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MAINE LEGISLATIVE DRAFTING MANUAL



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

Office of the Revisor of Statutes
Augusta, Maine 04333
(207)287-1650
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PART I

THE DRAFTING PROCESS

CHAPTER 1

CLOTURE AND INTAKE

Section 1. Cloture

All proposed legislation must be submitted to the Office of the Revisor of Statutes prior to its introduction. Cloture is the date by which legislative drafting requests must be filed in the Office of the Revisor of Statutes. Generally, if a request is filed after cloture, an after-deadline procedure applies. The guidelines for the filing of requests are set forth in the Joint Rules of that legislative session. The Joint Rules discussed in this part of the manual refer to the Joint Rules that have been consistently adopted in the past.

- A joint rule requires that requests for bills or resolves be submitted to the Revisor of Statutes on behalf of state departments, agencies or commissions on or before the first Wednesday in December or within 30 days after a newly elected Governor takes the oath of office.
- A joint rule requires that during the first regular session all requests by Legislators for bills and resolves be submitted in complete form to the Revisor of Statutes on the third Friday in December following the convening of the session in December.
- A joint rule requires the Legislative Council to establish procedures for submission of bill requests for the second regular session.
- A joint rule provides that a request for drafting must be filed with the Revisor of Statutes and must be accompanied by "sufficient instructions, information and data required for its preparation."

Bill requests submitted after the cloture deadline are submitted to the Legislative Council for review and approval. The Office of the Revisor of Statutes will not process these requests unless at least a majority of the council votes to accept the proposal for introduction.

Section 2. Authority for introduction

Each legislative instrument must have a proper authority for introduction. Although bill requests may come from a wide variety of sources, including state agencies, study groups, joint standing committees and Legislators, bills may be introduced only by the following authorities.

A. Legislators. The majority of bills are authorized for introduction as Legislators' bills filed before or after the filing deadline. As provided in the Joint Rules, these bills have a primary sponsor and may have one lead cosponsor from the other chamber and up to 8 other cosponsors. Citizens, interest groups or lobbyists must have a legislative sponsor who agrees to the filing of their bill.

B. Governor. The Governor may introduce bills at any time during the legislative session. Bills that originate from the Governor's office have a primary legislative sponsor and may have one lead cosponsor from the other chamber and up to 8 other cosponsors. Governor's bills do not have a jacket legend.

C. Executive Department. Bills that originate from the Executive Department follow the same rules of sponsorship but also routinely bear a legend on the bill jacket indicating the bill's origin.

Example:

Submitted by the Department of Human Services pursuant to Joint Rule 204.

D. 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.

Submitted by the Joint Select Advisory Committee on Taxation pursuant to Resolve 1987, chapter 67.

Section 3. Intake

Intake, the receipt and initial processing of legislative requests, is a crucial step in the drafting process. Inadequate intake can lead to frustration on the part of both drafter and sponsor and wasted time and effort on the part of everyone involved in the drafting process.

A. Sufficiency of information. Under the Joint Rules, a request is considered complete when the request is properly titled and accompanied by sufficient instructions, information and data for its preparation.

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? If so, the request is accepted as a properly filed precloture request. If not, the sponsor is informed by the Revisor that the request is incomplete, and, unless completed before cloture, the bill request may be reviewed by the Legislative Council as an after-deadline request.

B. Interviewing process. The interviewer's job during intake is to ask questions to determine why the sponsor wants a particular piece of legislation, the relevant facts creating the background for the request and what the sponsor hopes to accomplish with the legislation.

- If a bill would create a new statutory program, ask the sponsor to specify: the targeted or affected population; the person or entity that will implement, administer or oversee the program; the authority that person or entity has to carry out its duties; and where funding for the program should come from.

- If a bill would "make it against the law" to commit some act or fail to undertake some action, ask what the sponsor intends as the penalty for the violation or as the enforcement mechanism to ensure compliance.

- If the bill is to be drafted as an emergency measure, ascertain the facts and circumstances that necessitate enactment of the bill as an emergency measure.

In addition, ask the sponsor where the idea for the bill originated since the answer received often may lead to a valuable resource. If the sponsor wishes to model a bill on a proposal from a prior session, ask the sponsor whether any proposed amendments to that bill should be incorporated.

If the bill requires rulemaking, ask the sponsor if the rules would be major substantive rules, requiring review by the Legislature, or routine technical rules, not requiring review by the Legislature.

Remember to record clearly all of the information provided during intake because the request may ultimately be drafted by someone else.

Section 4. Legislative confidentiality

Under the freedom of access provisions contained in the Maine Revised Statutes (see Title 1, section 402, subsection 3, paragraph C), 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.

The Joint Rules, however, specify that the names of sponsors and the titles of requests for bills and resolves submitted by Legislators or by departments, agencies or commissions become public information on the cloture date. Under the Joint Rules, titles of requests for bills and resolves submitted by the Governor are considered public information upon filing unless the Governor has directed that a particular title remain confidential until the bill or resolve is printed.

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

- Except for the title and name of the sponsor, 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 one another when necessary in accordance with their office policies.

Section 5. Legislative numbering

When a bill request is received by the Office of the Revisor of Statutes, it is entered into 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. L.R. numbers are assigned sequentially, based on chronological order of receipt. 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 Paper 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 Division. Chapter numbers are issued sequentially, based on the type of the enacted law (e.g., Public Law 1997, chapter 1 is followed by Public Law 1997, chapter 2, etc., but the first enacted resolve is designated Resolve 1997, chapter 1, and so on).

CHAPTER 2 THE INITIAL DRAFT

The ultimate goal of a drafter of legislation is the creation of a law that states 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, the following 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. Maine Revised Statutes Annotated. *Maine Revised Statutes Annotated* (MRSA), 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 library references, historical and statutory notes or summaries of case law. The summaries of case law are issued by the Maine Supreme Judicial Court and various federal courts that have interpreted the Maine statutes.

Text 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, additional changes may have been made since the pocket part was published. If so, these changes may be located using *Laws of the State of Maine*, West's *Maine Legislative Service* and recent chaptered laws. It is often necessary to read the bound volume, the pocket part and the more recent changes together in order to understand correctly the law that is currently in effect. MRSA also contains an annually updated subject index that references the title and section of statutes on each subject.

B. Maine Key Number Digest. This digest, also published by West Publishing Company, brings together under one standard classification system annotations of opinions of the Supreme Judicial Court and the Attorney General and of the federal courts when those federal courts construe 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.

C. History and disposition; old legislative documents as models. Two publications provide access to relevant documents from previous sessions; they are often good models on which to base drafts. The Legislative Information Office compiles a record of the actions taken on all legislation introduced in each legislative session, the dates on which actions were 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 summarizes the content of every bill referred to legislative committees staffed by that office along with the actions taken on the bill. Copies of these publications are available in the Law and Legislative Reference Library.

D. Laws of the State of Maine. *Laws of the State 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 MRSA.

Each annual volume of *Laws of the State 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 Maine Revised Statutes of 1964 that were affected by subsequent session laws and a table of all public laws exempted in revisions prior to 1964

and affected by subsequent session laws.

E. 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.

F. Department rules. Statutes often give departments or agencies authority to issue rules that implement legislative policies or that 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 department or 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 subject matter of the relevant rule should be clearly identified and explicitly overruled. If the legislation delegates rule-making authority to departments or agencies, the rules adopted must be identified as either “routine technical” or “major substantive,” depending on the level of legislative oversight needed (See 5 MRSA c. 375, sub-c. II-A).

G. 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.

H. 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. Westlaw and the Internet are two good resources.

I. Uniform and model acts. The National Conference of Commissioners on Uniform State Laws prepares uniform acts, which it publishes in *Uniform Laws Annotated*.

J. 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. The library also offers computer-accessed resources such as Westlaw and the Internet.

K. Other resources. The Office of the Revisor of Statutes, 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 working with the joint standing and select committees of the Legislature and legislative and special study groups. The analysts in OFPR have expertise with 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 and 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; and
- technical or housekeeping provisions appear last.

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

In addition to composing a draft on a typewriter or word processor, the drafter may find the following methods useful. The Office of the Revisor of Statutes will accept legible 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 MRSA, including pocket parts, in *Laws of the State of Maine* or in an updated statutory database printout and marks the desired changes by striking through and underscoring the text, as appropriate. Old L.R.s and L.D.s also may be used. 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. It allows the drafter to insert blocks of text that make changes to existing law or that enact new law. This method and the mark-up method are helpful when the drafter uses existing statutory language as a model for the draft.

(3) **Diskettes.** Drafts may be submitted on computer diskettes. The Legislature uses Wang WPPLUS and Microsoft Word for Windows. Any drafts submitted in electronic form should be in one of these formats. In addition, a hard copy of the draft should be submitted with the diskette.

B. Final Review. Before a draft is submitted to the Office of the Revisor of Statutes 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 checklist of items 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 summary?

(10) Statutory references?

More importantly, after the drafter has ensured the bill's technical correctness, grammar and legal elegance, it must be determined that the draft still reflects the underlying purpose and intent.

After applying the above checklist to a draft, the drafter may wish to ask a colleague to read over the draft and suggest improvements.

Any changes made to a draft should be made on the computer-printed version that has been through draft processing in the Office of the Revisor of Statutes.

Section 3. Draft processing

A. Legal review. When a draft is submitted, it is first reviewed and revised by one of the legal staff in the Office of the Revisor of Statutes. The logical structure, the proposed allocation to the Maine Revised Statutes and the form and format are examined. The language is edited when necessary to conform with the legislative style and grammar explained in Part III of this manual, and any unnecessarily gender-specific terms are eliminated.

Questions concerning intent and clarity sometimes arise at this stage, and the sponsor or contact person designated by the sponsor is asked 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 Office of the Revisor of Statutes. 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 by checking for errors of grammar, punctuation, spelling, structure and arrangement and by helping ensure the draft's 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 consultation, if

necessary, with the sponsor's contact person or the outside drafter.

A draft goes through one or more cycles of legal review, technical processing and proofreading until it is judged ready for introduction. At that point, the sponsor may either sign the draft or make changes. 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 part of the public domain.

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 Office of the Revisor of Statutes.

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 are not generally allocated to the statutes but are drafted as unallocated law and placed at the end of the bill (e.g., transitional provisions, retroactivity clauses, appropriation or allocation clauses, effective date clauses and emergency clauses; these are dealt with in more detail later in this Part).

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 *Laws of the State 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). A drafter should avoid proposing public laws and private and special laws in the same bill since determining which provisions are of general application and locating and indexing the laws would be difficult. 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 and scope 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, generalized 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"

B. The mandate preamble. The Constitution of Maine, Article IX, Section 21 provides 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.

C. 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 of the manual) 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,

D. 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:**"

E. 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, as discussed in this part of the manual. Within that order, the sections are further arranged by category 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:

§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 purpose clauses 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 Office of the Revisor of Statutes 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, such as in a recodification, and there may be uncertainty as to whether the changes should be construed as merely an update of 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 or using the summary to express the purpose of the legislation.

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 should 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 the draft contains 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 VII 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.

In a provision that includes language granting an agency rule-making authority, the drafter must identify in the bill whether those rules are "major substantive" or "routine technical."

Example:

Sec. 10. Major substantive rules. Rules adopted pursuant to this section are major substantive rules as defined in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II-A.

If the bill creates a state or independent agency, the drafter needs to amend Title 3, chapter 35, which sets out the schedules for periodic review and justification under the State Government Evaluation Act.

(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 pages 177-183 of this manual.

(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 that 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.

Another example of a transition provision may be found in PL 1993, c. 708. 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. The revision clause should be drafted carefully to include all phases affected by the intended change. For example, when changing the name of a department, the name of the commissioner of that department must be changed also. In order to ensure completeness, a phrase search on the name should be done.

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, the valid provisions or applications of that law are unaffected. 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 a 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 summary:

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) **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. Appropriation sections are usually drafted by the Office of Fiscal and Program Review (OFPR). An appropriation section should be drafted to provide, in as few words as possible, a clear and concise identification of the particular funds, department or agency program, 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 and the designation of the type of count, e.g., Legislative Count or Other Count;
- Any salaries included in a personal services figure include a state retirement contribution factor as well as other related benefits;
- Abbreviations or popularized names that 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 by 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, 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." Specific questions about fiscal matters should be resolved through consultation with the Office of Fiscal and Program Review. There are many possible variations in appropriations (see pages 216-225 of

this manual 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)

	1997-98	1998-99
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

(h) 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 pages 216-225 of this manual 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.

(i) **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.

(j) **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 an unallocated 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.

(k) **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 from naming a specific occurrence or event that will trigger the operation of a law, 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 from 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 2), 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.

(l) **Emergency clause.** 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 must contain an emergency preamble and an 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, 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.

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

(m) 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 submission 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 on pages 166-169 of this manual. Bond issues, which are also subject to referenda, are discussed on pages 170-176 of this manual.

F. Fiscal note. A bill or resolve affecting state revenues, appropriations or allocations that has a committee recommendation other than "Ought Not to Pass" or "Referral to Another Committee" must include a fiscal note describing the fiscal impact of the bill before the bill 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. However, a fiscal note is not required to be added by committee amendment to the bill if there is no other proposed change to the bill and the fiscal note only describes minor costs or minor savings that would result from the bill's enactment. 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 5685. Fiscal notes, if necessary, 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 department or executive bills. In addition, any amendment introduced that would affect the fiscal impact of the original bill must also include a fiscal note.

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

	1995-96	1996-97
APPROPRIATIONS/ALLOCATIONS		
General Fund	\$18,903	\$26,646
Other Funds	383,308	535,887
REVENUES		
General Fund	\$18,903	\$26,646
Highway Fund	(402,211)	(562,533)
Other Funds	383,308	535,887

The bill increases the portion of gasoline tax allocated to the Snowmobile Trail Fund and the ATV Recreational Management Fund administered by the Department of Conservation. This transfer to tax revenues on internal combustion engine fuel will reduce Highway Fund revenue by \$402,211 and \$562,533 in fiscal years 1995-96 and 1996-97, respectively, and increase General Fund revenue and dedicated revenue to the Snowmobile Trail Fund and the ATV Recreational Management Fund.

The estimated increases of General Fund revenue are \$18,903 and \$216,646 in fiscal years 1995-96 and 1996-97, respectively. These funds are to be used by the Department of Inland Fisheries and Wildlife for the administration of law enforcement, registration and safety training programs. The bill includes additional General Fund appropriations of the same amounts for each of the corresponding fiscal years.

The estimated increases of dedicated revenue to the Snowmobile Trail Fund and ATV Recreational Management Fund within the Department of Conservation are \$383,308 and \$535,887 in fiscal years 1995-96 and 1996-97, respectively. This bill includes total dedicated revenue allocations of the same amounts for each of the corresponding fiscal years.

Example:

FISCAL NOTE

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.22 per day for each offender. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.

G. Summaries and comments. A summary, formerly known as 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.¹ The Office of the Revisor of Statutes is responsible for ensuring that each bill has an appropriate summary and rewrites proposed summaries that are too long, testimonial in nature or misleading or that advocate a position. Summaries should be straightforward and factual. Brevity in a summary, however, should not override the need for accuracy and thoroughness. In a bill dealing with a broad subject matter, a more detailed summary may be necessary.

The following are some examples of summaries.

Example:

SUMMARY

The purpose of this bill is to allow greater flexibility in residential placement of individuals who are near 18 years of age. Under this bill, the Department of Human Services may allow persons who reach 18 years of age to remain in a

¹ Draft proposed summaries (formerly known as “statements of fact”) carefully, because they may be relied on by the 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 summary to fill holes in a poorly drafted bill since, if the statute is unambiguous and at variance with the summary, the court will disregard the summary. Stone v. Board of Registration of Medicine, 503 A.2d 222 (Me. 1986).

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:

SUMMARY

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.

Example:

SUMMARY

This bill establishes the Emergency Medical Services Fund to support emergency medical services operations, to provide matching funds to licensed service providers and to 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 summary for a broad subject matter bill aimed at reducing medical malpractice.

SUMMARY

This bill accomplishes the following tasks.

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.

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 summary 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.

H. 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 summary and appears in quotes exactly as it is received from the Department of Corrections.

Example:

SUMMARY

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 (e.g., "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 on pages 35-52 in this manual. 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, 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, the bill is a private and special law bill. For further distinctions between allocated and unallocated law, see page 14.

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; and
Title 5, §361

should be arranged as follows:

Sec. 1. 5 MRSA §361;
Sec. 2. 12 MRSA §3;
Sec. 3. 12 MRSA §32; and
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, a bill affecting:

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

should be arranged as follows:

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

(c) Private and special laws. If a private and special law bill only enacts new law, the elements are arranged as described on pages 14-35 of this manual 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, a bill affecting:

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

should be arranged as follows:

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

(f) Unallocated laws. 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).)

(2) **Conflicting law.** When law proposed by a bill conflicts with existing law, the existing law should be expressly changed or repealed since the courts are generally unwilling to espouse the theory of repeal by implication. 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 that enact uniform laws (discussed in more detail on page 188 of this manual), 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 new material 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., 101, 103, 105, 107, and so on). This practice 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 having 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 minor 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;
- Reenacting law that was repealed; and
- Correcting and renumbering law.

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 Office of the Revisor of Statutes. The amending clauses in the following examples do not contain the historical information that is routinely provided by the Office of the Revisor of Statutes.

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 Education and Cultural Services, 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;

(v) Reenacting law that was repealed. This may be used only when the repealed law is reenacted word-for-word.

Sec. 1. 22 MRSA §3760-D, as repealed by PL 1995, c. 368, Pt. I, §1, is reenacted to read:

§3760-D. Special needs payment for recipients with excessive shelter costs

The department shall provide a special housing allowance in the amount of \$75 per month for each assistance unit to recipients of Aid to Families with Dependent Children whose shelter expenses for rent, mortgage or similar payments, property insurance and property taxes equal or exceed 75% of their monthly assistance unit income.

(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 on page 98 of this manual. In using the outline form, follow the guidelines set out on pages 93-98 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 usually 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 pages 38-44 of this manual 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 created by a committee report authorized by the presiding officers as "Ought to Pass in New Draft."

A new draft always indicates the L.D. number of the original bill, the names of the original sponsor and cosponsors 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.

Example 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]

[AMENDING CLAUSE,
ALLOCATED SECTION]

Sec. 1. 12 MRSA §6134, as enacted by PL 1975, c. 573, is further amended by adding at the end a new paragraph to read:

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 funding during any one-year period. The commissioner shall develop rules, including biological and economic criteria for evaluating proposals. The commissioner shall require the recipients of the grants 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 the Act.

1989-90 1990-91

**MARINE RESOURCES,
DEPARTMENT OF**

**Bureau of Marine
Development**

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.

[SUMMARY]

SUMMARY

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.

Example B: 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:

[BODY OF BILL]

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

**[ALLOCATED
SECTIONS]**

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

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 technical analysis, the director of consumer assistance and the assistant to the director of consumer assistance 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 account 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 assessment of not more than .25% on its intrastate gross operating revenues to produce no more than ~~\$2,306,000~~ \$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 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 are not 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 MRSA §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:

	1989-90	1990-91
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	
<p>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.</p>		
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

	1989-90	1990-91
APPROPRIATIONS/ ALLOCATIONS		
All Other	\$314,000	\$528,000
REVENUES		
Other Funds	\$314,000	\$528,000

This bill increase 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.

[SUMMARY]

SUMMARY

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.

Example C: 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 ~~said~~ 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.

[SUMMARY]

SUMMARY

This bill clarifies the procedures regarding nomination papers under section 14 of the Waldoboro Sewer District charter. This 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 same force of law as acts. 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. 80-53). 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 summary. The rules for drafting fiscal notes and summaries 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 options, 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 Office of the Revisor of Statutes. 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]

Sec. 1. 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.

[SUMMARY]

SUMMARY

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 1995 Resolves, chapters 66, 67, 82 and 83.

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.

Example:

Constitution, Art. IV, Part Third, §2-A is enacted to read:

Section 2-A. Line-item veto of dollar amounts appearing in appropriation or allocation sections of legislative documents. The Governor has power to disapprove any dollar amount appearing in an appropriation section or allocation section, or both, of an enacted legislative document. Unless the Governor exercises the line-item veto power authorized in this section no later than one day after receiving for signature the enacted legislation, the powers of the Governor as set out in section 2 apply to the entire enacted legislation. For any disapproved dollar amount, the Governor shall replace the dollar amount with one that does not result in an increase in an appropriation or allocation or a decrease in a deappropriation or deallocation.

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. Although the question is not part of the constitutional amendment and the Legislature has latitude in wording, the question should reflect the content and intention of the proposed amendment and should not be misleading or promotional. 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?"

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 maybe 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. Summary. Like a bill, a constitutional resolution contains a summary. The drafter should refer to pages 32-34 of this manual for rules on drafting summaries.

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

An example of a complete first session constitutional resolution with the labeled parts is as follows:

[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]

Section 14-E. Authority to insure payment of mortgage loans. For the purpose of fostering and

CLAUSE]

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.

SUMMARY

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 Government or local government, another state government, the federal government, an official of those governments or to another person or entity. Unlike bills, summaries 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 Office of the Revisor of Statutes. The Office of the Revisor of Statutes 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 Office of the Revisor of Statutes 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 fjord-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 resolution

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 ..." A standard introductory paragraph follows the title and comes before the preamble, 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. This type of joint resolution does not require approval from the President of the Senate and the Speaker of the House. The elements of an in memoriam differ from other joint resolutions.

An example of an in memoriam is as follows:

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;

**THEREFORE, 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.

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.

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 summary.

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; forms

A. Congratulatory orders or legislative sentiments. The most common use of orders is to congratulate or recognize a person, group or other entity for an outstanding achievement, civic accomplishment or important event. The President of the Senate and the Speaker of the House of Representatives, pursuant to the Joint Rules, set guidelines for the use of these instruments.

An example of a typical congratulatory order is as follows:

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.

B. Orders to recall bills. Occasionally, the Legislature wishes to reconsider its actions on a bill that is on the Governor's desk awaiting signature or that has failed and been placed in the legislative files. An order to recall a bill must recall the bill to either the House or the Senate--an order can not recall a bill to a committee.

Example of a joint order recalling a bill from the legislative files:

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.

SPONSORED BY: _____

(Representative JONES)

TOWN: Augusta

An example of an order recalling a bill from the Governor's desk:

STATE OF MAINE

In Senate _____

ORDERED, the House concurring, that Bill, "An Act to Establish a Presidential Primary in Maine," S.P. 178, L.D. 202, and all its accompanying papers, be recalled from the Governor's desk to the Senate.

SPONSORED BY: _____
(Senator SMITH)
COUNTY: Penobscot

C. Orders to report out bills. The Legislature may order a joint standing committee of the Legislature to report out a bill, including a bill that does not yet exist.

(1) Form when bill exists and is in committee:

ORDERED, the Senate (or House) concurring, that the Joint Standing Committee on (name of committee) report out, to the Senate (or House), that Bill, "An Act (set out title of bill)," S.P. ___, (or H.P. ___) L.D. ___.

(2) Form when no bill exists, but order supplies title:

ORDERED, the Senate (or House) concurring, that the Joint Standing Committee on (name of committee) report out, to the Senate (or House), a bill, "An Act (set out title of bill supplied by sponsor of order)."

(3) Form when no bill exists and order does not supply title:

ORDERED, the Senate (or House) concurring, that the Joint Standing Committee on (name of committee) report out, to the Senate (or House), legislation (set out the subject matter and brief description of the content of the bill).

D. Orders of adjournment. Orders may be used to adjourn the Legislature until a specified date, or direct the Legislature to adjourn "without day," or *sine die*, when the

Legislature is finished with its session. These orders are sometimes prepared in the offices of the Clerk of the Senate and the Secretary of the Senate rather than in the Office of the Revisor of Statutes. The forms for these orders are as follows:

(1) Form for adjournment until a specified date:

ORDERED, the House (or Senate) concurring, that when the House and Senate adjourn, they adjourn to (set date and time for reconvening).

(2) Form for adjournment without day:

ORDERED, that a message be sent to the Senate (or House) informing that Body that the House (or Senate) has transacted all the business that has come before it and is ready to Adjourn Without Day.

(3) Form for adjournment until Veto Day:

ORDERED, the House Concurring, that when the House and Senate adjourn, they both adjourn to ten in the morning on Wednesday, July 14, 1993, at which time the Senate and House of Representatives shall meet for one legislative day for the purpose of considering possible objections of the Governor to any Bill or Resolve presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2.

E. Orders to amend the rules. Orders may be used to amend the rules of either house or the Joint Rules. The forms of these orders are as follows:

(1) Form for changing Joint Rules (by joint order):

ORDERED, the Senate (or the House) concurring, that Joint Rule (number of Joint Rule) be (adopted, repealed or amended) (set out proposed new rule or amendment using strike-through and underscoring to show changes).

(2) Form for changing Senate Rules by Senate order or House Rules by House order:

ORDERED, that Senate (or House) Rule (number of

rule) be (adopted, repealed or amended) (set out proposed new rule or amendment using strike-through and underscoring to show changes).

F. Orders to carry over bills. The Legislature may wish to carry over bills from the first regular session to be considered further at the next regular or special session. Bills that are carried over are held in committee. Note that the form is the same whether one bill or 100 bills are carried over. The Legislative Council must approve any proposed carry-over of legislation, and council-approved requests are usually consolidated into one omnibus order.

The following is an example of a carry-over order with multiple bills being held over:

STATE OF MAINE

In Senate _____

Ordered, the House concurring, that the following specified matters be held over to the next special or regular session of the 113th Legislature:

Committee	Bill
Judiciary	(H.P. 1332) (L.D. 1822) - An Act Relating to Aggravated Trafficking or Furnishing Scheduled Drugs under the Maine Criminal Code.
Energy and Natural Resources	(H.P. 1411) (L.D. 1913) - A Resources Act to Amend the Comprehensive Protection for Groundwater Laws. (H.P. 1412) (L.D. 1915) - An Act to Clarify the Law Affecting the Transfer of Shoreland Property.
Education	(S.P. 672) (L.D. 1905) - An Act to Require the Department of Educational and Cultural Services

to Promulgate Rules Necessary to
Implement Legislation Enacted
During the First Regular Session
Concerning Certified Nursing
Assistants.

(Sen. SMITH)

SPONSORED BY: _____

COUNTY: Androscoggin

G. Study orders. Study orders, which were used prior to the mid-1980's to authorize studies to be conducted solely by Legislators, are currently disfavored. If a sponsor requests such an order, the drafter should advise the sponsor that purely legislative studies must be requested by letter to the Legislative Council. If the sponsor insists on the procedure, the drafter may draft a resolve authorizing the study, although the propriety for using an instrument that must be presented to the Governor for a function clearly internal to the Legislature is questionable.

H. Other uses of orders. Orders are used for many other purposes, such as ordering the printing of documents received by either house, authorizing the issuance of stamps, and regulating the use of legislative facilities. A drafter who is unsure of the proper form for a particular order should consult the Office of the Revisor of Statutes, the Secretary of the Senate or the Clerk of the House.

CHAPTER 6 AMENDMENTS

An amendment is a proposed change to a bill, resolve, constitutional resolution, resolution, order or another amendment. An amendment must relate to the same subject matter as the instrument to which it is offered. If it does not, the President of the Senate or the Speaker of the House may rule that it is not germane and therefore not properly brought before the body. The Office of the Revisor of Statutes processes requests for amendments authorized by Legislators or committees only, although a request might include a draft prepared by a lobbyist or an executive department or agency.

Section 1. Types of amendments; processing of amendments

There are two types of amendments: committee amendments and floor amendments.

A. Committee amendments. After considering a legislative document, the committee to which the document was referred may propose revisions to that document. This proposed revision is called a committee amendment; it is drafted by the legislative analyst for that committee. A committee amendment may be reported out by one or more members of the committee. If a majority of the members, or a plurality if no majority exists, of a committee supports the amendment, it is a majority report; a minority of the committee may join in a minority report. In theory, a committee could report out as many amendments as there are committee members.

B. Floor amendments. Floor amendments may originate in either the Senate or House of Representatives.

(1) **Senate amendments.** A Senate amendment is proposed and sponsored by a Senator.

(2) **House amendments.** A House amendment is proposed and sponsored by a member of the House of Representatives.

After an amendment has been processed in the Office of the Revisor of Statutes, it is either signed by the sponsor, if a floor amendment, or received by the committee clerk,

if a committee amendment, and then filed with either the Secretary of the Senate or the Clerk of the House. Senate amendments are filed with the Secretary of the Senate and House amendments are filed with the Clerk of the House. Committee amendments are filed with either the secretary or the clerk in accordance with the original instrument's house of origin. The secretary or the clerk assigns a letter designation and a filing number, then reproduces the amendment for distribution. The first amendment of a certain type is given the letter designation "A" and each subsequent amendment of that type to the same legislative instrument is assigned the next letter in sequence.

Section 2. Amendments to the second degree

Amendments beyond the second degree are prohibited. This means that an amendment may amend another amendment, but it may never amend an amendment to an amendment. Floor amendments to committee amendments and floor amendments to other floor amendments are proper as long as there are no more than two levels of amendments. The drafter must first determine what instrument needs to be amended. For example, if House Amendment "A" to Committee Amendment "A" to a bill has been adopted, the drafter may be able to avoid the problem by creating a new House amendment that goes directly to the bill if the changes desired are not in conflict with House Amendment "A" to Committee Amendment "A" to the bill. If the proposed changes are in conflict with House Amendment "A" to Committee Amendment "A" to the bill, the drafter must indicate to the sponsor that House Amendment "A" to Committee Amendment "A" to the bill must be removed or "killed," and the drafter writes the amendment as if House Amendment "A" to Committee Amendment "A" to the bill never existed (although in most instances, much of the body of that amendment may be incorporated as text in the new amendment, House Amendment "B" to Committee Amendment "A" to the bill).

Factors to consider in determining which document to amend include the following:

- Whether amendments have already been accepted and by which house;
- The sponsor's instructions;
- The likelihood of acceptance of other printed amendments; and
- Whether amending one instrument rather than another requires the

Legislature to take fewer additional procedural steps.

Section 3. Elements

In addition to the elements listed below, amendments have many technical elements with which the drafter need not be concerned, as they are supplied by the Office of the Revisor of Statutes.

A. Heading. The heading includes the house of origin and the session of the Legislature.

B. Introductory paragraph. The introductory paragraph, which appears after the heading, sets out the type of amendment, the instrument being amended and the title of the instrument being amended.

C. Body of the amendment. The body of the amendment contains the language that effectuates the objectives of the sponsor. The body consists of paragraphs setting out where and how the instrument is to be amended. The first paragraph always begins "Amend the bill (or amendment or other instrument)..." All subsequent paragraphs begin with "Further amend the bill (or other instrument)..." The drafter must be aware that the changes proposed by the amendment may require changing the title of the instrument.

D. Fiscal notes. A bill that proposes legislation that has a financial impact must have a fiscal note. Fiscal notes are usually added to bills during the amendment process. When drafting a committee amendment or a floor amendment, legislative drafters should contact the Office of Fiscal and Program Review to determine whether a fiscal note should be included in the amendment.

E. Summary. An amendment must have a summary. A summary describes how the amendment alters the instrument being amended. The same rules set out on pages 32-34 of this manual, for summaries on bills, apply to floor amendments. Summaries on committee amendments are drafted by legislative analysts and may include background information endorsed by the committee and the purpose and intent of the committee in recommending the proposed change.

The following example identifies the basic elements of an amendment.

[AMENDMENT
HEADING]

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

[INTRODUCTORY
PARAGRAPH]

HOUSE AMENDMENT "B" to COMMITTEE
AMENDMENT "A" to H.P. 1533, L.D. 2118, Bill,
"An Act Regarding Municipal Shellfish Regulations"

[BODY OF
AMENDMENT]

Amend the amendment in section 1 in
subsection 7 by inserting at the end 2 new sentences to
read: 'Once a clam digger sells the clams, an
identification tag may not be used to prosecute a clam
digger for any violation of this section, section 6671 or
section 6681. This subsection is effective July 1,
1990.'

[SUMMARY]

SUMMARY

This amendment makes the provision requiring
the use of identification tags by clam diggers effective
July 1, 1990, allowing the Department of Marine
Resources time for rulemaking and ensuring that clam
diggers are not liable for violations for undersize
clams once the clams have been sold.

Section 4. Technical style

A. Printer instructions. Amendments are drafted in the form of technical directions because, historically, they were instructions to the printer. These directions should be as clear as possible to ensure that the proper changes are made to the legislative instrument when it is engrossed.

The easiest way for a drafter to give these instructions unambiguously is to show the changes directly on the instrument being amended. The legislative technicians in the Office of the Revisor of Statutes will supply the necessary technical wording to accomplish the changes marked on the instrument.

B. Amendatory language. In order to identify the exact place in the instrument that the drafter seeks to amend, that place needs to be described in words and then identified by the page and line number.

Example:

Amend the bill by inserting at the beginning of the first line after the enacting clause (page 1, line 3 in L.D.) the following: 'Sec. 1.'

Example:

Amend the bill by inserting after section 4 the following:

Example:

Amend the amendment by striking out everything after the title and before the summary and inserting in its place the following:

C. Numbering. When adding or deleting sections from an instrument by amendment, the drafter considers only the section numbers of the document that are being amended. For example, if a bill has three sections and an amendment inserts two more, "Sec. 4." and "Sec. 5.," and a second amendment to the bill then inserts a different new section to the bill, that second amendment would also add a "Sec. 4." In such cases, the drafter includes the following paragraph:

Further amend the (instrument) by renumbering the sections to read consecutively.

Similarly, after deleting sections by amendment, the drafter refers to the remaining sections by the same numerical designation that they had in the instrument being amended and then gives instructions to renumber.

D. Quotes. The type of quotation marks used is of special significance for amendments. When indicating that specific words in an instrument are to be deleted or

when quoting specific words from an instrument, the amendment shows those words double quoted exactly as they appear in the instrument. When specific words are to be added by amendment, they are single quoted.

Section 5. Examples

This section contains three documents: a bill, a committee amendment to the bill and a House amendment to the committee amendment.

(1) The bill, H.P. 153, L.D. 205:

An Act to Prohibit and Provide a Penalty for Trespass by Animals

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

Sec. 1. 17 MRSA §3853-D is enacted to read:

§3853-D. Trespass by animals

1. Prohibition. A person commits a civil violation if any animal, owned by or subject to that person's control, enters on the property of another after the person had been previously warned by a law enforcement officer or a justice of the peace that an animal, owned by or subject to that person's control, was found on the property of another. A person is not liable under this section if, at the time of the alleged trespass, that person was licensed or privileged to allow the animal to be on the property.

2. Penalty. A forfeiture of not more than \$500 must be adjudged for a violation of this section. The court may also order restitution for any damage caused by the animal.

SUMMARY

This bill will reestablish the prohibition of and penalty for trespass by animals.

(2) Committee amendment "A" to H.P. 153, L.D. 205:

COMMITTEE AMENDMENT "A" to H.P. 153, L.D. 205, Bill, "An Act to Prohibit and Provide a Penalty for Trespass by Animals"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 7 MRSA c. 741 is enacted to read:

CHAPTER 741
ANIMAL TRESPASS

§4041. Animal trespass

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

A. "Animal control officer" or "law enforcement officer" means the animal control officer or law enforcement officer having jurisdiction over the area in which the livestock animal was found.

B. "Livestock animal" means dairy, feeding, beef or breeding cattle; horses; sheep; goats; donkeys; or swine.

C. "Trespass" means that a livestock animal of an owner or keeper has entered or been found on the property of another person.

2. Removal. The owner or keeper of a livestock animal is responsible, at the owner's or keeper's expense, for removing any livestock animal found trespassing. An animal control officer or law enforcement officer may, at the owner's or keeper's expense, remove and control a livestock animal found trespassing if:

A. The owner or keeper fails to remove the livestock animal within 6 hours after having been notified by an animal control officer or law enforcement officer that a livestock animal owned or kept by the owner or keeper was trespassing; or

B. The livestock animal is an immediate danger to itself, persons or another's property.

3. Civil violation. A person commits a civil violation if a livestock animal owned or kept by that person is found trespassing and:

A. That person fails to remove the livestock animal within 6 hours after having been personally notified by an animal control officer or law enforcement officer that a livestock animal owned or kept by that person was trespassing; or

B. A livestock animal of that person had been found trespassing on a prior occasion within the 12 months immediately preceding the present trespass and the owner or keeper had, at that time, been notified by an animal control officer or law enforcement officer of that trespass.

4. Penalty. A forfeiture of not more than \$500 must be adjudged for a civil violation under subsection 3. In addition, the court may as part of the sentencing include an order of restitution for damages caused by the livestock animal in accordance with section 3964 and for costs incurred in removing and controlling the livestock animal.

5. Exemption. A person is not liable under this section if, at the time of the alleged trespass, that person was licensed or privileged to allow the livestock to be on the property.

FISCAL NOTE

The Judicial Department has indicated that it can absorb the costs of this proposed legislation within existing resources.

If enacted, this legislation could result in a potential increase of revenue to the General Fund in an amount which can not be precisely estimated at this time.'

SUMMARY

This amendment clarifies the intent of the original bill by making the trespass of livestock on the property of another a

civil violation. It also adds a fiscal note.

(3) House Amendment "A" to Committee Amendment "A" to H.P. 153, L.D. 205:

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 153, L.D. 205, Bill, "An Act to Prohibit and Provide a Penalty for Trespass by Animals"

Amend the amendment by inserting after the title the following:

'Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, livestock animals have the greatest opportunity to trespass during the spring and summer when they are out in their pastures; and

Whereas, there needs to be a clarification of the animal trespass laws to cover this spring and summer; 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,'

Further amend the amendment in the first line after the title (page 1, line 16 in amendment) by striking out the word "Amend" and inserting in its place the following: 'Further amend'

Further amend the amendment by inserting at the end before the fiscal note the following:

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

SUMMARY

This amendment adds an emergency preamble and clause to the committee amendment to the original bill.

PART III STYLE AND GRAMMAR

This Part sets forth the conventions of style and grammar applied by the Office of the Revisor of Statutes 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 Office of the Revisor of Statutes often consult *The Fundamentals of Legal Drafting* (2nd ed.) and *Legislative Drafting* by Reed Dickerson along with *The Elements of Grammar* by Margaret Shertzer, *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

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," unless the word is an accepted term of art, such as "reasonable" attorney's fees.

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 on pages 100-104 of this manual.)

(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 on pages 117-121 of this manual.)

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." The drafter 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. Complete 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 pages 150-155 of this manual.)

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.

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.² 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

² Slosberg, Samuel H., *Report of the Director of Legislative Research*, October 12, 1964.

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;

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 discussion on gender on pages 109-117 of this manual.)

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.

Examples:

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 pages 109-117 of this manual.

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?

Examples:

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:

to implement pupil
management techniques

established a contractual
relationship with

has knowledge or
suspicion that

make application for

make payment for

make provision for

upon X's request to Y

upon a determination
by X that

Use:

to manage pupils'
behavior

contracted with

knows or suspects
that

apply for

pay for

provide for

if X asks Y

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 goal 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

In 1988, the Legislature 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. A list of some substitutions that may be useful is as follows:

Alternatives for Nouns and Adjectives

Do not use:

alderman
boatman
bondsman
brakeman
businessman

chairman
clergyman

committeeman
congressman
councilman
craftsman
dairyman
doorman
draftsman
enlisted man
ferryman
fieldman
fireman
fisherman (commercial)

Use:

municipal officer
boater
bonding institution
brake tender
member of the business
community
chair
member of the clergy;
cleric
committee member
member of Congress
council member
skilled worker; artisan
dairy farmer
doorkeeper
drafter
enlisted member
ferry operator
field worker
firefighter
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	signaler
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 it is necessary to distinguish gender, use the following list as a guideline.

Do not write:

Write:

husband, wife	spouse
widow, widower	surviving spouse
mother, father	parent
son, daughter	child
sister, brother	sibling
stepmother, stepfather	stepparent
grandfather, grandmother	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 pages 104-105 of this manual.)

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:

Example:

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 pages 100-102 in this manual.) 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.

(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) "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 adopt rules.

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

Examples:

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 ...

(c) 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.

Example:

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.

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

Examples:

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 ...

(e) In drafting definitions:

Example:

Do not write:

"Bottle" shall mean container ...

Write:

"Bottle" means container ...

(2) Must.

(a) "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) 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.

professions licensed by the State ...

(c) "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 pages 102-104 of the manual.

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. 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 the use of 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 pages 123-124 and 145-146 of this manual 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 (°), minutes (′), seconds (″), but abbreviate directions only when used with a degree.

Examples:

Do not write:

West 15° 22' 13" East OR
West 15 degrees, 22 minutes, 13 seconds East

Write:

W 15° 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. Summary. Acronyms and abbreviations may be used sparingly in summaries 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 summary. 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 and are also written out (2nd, 3rd, ...) unless the number is "first" or the first word in a sentence; session designations are also written out.

Examples:

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

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

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:

no more than 50% of the time
a sum equal to 0.5% the amount due
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.

Examples:

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 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."

The general rule for calculating time periods, such as the 90-day period in these examples above, 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 (Me. 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 adopt 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.

Examples:

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 and summaries.

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.

Examples:

Instead of using the name "Ducks Unlimited, Inc.," use:

An international, nonprofit organization whose purpose is to raise money for developing, preserving, restoring and maintaining waterfowl habitat on the North American continent.

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" refer to a previously mentioned subject better than "such" or "said."

Examples:

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. "Each," "every," etc. Generally, these adjectives should be avoided. Simple words such as "a," "an" or "the" nearly always can be used instead.

If it becomes necessary to use these words, there are certain rules that should be followed.

- (1) **“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 ...

- (2) **No.** Subject to the discussion on prohibitive and restrictive language on pages 121-122 of this manual, 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, mandatory 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:

absolutely null and void

accorded

adequate number of

adjudged, ordered and
decreed

admit of

afforded

among and between

attain

at the place

at the same time

at the time

attempt (as a verb)

cause it to be done

Simple:

void and of no effect

given

enough

adjudged

allow

given

among (if more than
two things or persons
are involved);
between (if two
or more things are
involved
but are treated
individually)

reach

where

when

when

try

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	in which
within or without the United States	inside or outside the United States
with reference to	for
with the object of changing (or other gerund)	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 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. Governmental Bodies.

(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) 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) 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) Capitalize the first letter of the first word of a paragraph, subparagraph, division and subdivision, 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.

(d) 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

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 adopt 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 penultimate 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) 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 Administrative and Financial Affairs, shall ensure compliance.

(b) 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) 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) Restrictive clauses. 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 Administrative and Financial Services 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 on pages 155-156 of this manual.)

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 on page 153-154 of this manual.

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 ...

"Do you favor amending the Constitution of Maine 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 "rule-making."

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 pages 62-64 of this manual. 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 pages 35-44 of this manual.

(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 Cites. 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 Cites. 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 cites. 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 cites. 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) Give either the official or popular name of the act or title. Avoid abbreviations.

(b) Give the title number before the name of the code, then list all necessary subdivisions of the statute cited (articles, sections, etc.).

(c) 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) 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) As with citation to a code, give the official title of the act or a popular name. Avoid abbreviations.

(c) 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 *Statutes at Large*.

(d) 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 or pose particular problems for the drafter. 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 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 Office of the Revisor of Statutes reviews all referendum questions to help ensure that they are not biased or misleading.

In addition to their use in constitutional resolutions (see pages 59-61 of this manual) and bond issues (see pages 170-176 of this manual), 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.

For further information on legislation submitted to referendum, see the Legal Issue Summary prepared by the Office of Policy and Legal Analysis, *Miscellaneous Provisions of the Constitution of Maine* (November 1989).

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 2 STATEWIDE BOND ISSUES

Frequently, the Legislature will authorize, subject to approval of the voters, the issuance of bonds to finance certain projects. The most common type of bond issue before the Legislature is the "general obligation" bond issue, which is backed by the "full faith and credit of the State," and whose debt service is paid out of the General Fund or Highway Fund.

Drafters must use caution when combining statewide bond issues with other types of language. When making changes to the statutes in the same instrument as a bond issue, it is convenient to separate the bill into parts.

When drafting legislation that is contingent on voter approval of a bond issue, but is not in the same bill as the bond issue, the drafter should include a section modeled on the following example.

Example:

Sec. XX. Application; contingent on bond issue. This Act takes effect only if a \$(amount of issue) general revenue bond issue (or other type, if applicable) for (purpose of bond issue) is approved by the voters of this State.

Since the Constitution of Maine, Article IX, Section 14 requires bond issues to be approved by a vote of 2/3 of the members of each house present and voting, the Attorney General's office determined that emergency preambles are unnecessary on bond issues. In a 1984 opinion, the Attorney General's office concluded that notwithstanding the presence of an emergency preamble on a bill authorizing a bond issue, a vote of 2/3 of the members of each House present and voting rather than 2/3 of the entire elected membership of the House is all that is required for passage (Op. Me. Att'y Gen., 84-20).

State bond issues are subject to the provisions and restrictions found in the Maine Revised Statutes and the Constitution of Maine, Article VIII, Part First, Section 2 and Article IX, Sections 14, 14-A, 14-B, 14-C and 14-D. Anyone drafting such a proposal should be familiar with these provisions. Technical questions concerning bond issue bill drafts should be discussed with the Office of Fiscal and Program Review. For a discussion

of some of the constitutional issues that can arise, refer to the Legal Issue Summary prepared by the Office of Policy and Legal Analysis, *Miscellaneous Provisions of the Constitution of Maine* (November 1989).

The following example is a model of a bond issue without any other type of language. 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 of this Act. 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 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 of this Act 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 of this Act 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 of this Act 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.

SUMMARY

The funds provided by this bond issue, in the amount of \$ _____, will be used to _____.

CHAPTER 3 COUNTY BOND ISSUES

In addition to statewide bond issues, the Legislature sometimes authorizes the commissioners of a specific county to issue bonds.

While the form of county bond issues may vary more than statewide bond issues, the following example provides a starting point.

Example:

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

Sec. 1. To raise money for (PURPOSE). The county commissioners of (NAME) County are authorized to raise and expend a sum not to exceed \$000,000 for (PURPOSE) located in (NAME) County.

Sec. 2. Aid from other sources. The county commissioners of (NAME) County are authorized to borrow any portion of the sums authorized by this Act from or through any agency or department of the State and the Federal Government. The county commissioners are authorized to receive grants of money and other assistance from or through any agency or department of the State and the Federal Government for any of the purposes authorized in this Act.

Sec. 3. Bonds. To provide funds for the (PURPOSE), the treasurer of (NAME) County, with the approval of the county commissioners, may borrow upon the full faith and credit of the county such sums as necessary, not exceeding in the aggregate \$000,000, and may issue bonds for those sums that must bear on their face the words "(NAME) County Capital Improvement Bonds Act of (YEAR)." Each authorized issue is payable in such annual installments, beginning not more than (NUMBER) years from the date of authorization and not earlier than the year (YEAR), as will extinguish each loan in not more than (20 OR LESS) years from its date. The bonds must be signed by the treasurer of the county and countersigned by the majority of the county commissioners. The county may sell the securities at public or private sale upon such terms and conditions as the county commissioners may determine proper but at not less than par and accrued interest.

Sec. 4. Temporary notes. The county treasurer, with the approval of the county commissioners, may issue temporary notes of the county payable not more than one year from their dates in anticipation of the issue of bonds under this Act and may renew those notes, but the time within which the bonds become due and payable may not by reason of such temporary notes be extended beyond the term fixed by this Act. Any notes issued in anticipation of the bonds must be paid from the proceeds of the bonds.

Sec. 5. Bonds authorized but not issued. Any bonds authorized but not issued, or for which bond anticipation notes have not been issued within 5 years of the ratification of this Act, are deauthorized and may not be issued, provided 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. 6. Service fees. The county may negotiate with the municipality in which the (PURPOSE) with funds provided under this Act is located for the annual payment of reasonable service fees reflecting the cost of municipal services associated with the (PURPOSE).

Sec. 7. Referendum for ratification. This Act must be submitted to the legal voters of (NAME) County. The dates of the submission must be determined by the (NAME) County Board of Commissioners but may not be later than 18 months after adjournment of the Legislature. The (NAME) County commissioners are authorized to expend such funds as necessary to implement the referendum.

The county commissioners shall cause the preparation of the required ballots on which they shall state the subject matter of this Act in the following question:

"Do you favor a \$000,000 bond issue for (PURPOSE)?"

The ballot must also contain the following information determined by the county commissioners to be accurate as of the date when it is necessary to begin preparation of the ballot question:

1. A statement of the total debt service of the requested issue divided into principal and interest and indicating the interest rate and period of the bond; and

2. A statement of the county's bonded indebtedness prior to the requested bond issue.

The voters shall indicate by a cross or a check mark placed against the words "Yes" or "No" their opinion of the question.

This Act takes effect immediately upon its acceptance by a majority of the legal voters voting at the election provided the total number of votes cast for and against the acceptance of this Act equals or exceeds (30%) of the total votes for all candidates for Governor cast in the next previous gubernatorial election in the county. If at the first election the total number of votes cast for or against acceptance of this Act is less than (30%) of the total votes for all candidates for Governor cast in the county in the next previous gubernatorial election, the county commissioners may submit the question to voters not more than one other time within the time prescribed in this section.

The result of the elections must be declared by the (NAME) County commissioners and due certificate filed with the Secretary of State.

SUMMARY

This bill authorizes the (NAME) County commissioners to seek approval from county voters to raise \$000,000 for (PURPOSE).

CHAPTER 4
CRIMINAL PENALTIES, CIVIL VIOLATIONS AND
THE MAINE CRIMINAL CODE

Section 1. Introduction

In 1975 Maine adopted a new criminal code (Maine Revised Statutes, Title 17-A), which went into effect on May 1, 1976. The Maine Criminal Code is intended to be a systematic revision of Maine's criminal law and is intended to apply not only to the crimes set out within the code but to crimes defined in all other parts of the Maine statutes. Criminal statutes drafted in the future must conform as closely as possible to the general principles and guidelines set out in the code. Therefore, the Maine Criminal Code should serve as the basic model for drafting any proposed statute that deals with crimes, civil violations or civil penalties.

Section 2. 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 or 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 or 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 3. 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 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 4. 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).

Section 5. Miscellaneous drafting problems

A. Minimum terms of imprisonment. One problem in drafting criminal provisions is that the classification system established by the Maine Criminal Code does not provide for the imposition of minimum terms of imprisonment. If a minimum term of imprisonment that may not be suspended is desired, the following language should be used:

(Set out name of offense) is a Class (classification letter) crime, except that a person convicted of this crime must be sentenced to a term of imprisonment of not less than (set out minimum term of imprisonment). The minimum term of imprisonment may not be suspended (nor may probation be granted).

An alternative means of requiring a minimum term of imprisonment that allows the court to impose a term of less than the minimum in exceptional circumstances follows:

(Set out name of offense) is a Class (classification letter) crime, except that a person convicted of this crime must be sentenced to a term of imprisonment of not less than (set out minimum term of imprisonment). The minimum term of imprisonment may not be suspended and probation may not be granted unless the court sets forth in detail the reasons for suspending the sentence. The court shall consider (set out the factors to be considered in suspending the minimum sentence) and may suspend the minimum term of imprisonment only if the court is of the opinion that the exceptional features of the case justify the imposition of another sentence.

Example:

Sexual exploitation of a minor is a Class B crime, except that a person convicted of this crime must be sentenced to a term of imprisonment of not less than 5 years. The minimum term of imprisonment may not be suspended and probation may not be granted unless the court sets forth in detail the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor and the history and character of the defendant, and may only suspend the minimum term if it is of the opinion that the exceptional features of the case justify the imposition of another sentence.

B. Minimum civil forfeitures/penalties.

(1) **Forfeiture.** If a minimum forfeiture is imposed for a violation (i.e., a forfeiture of not less than a stated dollar amount) the wording should be as follows: "A person who (set out prohibited conduct) commits a civil violation for which a forfeiture of not less than (minimum dollar amount of forfeiture) nor more than (maximum dollar amount of forfeiture) must be adjudged."

Example:

An owner of an orchard, field or garden who neglects or refuses to comply with the written order commits a civil violation for which a forfeiture of not less than \$10 nor more than \$50 must be adjudged for each violation.

(2) **Penalties.** For civil penalties, a minimum penalty provision should be worded as follows: "A person who (set out prohibited conduct) is subject to a (maximum dollar amount of penalty), payable to the State (or other entity). This penalty is recoverable in a civil action."

Example:

Any person violating this section is subject to a civil penalty of not less than \$1,000 nor more than \$2,000, payable to the State. This penalty is recoverable in a civil action.

C. States of mind. The code specifies in the Maine Revised Statutes, Title 17-A, section 34 that a person may not be convicted of a crime unless that person acted "intentionally," "knowingly," "recklessly" or "negligently," as defined in Title 17-A, section 35. The code no longer recognizes states of mind such as "willfully," "corruptly," "maliciously," etc., in the context of any criminal law. All states of mind included in criminal statutes that do not conform to one of the states of mind set out in the code are converted by Title 17-A, section 34 to "intentionally" or "knowingly." A culpable mental state should be included as an element in the definition of a crime unless it is expressly stated that some conduct must exist "in fact."

Example:

A person commits rape if that person engages in sexual intercourse with another person, not that person's spouse, if the other person has not in fact attained 14 years of age.

While the states of mind set out in the code are intended to encompass all culpable mental states in criminal law, if exceptional circumstances arise that require a statute be drafted with reference to a different state of mind, an exemption should be included in the statute to prevent that state of mind from being converted under Title 17-A, section 34. The exemption should be worded as follows: "Notwithstanding Title 17-A, section 34 ..."

Example:

Notwithstanding Title 17-A, section 34, a person who maliciously violates this section commits a Class E crime.

D. Headnotes. When the Maine Criminal Code was prepared, subsection headnotes were omitted. This deviates from the statutory format generally used in the other titles. When preparing legislation for the code, drafters should omit subsection headnotes.

CHAPTER 5
REQUESTS FOR OPINIONS OF THE
JUSTICES OF THE SUPREME JUDICIAL COURT

The Constitution of Maine, Article VI, Section 3, requires the Justices of the Supreme Judicial Court to render an opinion upon "important questions of law and upon solemn occasions, when required by the Governor, Senate or House of Representatives." Occasionally, either the Senate or the House of Representatives may wish to request that the court render an opinion on a certain issue.

Because the court will give its opinion only on important questions of law and upon solemn occasions, the request must spell out the circumstances raising the important questions of law or constituting the solemn occasion. Without this, the court may rule that the questions of law are not important or that the occasion is not solemn. For further discussion of what constitutes an important question of law or a solemn occasion, refer to the Legal Issue Summary prepared by the Office of Policy and Legal Analysis, *Miscellaneous Provisions of the Constitution of Maine* (Nov. 1989).

The following is the form generally used to request an opinion. The request has the following standard heading and first paragraph.

(House or Senate) Order Propounding Questions to the Justices
of the Supreme Judicial Court

Whereas, it appears to the (Senate or House of Representatives)
of the __th Legislature that the following are important
questions of law and that this is a solemn occasion; and

Then, in as many paragraphs as are necessary, the circumstances that give rise to the important questions of law and that make the occasion solemn are set out.

The "Whereas" paragraphs are followed by an "ORDERED" paragraph or paragraphs. If a separate summary concerning the occasion is to be set out in the order, it is set forth as indicated below.

Example:

ORDERED, that in accordance with the provisions of the Constitution of Maine, the (Senate or House of Representatives) herein (submits the following summary and) respectfully requests the Justices of the Supreme Judicial Court to give to the (Senate or House of Representatives) their opinion on the following questions of law:

(Summary)

(question to be addressed to the court)

This is the general form used in requesting an opinion, which may be varied to meet the needs of each particular case. An example follows. For further samples, refer to West's Key Digest, Courts, section 208.

Example:

STATE OF MAINE

In House _____

**House Order Propounding Questions
to the Justices of the
Supreme Judicial Court**

Whereas, it appears to the House of Representatives of the 114th Legislature that the following are important questions of law and that this is a solemn occasion; and

Whereas, the Constitution of Maine, Article VI, Section 3, provides for the Justices of the Supreme Judicial Court to render their opinion on these questions; and

Whereas, there is now before the 114th Legislature for its consideration House Paper 457, Legislative Document 622, "An Act to Require Parental Consent to a Minor's Abortion"; and

Whereas, Committee Amendment "A" has been proposed which would amend the document to allow ordained members of the clergy to provide information and counseling on abortion to minors as an alternative to requiring parental consent before a physician performs an abortion on a pregnant minor; and

Whereas, this provision may present a conflict between a civic duty required by law and an individual's religious beliefs; and

Whereas, Committee Amendment "A" requires that, before an attending physician may perform an abortion on a pregnant minor, the physician must ensure that the pregnant minor has given her informed consent to the procedure by providing information to the minor about the pregnancy and the abortion procedure, including the risks involved in both; providing information and counseling to the minor on the services and alternatives available to the minor or referring the minor to another authorized individual for information and counseling; and determining whether the minor, under all the surrounding circumstances, is mentally and physically competent to give consent; and

Whereas, if Legislative Document 622, as amended by Committee Amendment "A" becomes law, there may be serious questions regarding its constitutionality and effect; and

Whereas, it is important that the Legislature be informed as to the questions raised in this Order; now, therefore, be it

Ordered, that in accordance with the provisions of the Constitution of Maine, the House of Representatives respectfully requests the Justices of the Supreme Judicial Court to give the House of Representatives their opinion on the following questions of law:

Question No. 1. If Legislative Document 622 as amended by Committee Amendment "A" becomes law, would the potential involvement of the clergy authorized by law violate the Establishment Clause of the First Amendment to the United States Constitution?

Question No. 2. If Legislative Document 622 as amended by Committee Amendment "A" becomes law, does the information of consent requirement of the law impose improper professional obligations upon attending physicians unrelated to the licensing requirements of this State and the practice of medicine?

Question No. 3. If Legislative Document 622 as amended by Committee Amendment "A" becomes law, does the requirement that a physician provide information to a minor

concerning abortion, which may be contrary to the physician's religious beliefs, violate the First Amendment to the United States Constitution?

(Representative CARTER)
SPONSORED BY: _____

TOWN: Winslow

CHAPTER 6 UNIFORM LAWS

Uniform laws (laws recommended for enactment in each state by the National Conference of Commissioners on Uniform State Laws) sometime 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 usually altered to conform with the Maine Revised Statutes standards.

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 page 34 of this manual for a discussion on the use of comments in bills enacting or amending uniform laws.

CHAPTER 7
REAL ESTATE MATTERS

There are several types of legislation dealing with real estate matters. 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.

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 of this Act, the board of assessors of the plantation must 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 of this Act.

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 of this Act 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.

SUMMARY

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.

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.

SUMMARY

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. The statutory provisions regarding the procedure for deorganization of municipalities and plantations are found in Title 30-A, chapter 302. 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 of this Act, and at the 2nd regular municipal election after passage of this Act for the purposes of voting on the annexation described in section 2 of this Act. 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 of this Act. 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 of this Act 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. Secession of territory

Secession of a territory from a municipality is usually accomplished through a private and special bill subject to referendum submitted to the voters of the territory seeking to secede and the voters of the municipality containing the seceding territory. Statutory guidelines for legislation proposing secession may be found in Title 30-A, chapter 113, sub-c. II.

Example:

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

PART A

Sec. A-1. Separation and incorporation; Peaks Island. Subject to a referendum election as set forth in section 2 of this Part, the following territory now within the City of Portland and Cumberland County, together with the inhabitants of that territory, is separated and set off from the City of Portland and incorporated into a separate town by the name of the Town of Peaks Island: Peaks Island, House Island, Pumpkin Knob, Ram Island and Ram Island Ledge and the surrounding waters, referred to in this Act as "the Peaks Island territory." By virtue of this separation, the Town of Peaks Island is also removed from the jurisdiction of the Board of Harbor Commissioners of the Port of Portland, but remains within Cumberland County.

The boundaries of the Town of Peaks Island are described as follows: All that part of Portland in Cumberland County in the State of Maine beginning at a point in the waters of Hussey Sound between Long Island, Peaks Island and Great Diamond Island identified as 43° 40' 50" N by 70° 11' 00" W thence extending on a heading of 148.5° T through 43° 39' 00" N by 70° 09' 30" W to sea.

Beginning again at a point identified as 43° 40' 50" N by 70° 11' 00" W thence extending on a heading of 221° T to 43° 40'

00" N by 70° 12' 00" W thence extending on a heading of 215° T to 43° 39' 30" N by 70° 12' 30" W thence extending on a heading of 272° T to 43° 39' 30" N by 70° 13' 00" W thence on a heading of 186° T to 43° 38' 50" N by 70° 13' 05" W thence on a heading of 90° T to 43° 38' 50" N by 70° 11' 00" W thence on a heading of 255° T to 43° 37' 45" N by 70° 12' 00" W thence on a heading of 149° T through 43° 36' 30" N by 70° 10' 53" W to sea.

Sec. A-2. Referendum election. Part A of this Act takes effect 90 days after approval for the purpose of permitting its submission to the voters of Peaks Island at a special referendum election to be held on November 5, 1996. Warrants must be issued for this election notifying the qualified voters to vote on the approval or rejection of this Part.

For the purposes of this referendum election, all persons resident and legally registered to vote within the Peaks Island territory are eligible to vote on the question with respect to the separation of that territory from the City of Portland.

This Act does not require the City of Portland to hold an election unless it receives, collectively and in advance, from Peaks Island, represented by the Peaks Island Research Committee, the reasonable cost to the City of Portland of placing the referendum on the ballot in the special referendum election so that the City of Portland bears no cost or expense attributable to this Act.

The city clerk of the City of Portland shall prepare the required ballots on which the subject matter of this Act must be reduced to the following question:

"Do you favor the separation of Peaks Island, House Island, Pumpkin Knob, Ram Island and Ram Island Ledge and the surrounding waters from the City of Portland and their incorporation as a separate town?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their vote on this question.

The referendum election must be conducted by the city clerk of the City of Portland, who shall declare the result of the election. After the polls close and after a ballot inspection and recount, if one is necessary, the city clerk's declaration of the

election results is final, subject to review by the Superior Court for the County of Cumberland. The results of the referendum election must be filed by the city clerk with the Secretary of State.

Sec. A-3. Effective date of separation. If a majority of those voting in the Peaks Island referendum election approve the question, Part A of this Act takes effect with respect to that territory and that territory is separated from the City of Portland and is incorporated as the Town of Peaks Island on March 1, 1997.

Sec. A-4. Provision for first meeting. If a majority of those voting in the Peaks Island referendum election approve the question, a justice of the peace or notary public may issue a warrant to any legal voter in the Town of Peaks Island directing that legal voter to notify the municipal inhabitants of a public meeting to select municipal officers and to transact municipal business, to be held at a time and place specified in the warrant. Notice to the municipal inhabitants must be provided at least 7 days prior to the meeting. Until February 28, 1997, municipal officers or school board members selected at the meeting are vested with all the powers and duties that other duly elected municipal officers or school board members have, including the power to raise, borrow and spend money.

Sec. A-5. Form of government. If a majority of those voting in the Peaks Island referendum election approve the question, the Town of Peaks Island will be incorporated and separated from the City of Portland on March 1, 1997 and shall adopt the town meeting as its form of government.

This Act does not prevent the Town of Peaks Island from subsequently voting to change its form of government without the necessity of a further act of the Legislature.

Sec. A-6. Allocation of debts and assets. If the Town of Peaks Island is incorporated and is separated from the City of Portland on March 1, 1997, the Town of Peaks Island shall assume its just and due proportion of the debts of the City of Portland and shall receive its just and due proportion of the assets of the City of Portland. Any debt or any asset may be excluded upon agreement of both parties.

Sec. A-7. Sewage treatment services. If the Peaks Island territory is separated from the City of Portland and is incorporated as the Town of Peaks Island, the Portland Water

District shall provide wastewater and sewage services to the Town of Peaks Island in accordance with the district's charter. The allocation of financing, operating and maintenance costs and any other costs related to wastewater and sewage collection, interception and treatment under this paragraph must be consistent with the Portland Water District Charter, except that the arbitration panel may allocate or reallocate between the City of Portland and the Town of Peaks Island any of the financing, operating and maintenance costs and any other costs related to wastewater and sewage collection in its total allocation of debts and assets.

In relation to any bonded indebtedness and interest for the described facilities on Peaks Island, if that debt and interest are allocated to the Town of Peaks Island and if the town fails to make necessary payments, the City of Portland shall pay the principal and interest on any bonds authorized and issued by the Portland Water District prior to January 1, 1997. In such a case, the city has a cause of action against the Town of Peaks Island.

Sec. A-8. Teachers. If the Town of Peaks Island is incorporated and is separated from the City of Portland, that separation in no way affects the tenure rights existing on November 5, 1995 of those school teachers within the Portland School System who are employed at the Peaks Island school as of November 5, 1996 and who elect to remain employed by the Portland School System.

Sec. A-9. Water rates. If the Town of Peaks Island is incorporated and is separated from the City of Portland, the Portland Water District shall provide water service to the Town of Peaks Island in accordance with the district's charter and may charge rates in accordance with the provisions of the Maine Revised Statutes, Title 35-A, chapter 61.

PART B

Sec. B-1. Other duties and responsibilities. Projected debts, assets and property taxes for the period July 1, 1996 to February 28, 1997 must be allocated between the City of Portland and the Town of Peaks Island as set forth in Part A, section 6. The City of Portland and the Town of Peaks Island shall allocate other duties and responsibilities between themselves as they mutually determine to be necessary and appropriate and shall negotiate with each other in good faith.

Sec. B-2. Agreement binding; binding arbitration. Negotiations under section 1 of this Part must be completed by June 30, 1996, subject to a mutually agreed-upon extension. If the parties reach agreement by that date, the agreement must be reduced to writing and is final and binding on the City of Portland and the Town of Peaks Island upon incorporation of the Town of Peaks Island on March 1, 1997 if the referendum question in Part A, section 2 is approved.

If the parties do not reach agreement by June 30, 1996, the parties shall submit any matters remaining in dispute to a panel of arbitrators and shall reduce to writing all matters agreed upon. The panel of arbitrators consists of one arbitrator selected by the City of Portland, one arbitrator selected by the representatives of the Peaks Island Research Committee and one neutral arbitrator selected jointly by the 2 other arbitrators. Each party shall pay its chosen arbitrator and half of the cost of the neutral arbitrator. Determination of disputed matters by the panel of arbitrators is final and binding on the parties. The arbitration must be administered under the auspices of the American Arbitration Association and, except for the selection of arbitrators, is governed by the commercial rules and procedures of the American Arbitration Association. The concept of "last best offer" must be used. These issues must be resolved no later than September 30, 1996.

SUMMARY

This bill authorizes the incorporation of Peaks Island, House Island, Pumpkin Knob, Ram Island and Ram Island Ledge into the Town of Peaks Island if the legal residents of

those territories approve, by referendum, separation from the City of Portland and incorporation as a separate town. Part B of the bill clarifies the binding arbitration process.

Section 6. 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

* Note that according to the Constitution of Maine, Article IV, Part Third, Section 16, a bill providing for "the sale or purchase or renting for more than 5 years of real estate" may not be an emergency measure.

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 summary. Otherwise, the description should be included in the body of the bill.

Example with incorporated description:

**Resolve, to Clear Title or to Secure a Release of Property
from the State**

Sec. 1. 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.

SUMMARY

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.

For an example using descriptions that are incorporated by reference, see pages 205-207 of this manual.

CHAPTER 8

INCORPORATION BY REFERENCE

In drafting a legislative document, it may be necessary or desirable to refer to another source as a means of incorporating its contents into your document. Unfortunately, this convenience presents practical and constitutional pitfalls and should be used judiciously.

If it is necessary to incorporate by reference a law, regulation, rule, policy or other source, make certain it is clearly and correctly identified and that it contains the desired information. The following resolve properly incorporates purchase and sale agreements. The agreements were attached to the legislative document as exhibits.

Resolve, Authorizing the Conveyance of Certain Public Lands

Sec. 1. 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.

SUMMARY

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 summary.

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

**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 9 INITIATED BILLS

The Constitution of Maine, Article IV, Part 3, Sections 18, 19 and 20 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 Office of the Revisor of Statutes for an advisory editorial review. The Office of the Revisor of Statutes reviews the bill draft and prepares a revised draft that includes suggested corrections authorized by the Maine Revised Statutes, Title 21-A, section 901, such as corrections to form, format, allocation and grammar. This corrected draft is forwarded to the Secretary of State's Office. The Secretary of State provides the corrected draft to the proponents who are advised, but not required, to use the corrected version. If the proponents make additional changes to the draft, the Secretary of State's Office forwards the changes to the Office of the Revisor of Statutes for review. The Office of the Revisor of Statutes does not prepare a new revised draft based on the proponent's changes; rather, comments on the revised draft or drafts are conveyed by means of a letter addressed to the Secretary of State's Office.

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. From that point on changes may be made, as the Constitution of Maine 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.

CHAPTER 10 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 *Laws of the State of Maine* and publication errors in *Maine Revised Statutes Annotated*. *Laws of the State of Maine* errors and Maine Revised Statutes errors should be sent to the Office of 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 Office of 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.

Depending on the nature of the error, it will either be addressed in the annual Revisor's Report or included in a bill specifically designed to correct such technical errors, known as an "errors bill."

The Revisor's Report is an annual report submitted to the joint standing committee having jurisdiction over judiciary matters describing all the changes made by the Revisor of Statutes pursuant to the Maine Revised Statutes, Title 1, section 93 in the course of update. The Revisor of Statutes is authorized by that section of law to make certain limited changes or corrections when the corrections do not alter the sense or meaning of the laws. The types of corrections permitted are explicitly outlined in the statute, and

include corrections involving cross-references, histories, headnotes and renumbering or relettering. Any nonsubstantive error identified that does not fit squarely within the categories set forth in Title 1, section 93 are reviewed for inclusion in an errors bill.

After legal review, these remaining sections are consolidated into a bill entitled "An Act to Correct Errors and Inconsistencies in *Laws of the State 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 a separate part of the bill or committee amendment or 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 these and any other floor amendments to the errors bill are governed by the Joint Rules, which require that an amendment to the errors bill be printed at least 24 hours before consideration.

CHAPTER 11
ACTIONS RELATING TO
THE UNITED STATES CONSTITUTION

Article V of the United States Constitution provides that:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress ...

The powers granted to the state legislatures include the ratification of proposed amendments and the right to make application to Congress to call conventions for the purpose of proposing constitutional amendments. Generally, legislative proposals for actions relating to the United States Constitution take the form of a memorial, resolution, application or petition. The procedures governing these powers are established in the Joint Rules; as stated in the rule, the proposals do not need approval from the Legislative Council.

The following examples show two types of joint resolutions involving actions relating to the United States Constitution. The drafter can modify the form used in these examples to fit the circumstances of the particular occasion.

(1) Example of a joint resolution ratifying an amendment to the United States Constitution:

**JOINT RESOLUTION TO RATIFY THE EQUAL
RIGHTS AMENDMENT TO THE FEDERAL
CONSTITUTION**

Whereas, the 92nd Congress of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the

Constitution when ratified by the Legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This Amendment shall take effect two years after the date of ratification, now, therefore, be it

Resolved: By the Members of the House of Representatives and the Senate of the 106th Legislature, that such proposed amendment to the Constitution of the United States of America be and the same is hereby ratified; and be it further

Resolved: That certified copies of this Resolution be forwarded by the Secretary of State to the Administrator of General Services, Washington, D.C., and the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States.

(2) Example of a joint resolution making application to Congress for the calling of a constitutional convention:

**JOINT RESOLUTION MAKING APPLICATION
TO CONGRESS CALLING A CONSTITUTIONAL
CONVENTION TO PROPOSE AN AMENDMENT
TO THE FEDERAL CONSTITUTION TO
REQUIRE A BALANCED FEDERAL BUDGET**

WHEREAS, with each passing year, this nation becomes more deeply in debt as its expenditures grossly and repeatedly exceed available revenues so that the public debt now exceeds hundreds of billions of dollars; and

WHEREAS, the annual federal budget continually demonstrates an unwillingness or inability of both the legislative and executive branches of the Federal Government to curtail spending to conform to available revenues; and

WHEREAS, unified budgets do not reflect actual spending because of the exclusion of special outlays which are not included in the budget nor subject to the legal public debt limit; and

WHEREAS, knowledgeable planning, fiscal prudence and plain good sense require that the budget reflect all federal spending and be in balance; and

WHEREAS, believing that fiscal irresponsibility at the federal level, with the inflation which results from this policy, is the greatest threat which faces our nation, we firmly believe that constitutional restraint is necessary to bring the fiscal discipline needed to restore financial responsibility; and

WHEREAS, under the United States Constitution, Article V, the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to the United States Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments which, in either case, shall be valid to all intents and purposes, as part of the United States Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; and

WHEREAS, we believe action on amendments to the United States Constitution concerning federal expenditures to be vital; now, therefore, be it

RESOLVED: That this body respectfully apply to the Congress of the United States to call a convention for the specific and exclusive purpose of proposing an amendment to the United States Constitution to require a balanced federal budget, except in time of declared war or when 3/5 of the elected members of each House agree; and be it further

RESOLVED: That this application by this body constitutes a continuing application in accordance with the United States Constitution, Article V, until at least two thirds of the legislatures of the several states have made similar application pursuant to Article V, but if Congress proposes an amendment to the United States Constitution identical in subject matter to that contained in this Joint Resolution, then this application for a constitutional convention shall no longer be of any force or effect; and be it further

RESOLVED: That this application and request be void, rescinded and of no effect in the event that such convention not be limited to such specific and exclusive purpose; and be it further

RESOLVED: That this body propose that the legislatures of each of the several states comprising the United States apply to the Congress requesting the enactment of an appropriate amendment to the United States Constitution; or requiring the Congress to call a constitutional convention for proposing such amendment to the United States Constitution; and be it further

RESOLVED: That duly authenticated copies of this resolution be immediately sent to the Secretary of State and to the Secretary of the Senate and presiding officers of both houses of the legislature of each of the several states in the nation, the Speaker and the Clerk of the United States House of Representatives, the President and the Secretary of the United States Senate and to each member of the Maine Congressional delegation.

CHAPTER 12

APPROPRIATIONS AND ALLOCATIONS

General provisions concerning the use and limitations of appropriation and allocation sections are set forth on pages 24-27 of this manual. 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. An example of each major variation follows. Although each of 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.

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 - Legislative Count	(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	<u>\$56,000</u>
--------------	-----------------

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
-----------	-------------

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 - Legislative Count	(2.0)
Personal Services	\$51,800
All Other	3,200
Capital Expenditures	1,000
TOTAL	<u>\$56,000</u>

Provides funds for one Attorney and one Clerical position in order to carry out the purposes of this Act.

Health - Bureau of

Positions - Legislative Count	(14.0)
Personal Services	\$291,760
All Other	65,240
TOTAL	<u>\$357,000</u>

Provides funds for 14 Restaurant Inspector positions in order to carry out the purposes of this Act.

DEPARTMENT OF HUMAN SERVICES	
TOTAL	<u>\$413,000</u>

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 - Legislative Count	(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 Inspector positions in order to carry out the purposes of this Act.

DEPARTMENT OF HUMAN SERVICES	
TOTAL	<u>\$343,560</u>

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 - Legislative Count	(0.5)
Personal Services	\$13,832
All Other	5,000
Capital Expenditures	500

Provides funds for a 1/2-time Laboratory Supervisor position to develop, adopt and monitor rules for substance abuse testing.

DEPARTMENT OF HUMAN SERVICES	
TOTAL	<u>\$19,332</u>

LABOR, DEPARTMENT OF

Regulation and Enforcement

Positions - Legislative Count	(1.0)
Personal Services	\$19,373
All Other	3,500

Provides funds for one Clerical Enforcement position and related expenses including the cost of a report.

DEPARTMENT OF LABOR	
TOTAL	<u>\$22,873</u>

TOTAL APPROPRIATIONS	<u>\$42,205</u>
-----------------------------	-----------------

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 - Legislative Count	(0.5)
Personal Services	\$13,832

Provides funds for a 1/2-time Laboratory Supervisor position to develop, adopt and monitor rules for substance abuse testing.

DEPARTMENT OF HUMAN SERVICES	
TOTAL	<u>\$13,832</u>

LABOR, DEPARTMENT OF

Regulation and Enforcement

Positions - Legislative Count	(1.0)
Personal Services	\$19,373

Provides funds for one Clerical Enforcement position and related expenses including the cost of a report.

DEPARTMENT OF LABOR	
TOTAL	<u>\$19,373</u>

TOTAL APPROPRIATIONS	<u>\$33,205</u>
-----------------------------	-----------------

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 - Legislative Count	(2.0)
Personal Services	\$51,800
All Other	3,200
Capital Expenditures	1,000
TOTAL	\$56,000

Provides funds for legal staff.

Health - Bureau of

Positions - Legislative Count	(14.0)
Personal Services	\$291,760
All Other	65,240
TOTAL	\$357,000

Provides funds for 14
 Restaurant Inspector positions.

DEPARTMENT OF HUMAN SERVICES	
TOTAL	\$413,000

LABOR, DEPARTMENT OF

Regulation and Enforcement

Positions - Legislative Count	(1.0)
Personal Services	\$19,373
All Other	10,000

TOTAL	<u>\$29,373</u>
-------	-----------------

Provides funds for one Clerical Enforcement position and related expenses.

Administration - Bureau of Labor Standards

Positions - Legislative Count	(1.0)
Personal Services	\$23,489
All Other	10,000

TOTAL	<u>\$33,489</u>
-------	-----------------

Provides funds to hire one Clerk Typist I position.

DEPARTMENT OF LABOR	
TOTAL	<u>\$62,862</u>

TOTAL APPROPRIATIONS	<u>\$475,862</u>
-----------------------------	------------------

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 - Legislative Count	(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 - Legislative Count	(14.0)
Personal Services	\$291,760

Provides funds for 14 Restaurant Inspector positions in order to carry out the purposes of this Act.

DEPARTMENT OF HUMAN SERVICES
TOTAL

\$443,560

LABOR, DEPARTMENT OF

Regulation and Enforcement

Positions - Legislative Count	(1.0)
Personal Services	\$19,373

Provides funds for one 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**

\$29,373

TOTAL APPROPRIATIONS

\$472,933

BIBLIOGRAPHY

- Advisory Commission on Intergovernmental Relations. *State Constitutions in the Federal System: Selected Issues and Opportunities for State Initiatives*. Washington, D.C., 1989.
- Barnet, Sylvan, and Marcia Stubbs. *Practical Guide to Writing*. Boston: Little, Brown and Company, 1977.
- Dickerson, Reed. *The Fundamentals of Legal Drafting*. Boston: Little, Brown and Company, 1986.
- _____. *Legislative Drafting*. Westport: Greenwood Press, 1977.
- _____. *Materials on Legal Drafting*. St. Paul: West Publishing Company, 1981.
- Fowler, H.W. *A Dictionary of Modern English Usage*. Oxford: Oxford University Press, 1985.
- Legislative Research Office, State of Maine. *Manual for Legislative Drafting*. 1980.
- Maggio, Rosalie. *The Nonsexist Word Finder*. Phoenix: Oryx Press, 1987.
- Office of Legislative Assistants, State of Maine. *A Guide to Maine Bill Drafting*. 1976.
- Office of Policy and Legal Analysis, State of Maine. *An Outline on the Commerce Clause*. Aug. 1988.
- _____. *An Outline on Delegation of Legislative Authority*. Dec. 1986.
- _____. *An Outline on Federal Preemption*. Nov. 1986.
- _____. *An Outline on Miscellaneous Provisions of the Constitution of Maine*. Nov. 1989.
- _____. *An Outline on the Privileges and Immunities Clause*. Sept. 1988.
- _____. *An Outline on Separation of Powers*. Nov. 1989.
- _____. *An Outline on Statutory Construction*. Nov. 1987, Jan. 1987.
- Office of the Revisor of Statutes, State of Maine. *Manual for Legislative Drafting*. 1988.
- Office of the Revisor of Statutes, State of Minnesota. *Minnesota Revisor's Manual*. 1984.
- Shertzer, Margaret. *The Elements of Grammar*. New York: Macmillan Publishing Company, 1986.
- Singer, Norman J. *Sutherland Statutory Construction*. Wilmette: Callaghan & Company, 1985.
- Strunk, William, Jr., and E.B. White. *The Elements of Style*. New York: Macmillan Publishing Company, 1979.

Weihofen, Henry. *Legal Writing Style*. St. Paul: West Publishing Company, 1961.

Wydick, Richard C. *Plain English for Lawyers*. Durham: Carolina Academic Press, 1979.

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