody of the funds of the plantation shall pay to the Treasurer of State all unexpended school funds that, together with the credits due the plantation for school purposes, are to be used by the State Tax Assessor to settle any school obligations contracted by the plantation before deorganization. Any unexpended school funds remaining with the Treasurer of State after all the obligations have been met must be added to the Unorganized Territory Education and Services Fund, as established in the Maine Revised Statutes, Title 36, chapter 115.

**Sec. 3. School debt.** The plantation treasurer or the person who has custody of the plantation funds shall pay \$18,000 to School Administrative District No. 42 as the plantation's share of the debt service. This amount must be paid within 30 days of the effective date of this section. School Administrative District No. 42 may retain any interest earned on this amount. Any remaining unexpended school funds, together with any credits due the plantation for school purposes, must be paid to the State Treasurer. These funds, if any, must be added to the Unorganized Territory Education and Services Fund.

**Sec. 4. Withdrawal from School Administrative District No. 42.** Plantation E is withdrawn from School Administrative District No. 42.

**Sec. 5. Assessment of taxes.** The State Tax Assessor shall assess the real and personal property taxes in Plantation E as of April 1, 1990, as provided in Title 36, chapter 115.

**Sec. 6. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1990-91

**EDUCATIONAL AND CULTURAL SERVICES, DEPARTMENT OF**

**Education in the Unorganized Territories**

All Other \$81,691

Provides funds for the education costs of Plantation E. These additional expenditures will be offset by General Fund revenues collected through the Unorganized Territory Education and Services Fund.

**General Purpose Aid for Local Schools**

All Other (\$47,132)

Deappropriates funds no longer required for Plantation E.

**DEPARTMENT OF EDUCATIONAL AND CULTURAL SERVICES  
TOTAL**

\$34,559

**FINANCE, DEPARTMENT OF**

**Tree Growth Tax Reimbursement**

All Other (\$5,100)

Deappropriates funds no longer required for Plantation E.

**DEPARTMENT OF FINANCE  
TOTAL**

(\$5,100)

**TOTAL APPROPRIATIONS**

\$29,459

**Sec. 7. Referendum; certificate to Secretary of State.**

Notwithstanding Title 30-A, section 7209, the board of assessors of the plantation shall submit this Act to the legal voters of Plantation E by ballot at a special election held in May after passage of this Act. This election must be called, advertised and conducted according to the Maine Revised Statutes, Title 30-A, sections 2528 and 2532. The plantation clerk shall prepare the required ballots on which the clerk shall reduce the subject matter of this Act to the following question:



"Do you favor the deorganization of Plantation E?"

The voters shall indicate their opinion on this question by a cross or check mark placed against the word "Yes" or "No." Before becoming effective, this Act must be approved by at least 2/3 of the legal voters voting at the special election, and the total number of votes cast for and against the acceptance of this Act at the election must equal or exceed 50% of the total number of votes cast in the plantation for Governor at the last gubernatorial election.

The board of assessors of Plantation E shall declare the result of the vote. The plantation clerk shall file a certificate of the election result with the Secretary of State within 10 days from the date of the election.

**Emergency clause.** In view of the emergency cited in the preamble, section 7 of this Act takes effect when approved. Sections 1 to 6 take effect on July 1, 1990, if deorganization is approved by the voters of Plantation E pursuant to section 7.

#### **Section 4. Annexation**

Annexation of land by a town is usually accomplished through a private and special law bill subject to referendum submitted to the voters of the town and the voters inhabiting the area to be annexed.

#### Example:

#### **An Act to Authorize the Annexation of Land Adjacent to the Town of East Millinocket**

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

**Whereas,** the Town of East Millinocket requires the annexation of adjacent lands for the proper operation of municipal government, including road maintenance, public safety, and utilities management; 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 enacted by the People of the State of Maine as follows:**

**Sec. 1. One lot or parcel of land; annexed to the Town of East Millinocket.** The following lot or parcel of land bounded and described as follows and situated adjacent to the Town of East Millinocket in Penobscot County is annexed to the Town of East Millinocket:

Beginning at a point on the north town line of TA R7 WELS at the center or thread of Dolby Pond (Flowage); thence easterly by and along the north town line a distance of one thousand nine hundred (1,900') feet, more or less, to the northwest corner of the Town of East Millinocket; thence southerly by and along the west town line of East Millinocket a distance of two and one-quarter (2-1/4) miles, more or less, to a point in the center or thread of the West Branch of the Penobscot River; thence northwesterly by said center or thread a distance of three-quarter (3/4) miles, more or less, to the center or thread of Dolby Pond (Flowage); thence northerly by and along the center or thread of Dolby Pond (Flowage) a distance of one and three-quarter (1-3/4) miles, more or less, to the point of beginning. Said parcel contains 521 acres, more or less.

**Sec. 2. One lot or parcel of land; annexed to the Town of East Millinocket.** The following lot or parcel of land bounded and described as follows and situated adjacent to the Town of East Millinocket in Penobscot County is annexed to the Town of East Millinocket:

Beginning at a point on the west town line of East Millinocket at the center of the thread of the West Branch of the Penobscot River and immediately before that west town line turns southeasterly along the center or thread of the West Branch of the Penobscot River; thence southerly by the west town line of East Millinocket a distance of twenty eight thousand five hundred ninety eight (28,598) feet, more or less, to the south township line of TA R7 WELS; thence easterly by and along the south township line of TA R7 WELS a distance of thirteen thousand eight hundred sixty (13,860) feet, more or less, to the west town line of Medway; thence northerly by and along the west town line of Medway a distance of twelve thousand four hundred seventy four (12,474) feet, more or less, to a point in the center or thread of the West Branch of the Penobscot River; thence westerly by and along the center or thread of the West Branch of the Penobscot River a distance of sixteen thousand six hundred ninety eight (16,698) feet, more or less, to the point of beginning.

**Sec. 3. Planning costs to be absorbed by the Town of East Millinocket.** All costs associated with the transfer of jurisdiction over lands in Township A, Range 7 WELS from the Maine Land Use Regulation Commission to the Town of East Millinocket must be borne by the Town of East Millinocket.

**Sec. 4. Referendum; emergency clause; effective date.** This Act must be submitted to the legal voters in the Town of East Millinocket and Township A, Range 7 WELS in Penobscot County at the next regular municipal election after the passage of this Act for the purposes of voting on the annexation described in section 1, and at the 2nd regular municipal election after passage of this Act for the purposes of voting on the annexation described in section 2. Warrants must be issued for that election in the manner now provided by law for the holding of municipal elections, notifying and warning the qualified voters of the town and township to vote on the approval or rejection of this Act.

The subject matter of this Act must be presented at the town meeting in the form of the following question:

"Do you favor annexation by the Town of East Millinocket of certain portions of Township A, Range 7 WELS in Penobscot County?"

The voters of TA R7 WELS present at the meeting must be given one of 2 township ballots, distinguished on the basis of the portion of the township proposed for annexation in which the voter resides. The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion on the question posed. The votes of legal voters of the Town of East Millinocket and each portion of Township A, Range 7 WELS proposed for annexation must be separately counted, tallied and recorded.

In view of the emergency cited in the preamble, section 1 of this Act is considered approved upon its acceptance by a majority of the voters of East Millinocket and a majority of the voters of the portion of TA R7 WELS described in section 1. In view of the emergency cited in the preamble, section 2 of this Act is considered approved upon its acceptance by a majority of the voters of East Millinocket and if a majority of the voters of the portion of TA R7 WELS described in section 2 do not oppose annexation.

If the referendum fails, it may not be submitted again to the voters under the provisions of this Act.

The result of the votes must be declared by the municipal officers of the town and due certificates thereof must be filed by the town clerk with the Secretary of State within 10 days of the date of the vote.

## Section 5. Conveyance of state land

Another type of legislation gives the State authority to convey its interest in land. This is done through a resolve that also follows a specialized format. If the description of the land to be conveyed is lengthy or if there are numerous parcels, a copy of the description can be attached to the bill and marked as an exhibit and cross-referenced in the bill and statement of fact. Otherwise, the description should be typed as part of the bill.

### Example with incorporated description:

#### **Resolve, to Clear Title or to Secure a Release of Property from the State**

**Authority to convey. Resolved:** That the Director of the Bureau of Public Lands shall convey to Gerald H. Briggs and Elizabeth G. Briggs the State's interest in a certain parcel of land in Bangor. The State's interest must be conveyed at the cost of the State's initial investment in the property and associated title transfer costs. The parcel of land is described as follows:

A certain lot or parcel of land together with the buildings thereon, situated in Bangor, Penobscot County, State of Maine, bounded and described as follows, to wit:

Beginning at Number 6 iron rebar located at the northwesterly sideline of Stillwater Avenue all the southeasterly corner of land now or formerly of Statewide Floor Waxing, Inc. as described in Penobscot County Registry of Deeds in Book 2232, Page 464' thence N 10° 13' 08" W through a one inch bolt, One Thousand Three Hundred Seventy-Seven and Forty-Two Hundredths Feet (1,377.42), more or less, to a Number 6 iron rebar, thence N 5° 01' 22" E, Six Hundred Sixty and Seventy-Four Hundredths (660.74), more or less to a Number 6 iron rebar; thence S 59° 35' 00" E Three Hundred Forty-Seven and Sixty Hundredths Feet (347.60'), more or less, thorough a Number 6 iron rebar to a Number 6 iron rebar at the northeasterly corner of land of Helen Gardner described in said Registry in Book 3958, Page 309, thence S 30° 25' 00" W One Hundred Nine and Eighty-Four Hundredths Feet (109.84'), more or less, to a Number 6 iron rebar; thence S 58° 27' 35" E Six Hundred Sixty-Six and Fifty-One Hundredths Feet (666.51'), more or less, to a Number 6 iron rebar; thence S 32° 03' 49" W Two Hundred Feet (200'), more or less, to a Number 6 iron rebar; thence S 57° 36' 11" E

Two Hundred Ten Feet (210'), more or less, to a Number 6 iron rebar at the northwesterly sideline of Stillwater Avenue; thence S 32° 03' 49" W, along the northwesterly sideline of Stillwater Avenue One Thousand Three Hundred Thirteen and Eighty-Six Hundredths Feet (1,313.86'), more or less, to the point of beginning. Being 22.53 acres more or less. Bearings in this paragraph are based upon a Standard Boundary Survey conducted by Richard N. Perry, Jr. dated November 18, 1986.

### STATEMENT OF FACT

This resolve authorizes the Director of the Bureau of Public Lands to convey the State's interest in land in Bangor to Gerald H. Briggs and Elizabeth G. Briggs.

Some conveyances can be authorized by incorporating a description or legal agreement by reference. Incorporation by reference presents a number of practical, legal and constitutional pitfalls, and the technique is reserved for rare occasions and must be used with care. While an illustrative example of a proper incorporation of exhibits by reference follows, please consult with the Revisor's Office if you are considering the use of this technique.

#### Example with exhibit incorporated by reference:

#### **Resolve, Authorizing the Conveyance of Certain Public Lands**

**Director of the Bureau of Public Lands; property conveyed by quitclaim deed. Resolved:** That the Director of the Bureau of Public Lands may by quitclaim deed convey the following properties.

1. To the Little Squaw Campowners Association, the land described in a purchase and sale agreement between the State of Maine and the Little Squaw Campowners Association, dated April 12, 1989.

2. To the Town of Gray, the land described in a purchase and sale agreement between the State of Maine and the Town of Gray, dated March 7, 1989.

3. To Frederic C. Thompson and Doreen Thompson, the land described in a purchase and sale agreement between the State of Maine and Frederic C. Thompson and Doreen Thompson, dated March 7, 1989.

4. To Peter Becker, the land described in a purchase and sale agreement between the State of Maine and Peter Becker, dated April 20, 1989.

All money received from the sale of this land must be deposited in the Public Reserved Lands Acquisition Fund and must be used to purchase additional land for the public reserved lands system. The State may not convey any land or interest in any land that comprises a public road or a great pond.

### STATEMENT OF FACT

The transactions outlined in this resolve involve conveyances of small parcels of public lands. Two of the agreements call for the sale of land with no special public use potential at fair market value. The other transaction allows for a public road relocation adjacent to an existing parcel of public land to correct a safety problem. All money received as the result of these transactions will be deposited in the Public Reserved Lands Acquisition Fund and used to acquire land of greater interest to the public. The agreements and associated materials are reproduced as exhibits to this statement of fact.

Little Squaw Campowners Association: In accordance with direction from the 112th Legislature, the Bureau of Public Lands negotiated the sale of camp lots in Little Squaw Township to the camp owners at market value. The camp owners have been leasing their lots from the bureau since the bureau acquired these leases as part of a land exchange in 1975. (Exhibit A)

Town of Gray, Frederic C. and Doreen Thompson: These transactions allow the Town of Gray to relocate a dangerous section of road and intersection. (Exhibits B and C)

Peter C. Becker: This transaction clarifies a title defect which currently exists. The property in question may have escheated to the State in 1977 when the owner died, apparently without heirs. This agreement conveys the State's interest in the parcel to a nonblood relative at market value. (Exhibit D)

BUREAU OF PUBLIC LANDS  
DEPARTMENT OF CONSERVATION  
Purchase and Sales Agreement

EXHIBIT  
A to LR 2379

Little Squaw Township

This agreement is by and between the State of Maine, acting through its Bureau of Public Lands, Department of Conservation (hereinafter referred to as the "State"), and Kathi Cooper (P.O. Box 95, Greenville), acting as agent on behalf of those having leased lots on the Public Reserved Lands in Little Squaw Township, as listed in Exhibit A attached hereto (hereinafter referred to collectively as the "Grantee"), in accordance with the provisions of 30 MRSA §4169 and subject to the following terms and conditions:

- (1) The State of Maine shall convey all of its right, title and interest in and to those camp lots on the Public Reserved Lands of Little Squaw Township (hereinafter referred to as the "premises"), as shown on Exhibits B1 through B7 attached hereto, reserving for such administrative purposes as may be necessary rights-of-way as shown on Exhibits B1, B2, B3, B4, B5, B6 and B7. There shall be no further obligation of the State of Maine, expressed or implied, and the parties to this agreement do hereby waive all claims or causes against the State of Maine, relating to the ownership, administration or condition of these premises. The State shall not be responsible for maintenance of or any costs associated with any rights-of-way serving the camp lots.

## CHAPTER 6 INITIATED BILLS

Article IV, Part 3, Sections 18, 19 and 20 of the Constitution of Maine and the Maine Revised Statutes, Title 21-A, chapter 11 set out the procedure by which a proposal may be enacted by the direct initiative of the people.

When a person or group wishes to propose an initiated bill, the first step is to submit an application to the Department of the Secretary of State. The application must contain the full text of the proposed law. When the Secretary of State's Office receives the application containing the draft legislation for review, it is forwarded to the Revisor's Office for an advisory editorial review. The Revisor's Office then puts the bill draft through the drafting and editing cycle and forwards a corrected draft to the Secretary of State's Office. The Secretary of State then provides the corrected draft to the proponents who are advised, but not required, to use the corrected version.

For the proposal to advance, the number of valid signatures must be at least equal to 10% of the total vote for Governor in the last gubernatorial election. Once the requisite number of signatures is obtained, the draft is transmitted by the Secretary of State to the Clerk of the House, who sends it to the Office of the Revisor of Statutes for transcription. At that point no changes may be made, as the Constitution provides that the Legislature must consider the bill in the exact form presented by the petition. If the Legislature fails to enact the bill, it goes out for referendum. The Legislature may wish to make changes to the bill; if so, both the original and the amended versions go out to referendum as competing measures.

If the initiated version of the bill is passed at referendum, the bill becomes law in the exact form presented by the petition. Any technical errors in drafting, formatting or allocation can be addressed in the next errors bill and, if not controversial, remedied there.



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## CHAPTER 7 STATUTORY ERRORS

Despite the conscientious efforts of everyone involved in the enactment and publication of Maine's laws and statutes, the volume of legislation passed each session is so great that errors, including conflicts and inconsistencies, are inevitable.

Nonsubstantive errors must be directed to the Office of the Revisor of Statutes rather than to individual committees so that corrections can be coordinated to minimize duplication of effort and to avoid creating future conflicts while attempting to resolve current problems. Substantive problems are addressed by the introduction of legislation that proposes a change to a statute, rather than through the errors bill, and these individual bills are referred to the committees having jurisdiction.

There are three types of statutory errors: errors and conflicts in the laws as they are enacted, publication errors in the Laws of Maine, and publication errors in the Maine Revised Statutes Annotated. Laws of Maine errors and Maine Revised Statutes errors should be sent to the Revisor of Statutes, who will work with the respective printers to correct these errors where possible and will take steps to ensure that the problems will not be repeated.

Nonsubstantive errors identified in enactments should also be sent to the Revisor of Statutes at the earliest possible time. These errors, which can include problems such as multiple amendments of existing law without reference to each other (conflicts), multiple enactments of sections, inconsistent enactments or cross-references, misspellings, improper numbering, etc., will be researched and documented by the office.

After legal review, these problem sections are consolidated into a bill entitled "An Act to Correct Errors and Inconsistencies in the Laws of Maine" that, by tradition, is sponsored by the Senate Chair of the Judiciary Committee and cosponsored by the House Chair. Errors identified after the original bill is printed may be presented to the Judiciary Committee for possible incorporation in the committee amendment to the bill. The Judiciary Committee then reviews each section along with the supporting documentation, and the committee deletes those sections it considers substantive.

The Chairs of the Judiciary Committee may also present sections that the committee considers to be "possibly substantive" as floor amendments, so that if one of these sections generates controversy, passage of the noncontroversial sections, the great majority, will not be delayed. Drafters should be aware that floor amendments to the errors bill are governed by Joint Rule 21, which requires that an amendment to the errors bill be printed at least 24 hours before consideration.

## CHAPTER 8

### APPROPRIATIONS AND ALLOCATIONS

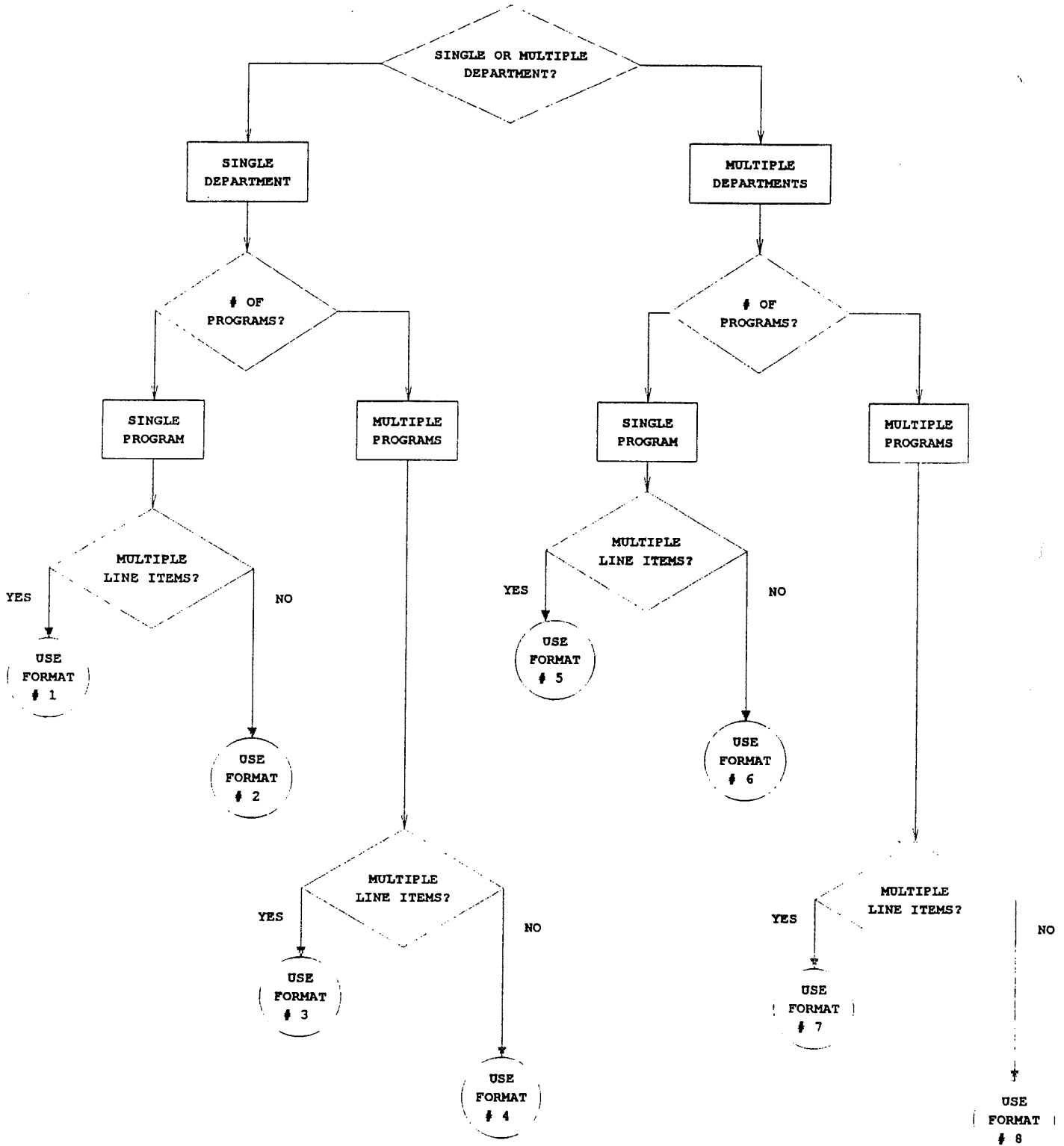
General provisions concerning the use and limitations of appropriation and allocation sections are set forth in Part II, pages 11 to 14. In addition to the legal requirements addressed in that portion of this manual, a drafter must pay attention to the specific types of appropriation and allocation formats used depending on which types of state government entities are receiving funds. Particular attention to these formats is necessary to ensure uniformity in the presentation and interpretation of budget bills and sections.

There are four basic types of appropriation formats:

- For single departments with a single program;
- For single departments with multiple programs;
- For multiple departments with a single program within a department; and
- For multiple departments with multiple programs within a department.

Each of these basic types is further varied depending on whether there are single or multiple line items within a program. A decision chart for the differences in format and an example of each major variation follow. The following examples are all appropriations. The format remains the same for allocations except that money is allocated from specific funds or sources, not appropriated from the General Fund. Program names are as designated by the Bureau of the Budget.

APPROPRIATION AND ALLOCATION SECTIONS  
 FORMAT DECISION TREE



**FORMAT #1**  
**SINGLE DEPARTMENT; SINGLE PROGRAM;**  
**MULTIPLE LINE ITEMS**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Legal Services - Human Services**

Positions	(2.0)
Personal Services	\$51,800
All Other	3,200
Capital Expenditures	1,000

Provides funds for one attorney and one clerical position in order to carry out the purposes of this Act.

**DEPARTMENT OF HUMAN SERVICES**  
**TOTAL**

            
\$56,000

**FORMAT #2**  
**SINGLE DEPARTMENT; SINGLE PROGRAM;**  
**SINGLE LINE ITEM**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**FINANCE AUTHORITY OF MAINE**

**Removal of Oil Storage Tanks**

All Other	\$3,000,000
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Provides funds for direct loans for removal and replacement of underground oil storage facilities. Loans may be provided at no interest to owners of 5 or fewer facilities. For purposes of determining whether an owner owns 5 or fewer facilities, all facilities with 50% or more common ownership are included.

**FORMAT #3**  
**SINGLE DEPARTMENT; MULTIPLE PROGRAMS;**  
**MULTIPLE LINE ITEMS**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Legal Services - Human Services**

Positions	(2.0)
Personal Services	\$51,800
All Other	3,200
Capital Expenditures	1,000
<b>TOTAL</b>	<b>\$56,000</b>

Provides funds for one attorney and one clerical position in order to carry out the purposes of this Act.

**Health - Bureau of**

Positions	(14.0)
Personal Services	\$291,760
All Other	65,240
<b>TOTAL</b>	<b>\$357,000</b>

Provides funds for 14 restaurant inspectors, in order to carry out the purposes of this Act.

**DEPARTMENT OF HUMAN SERVICES**  
**TOTAL**

**\$413,000**



**FORMAT #4**  
**SINGLE DEPARTMENT; MULTIPLE PROGRAMS;**  
**SINGLE LINE ITEM**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Legal Services - Human Services**

Positions	(2.0)
Personal Services	\$51,800

Provides funds for one attorney and one clerical position in order to carry out the purposes of this Act.

**Health - Bureau of**

Positions	(14.0)
Personal Services	\$291,760

Provides funds for 14 restaurant inspectors, in order to carry out the purposes of this Act.

**DEPARTMENT OF HUMAN SERVICES**  
**TOTAL**

\$343,560

**FORMAT #5**  
**MULTIPLE DEPARTMENTS; SINGLE PROGRAM;**  
**MULTIPLE LINE ITEMS**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Health - Bureau of**

Positions	(0.5)
Personal Services	\$13,832
All Other	5,000
Capital Expenditures	500

Provides funds for a half-time laboratory supervisor position to develop, adopt and monitor rules for substance abuse testing.

**DEPARTMENT OF HUMAN SERVICES  
TOTAL**

\$19,332

**LABOR, DEPARTMENT OF**

**Regulation and Enforcement**

Positions	(1.0)
Personal Services	\$19,373
All Other	3,500

Provides funds for a clerical-enforcement position and related expenses including the cost of a report.

**DEPARTMENT OF LABOR  
TOTAL**

\$22,873

**TOTAL APPROPRIATIONS**

\$42,205

**FORMAT #6**  
**MULTIPLE DEPARTMENTS; SINGLE PROGRAM;**  
**SINGLE LINE ITEM**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Health - Bureau of**

Positions	(0.5)
Personal Services	\$13,832

Provides funds for a half-time laboratory supervisor position to develop, adopt and monitor rules for substance abuse testing.

**DEPARTMENT OF HUMAN SERVICES  
TOTAL**

\$13,832

**LABOR, DEPARTMENT OF**

**Regulation and Enforcement**

Positions	(1.0)
Personal Services	\$19,373

Provides funds for a clerical-enforcement position and related expenses including the cost of a report.

**DEPARTMENT OF LABOR  
TOTAL**

\$19,373

**TOTAL APPROPRIATIONS**

\$33,205

**FORMAT #7**  
**MULTIPLE DEPARTMENTS; MULTIPLE PROGRAMS;**  
**MULTIPLE LINE ITEMS**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Legal Services - Human Services**

Positions	(2.0)
Personal Services	\$51,800
All Other	3,200
Capital Expenditures	1,000
<b>TOTAL</b>	<u>\$56,000</u>

Provides funds for legal staff.

**Health - Bureau of**

Positions	(14.0)
Personal Services	\$291,760
All Other	65,240
<b>TOTAL</b>	<u>\$357,000</u>

Provides funds for 14 restaurant inspectors.

**DEPARTMENT OF HUMAN SERVICES**

<b>TOTAL</b>	<u>\$413,000</u>
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**LABOR, DEPARTMENT OF**

**Regulation and Enforcement**

Positions	(1.0)
Personal Services	\$19,373
All Other	10,000
<b>TOTAL</b>	<u>\$29,373</u>

Provides funds for a clerical-enforcement position and related expenses.

**Administration - Bureau of  
Labor Standards**

Positions	(1.0)
Personal Services	\$23,489
All Other	10,000
TOTAL	<u>\$33,489</u>

Provides funds to hire a Clerk  
Typist I.

**DEPARTMENT OF LABOR  
TOTAL**\$62,862**TOTAL APPROPRIATIONS**\$475,862

**FORMAT #8**  
**MULTIPLE DEPARTMENTS; MULTIPLE PROGRAMS;**  
**SINGLE LINE ITEM**

**Sec. XX. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1988-89**

**HUMAN SERVICES, DEPARTMENT OF**

**Legal Services - Human Services**

Positions	(2.0)
Personal Services	\$51,800

Provides funds for one attorney and one clerical position in order to carry out the purposes of this Act.

**Health - Bureau of**

Positions	(14.0)
Personal Services	\$291,760

Provides funds for 14 restaurant inspectors, in order to carry out the purposes of this Act.

**DEPARTMENT OF HUMAN SERVICES  
TOTAL**

\$443,560

**LABOR, DEPARTMENT OF**

**Regulation and Enforcement**

Positions	(1.0)
Personal Services	\$19,373

Provides funds for a clerical-enforcement position and related expenses including the cost of a report.

**Administration - Bureau of  
Labor Standards**

All Other	\$10,000
-----------	----------

Provides funds to cover printing costs.

**DEPARTMENT OF LABOR**  
**TOTAL**  
**TOTAL APPROPRIATIONS**

\$29,373  
\$472,933

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